
(2014) 08 MAD CK 0204
In the Madras High Court
Case No : Writ Petition No. 15512 of 2013

R. Kuppuswamy

APPELLANT

Vs

The Registrar

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Citation : (2014) 08 MAD CK 0204

Hon'ble Judges : Satish K. Agnihotri, J;M.M. Sundresh, J

Bench : Division Bench

Judgement

1. The petitioner herein was appointed as a Postal Assistant on 19.10.1968. On the completion of 16 years of qualifying service, he was given financial up-gradation under Time Bound One Promotion Scheme with effect from 19.10.1984. Thereafter on completion of 26 years of service, he was given financial up-gradation under Biennial Cadre Review Scheme on 01.01.1995. He was further promoted to the lower Selection Grade-I on regular basis with effect from 05.01.2006 and was posted as Assistant Postmaster (Lower Selection Grade), Tindivanam Head Post Office in Pondicherry Division. As per Posts and Telegraphs (Selection Grade Posts) Recruitment Rules, 1976, for Higher Selection Grade-I post, the feeder category is the Higher Selection Grade-II officials with three years of service as on the first January of crucial year. It is also the position with respect to ad hoc promotion/officiating arrangement to Higher Selection Grade I Cadre. The petitioner was not given any ad hoc promotion to the Higher Selection Grade Cadre-I by the respondents. Since the post of Higher Section Grade-I Postmaster, Tindivanam Head Post Office, was vacant, purely on a local arrangement for the functional necessity, the fourth respondent in and by the Memo dated 10.01.2006, directed the petitioner to work in the said post. While working so as Higher Selection Grade-I Postmaster, the petitioner reached the age of superannuation on 31.01.2006. The petitioner filed an application in O.A. No. 1148 of 2011 before the Central Administrative Tribunal, Madras Bench, claiming fixation of pay and other benefits taking into account of the last drawn pay drawn in Higher Selection Grade-I pay. The Tribunal, in and by the order

dated 26.02.2013, dismissed the application of the petitioner on the ground that the petitioner was only asked to discharge the duties of Higher Selection Grade-I as a stop gap arrangement and since he has not completed three years regular service as Higher Selection Grade-I, he is not entitled for the relief. Challenging the same, the present writ petition has been filed.

2. The learned counsel appearing for the petitioner submitted that as per the Official Memorandum, the petitioner is entitled for the relief sought for. When there is no dispute that the petitioner was discharging the work in the post of Higher Selection Grade-I Postmaster, the benefits due to him for the said post cannot be denied. In support of his contention, the learned counsel has made reliance upon the following judgments.

1. Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others, ;
2. Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, ;
3. S.C. Parasher, Deputy Director General (Retd.), All India Radio Vs. Union of India (UOI) and Others, ;
4. UNION OF INDIA AND ANOTHER V. THE REGISTRAR, CENTRAL ADMINISTRATIVE TRIBUNAL, CHENNAI AND ANOTHER (W.P. No. 22202 OF 2005 dated 23.10.2008);
4. THE EXECUTIVE ENGINEER, TNWS & amp; DB, TUTICORIN V. DHARMAR AND 3 OTHERS (W.A. No. 1607 of 2002 dated 17.04.2009);
5. M. PARASURAMAN V. THE SECRETARY TO GOVERNMENT AND ANOTHER (W.A. No. 1780 of 2012 dated 29.08.2012); and
6. M. KASI V. INDIAN BANK, REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR, CHENNAI AND ANOTHER (W.A. No. 108 of 2012 dated 21.02.2013).

3. Per contra, the learned counsel appearing for the respondents 2 to 4 submitted that admittedly, the petitioner was asked to discharge the duties of Higher Selection Grade-I as a stop gap arrangement and no order was issued by the competent authority. He was also not qualified to the post of Higher Selection Grade-I. The Official Memorandum does not have any application to the case of the petitioner. In support of his contention, the learned counsel has relied upon the decision rendered by the Supreme Court in Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others, as well as the judgment of the Division Bench of this Court in M. ANANDAN V. UNION OF INDIA AND OTHERS (W.P. No. 26803 of 2012 dated 26.07.2013).

4. We have perused the documents filed by the learned counsels appearing for the parties and the decisions relied upon by them.

5. A perusal of the clarification issued under Rule 49 of CCS (Pension) Rules would show that it does not have any bearing to the present case on hand. Merely because, the petitioner has been asked to work in the position of Higher

Selection Grade-I Postmaster, he will not get any benefits of the said post for the purpose of claiming fixation of pension and other retiral benefits. As per the Posts and Telegraphs (Selection Grade Posts) Recruitment Rules, 1976, an employee concerned is promoted to Higher Selection Grade-I only when he has got three years of service as in the cadre of Higher Selection Grade-II. Merely because the pay is available for the work done by the petitioner, it will not give any vested right. Admittedly, no order was issued giving any ad hoc promotion to the petitioner by the competent authority viz., Circle Office. The mere order asking the petitioner to work in the vacancy of Higher Selection Grade-I cadre by way of local arrangement for functional necessity will not give any right. The decisions relied upon by the learned counsel appearing for the petitioner will not help his case. Even in *Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others*, the officer concerned was found eligible for promotion and in such circumstance only, the Supreme Court has held that the pay of promotion post cannot be denied even if the promotion was an officiating or stop-gap arrangement. It also deals with only the payment of salary

6. The other decision relied upon by the petitioner in *Selvaraj Vs. Lt. Governor of Island, Port Blair and Others*, did not say that notwithstanding the appointment made as stop gap arrangement, that too, without any qualification for considering the post in which the officer is working in the said capacity, he is entitled for pay fixation.

7. Further, the decision rendered by the Honourable Supreme Court in *Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others*, has not been taken into consideration by this Court on the earlier occasion. On the contrary, we are of the view that the decision of this Court rendered in W.P. No. 26803 of 2012 dated 26.07.2013 has got a direct bearing to the present case, wherein it has been held as follows:

"6. Even though the petitioner was a regular employee in HSG Grade II post, as pointed out by the Tribunal, only when the senior officer in HSG Grade I Post went on leave, to cope up with the requirement of work, the petitioner has been asked to attend to the duties of the higher post only under a local arrangement. Such an arrangement will not confer any right in pay fixation of HSG Grade I Post and consequential pensionary benefits as contemplated in Office Memorandum No. 45/10/98-P & PW(A) dated 17.12.1998. The petitioner has not produced any order or proceedings to show that he was ordered to officiate in HSG Grade I Post. In the absence of any such documents, the Tribunal was right in dismissing the petitioner's Original Application. We do not find any infirmity, warranting interference with the order of the Tribunal. Accordingly the writ petition is dismissed. No costs."

8. A mere payment made to a higher post to which an officer is not entitled to on merit cannot give him any right. When such arrangement is only a stop gap arrangement made by the authorities in favour of the officer, who was also not eligible to the said post on a permanent basis, then resultantly, he is not entitled

for pay fixation in the higher category. It is merely based upon necessity and not on either seniority or merit. Therefore, no right, equity or expectation could be built upon it. Considering the said legal position, the Supreme Court in Ramakant Shripad Sinai Advolpalkar Vs. Union of India and others, has held as follows:

"4. On the first contention, the very terms of the office order dated 30th August, 1963 (Exhibit A) is clear and conclusive. It says:

"Shri Ramakanta Sripada Sinai Advol-palcar, acting 3rd grade officer of the Caixa Economica de Goa will perform the duties of the Treasurer of Caixa Economica de Goa, vice Shri Antonio Xavier Furtado, who died this morning. Shri Advolpalcar should assume the function of the post from today.

Shri Advolpalcar will draw besides the monthly salary of his own post as acting 3rd grade officer an allowance of Rs. 100/- p.m. which is payable to the post of treasurer under the existing rules...." (Emphasis supplied) The arrangements contemplated by this order plainly does not amount to a promotion of the appellant to the post of Treasurer. The distinction between a situation where a Government servant is promoted to a higher post and one where he is merely asked to discharge the duties of the higher post is too clear to require any reiteration. Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of the higher post; but gets only that in service parlance is called a "charge allowance". Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement.

We may recall the observations of this Court in the context of a rule requiring as a condition for eligibility that the "person should have worked on the post for seven years" where the difference between merely working on the post and holding a post was indicated:

"13. Perhaps, there would have been some merit in the submission on behalf of the petitioner if in Rule 3(b) the words used were "who held the post" but the language in Rule 3(b) is so materially different and it speaks that a person should have worked on the post. The State was apparently wrong in introducing the element of rank for the purpose of Rule 3(b)."

See: State of Madhya Pradesh and Another Vs. Laxmishankar Mishra,

In Girja Shankar v. S.D.O., Harda it was held that a "person appointed to be in charge of the current duties of the office" did not hold the rank and, therefore, could not discharge the statutory functions assigned to the post. In the present case appellant cannot, on the strength of the office order dated 30th August 1963, claim to have been promoted to the post of the "Treasurer". The first contention is, therefore, unsubstantial.

6. The third contention is that appellant's "in charge" arrangements in the higher post had continued for so long a period that a determination of equivalence on the basis of his lower substantive post would become arbitrary. This contention ignores the fact that an "in charge" arrangement is not a recognition of or is necessarily based on seniority and that, therefore, no rights, equities or expectations could be built upon it. The third contention is also unmeritorious."

9. In view of the said pronouncement and in the light of the discussion made above, we are of the view that no ground has been made out to allow the writ petition. Accordingly, the writ petition stands dismissed. No costs.