

(2013) 07 MAD CK 0263
In the Madras High Court
Case No : Writ Petition No. 25714 of 2012

R. Ramanan

APPELLANT

Vs

The Registrar, The Chief General Manager and The General
Manager

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2013) 4 LLJ 23

Hon'ble Judges : T.S. Sivagnanam, J; R. Banumathi, J

Bench : Division Bench

Advocate : R. Murugesan, for the Appellant; M.S. Velusamy for R2, R3 and R1 -
Tribunal, for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—Whether the Petitioner is entitled to claim benefit of pay fixation as that of the Stenographer under F.R. 22(1)(a)(i) is the point falling for consideration in this Writ Petition, which is preferred against the order of dismissal of T.A. No. 68 of 2010 on the file of Central Administrative Tribunal dated 12.07.2012. Petitioner was initially appointed as Telegraphman from 04.5.1983 and later served as Telegraphist from 20.8.1990 and then as Senior Telecom Operating Assistant (Telegraph) [Sr. TOA(T)] from 10.06.1996. As Sr. TOA, Petitioner was drawing the pay scale of Rs. 1320-30-1560-40-2040. In 1995-96, there was acute shortage of Stenographic assistance to the Officers under the 2nd Respondent. During the year 1995, the 2nd Respondent deputed the Petitioner to work as Stenographer on temporary basis. Petitioner also expressed his willingness to work as temporary Stenographer on deputation basis. Petitioner was ordered to officiate as Stenographer Grade-III in the office of the 3rd Respondent in the scale of pay of Rs. 1200-2040. With effect from 01.01.1996 both the scales of Sr. TOA and Stenographer Grade-III have become same as Rs. 4000-100-6000.

2. As per the Proceedings in Memo No. E-3/11/PF/95-97/42 dated at TNJ the

25.4.1997, it was ordered that the Appellant while officiating, all the rules regarding local officiating will apply. On 17.3.2000, Petitioner submitted a representation stating that he is discharging the duties as Stenographer with higher responsibilities and requested for awarding additional increments as per the rules. By Memo dated 20.09.2001 in Memo No. E3/11/APF/1995-01/59, the officiating order issued in respect of the Petitioner to officiate as Stenographer Grade-III was cancelled. The representation of the Petitioner dated 17.3.2000 was not favourably considered and by the letter in E3/11/PF/1995-01/62 dated 2.11.2001, the Petitioner was intimated that his request for allowing monetary benefit for the officiating duty as Stenographer Grade-III cannot be acceded to. Petitioner filed W.P. No. 34974 of 2002 to quash the said Proceedings dated 02.11.2001 and also direction for fixation of pay under F.R. 22(1)(a)(i) from 19.1.1996 till 02.11.2001. The said Writ Petition was transferred to Central Administrative Tribunal in T.A. No. 68 of 2010. T.A. No. 68 of 2010 was dismissed by the Tribunal on 19.7.2011 which was challenged in W.P. No. 28025 of 2011. By the order dated 13.12.2011, the Division Bench of this Court has set aside the order of the Tribunal and remitted the matter back to the Tribunal for re-consideration. Tribunal considered the matter afresh and held that "the Petitioner was not promoted to the post of Stenographer in substantive, temporary or officiating capacity" and also held that F.R. 22(1)(a)(i) will apply only when the promotion has taken place in the manner prescribed therein. Tribunal further held that Petitioner was holding the post of Sr. TOA in the office of BSNL and he was not a Stenographer Grade-III and any local arrangement made dehors the recruitment rule may not confirm any fixation benefit as contemplated under F.R. 22(1)(a)(i). Challenging the said order, Petitioner has filed the present Writ Petition.

3. Mr. R. Murugesan, learned counsel for Petitioner contended that Tribunal failed to consider that by the Proceedings of the 3rd Respondent, the Petitioner has been ordered to officiate as Sr. TOA and that Petitioner is entitled to additional remuneration under F.R. 22(1)(a)(i). It is submitted that the recommendation made by the 3rd Respondent that Petitioner is entitled to pay fixation as per F.R. 22(1)(a)(i) was not properly considered. Placing reliance upon (2004) 13 SCC 25 [Raisudhir Prasad v. State of Bihar and others], it was submitted that Petitioner is entitled to additional pay of the officiating post over and above his regular salary for the period of officiation in such posts. It was submitted that the recommendation made by the 3rd Respondent that Petitioner is entitled to pay fixation as per F.R. 22(1)(a)(i) was not properly considered.

4. We have heard Mr. M.S. Velusamy, learned counsel appearing for Respondents 2 and 3. Learned counsel for Respondents 2 and 3 submitted that Petitioner was a Sr. TOA on the technical side and only by local arrangement, he was ordered to officiate as Stenographer Grade-III and such local arrangement dehors the recruitment rule will not confer right upon the Petitioner to claim pay fixation. It was further submitted that Petitioner was not promoted to the post of Stenographer Grade-III in substantive, temporary or officiating capacity.

5. Petitioner, who was working as Sr. TOA was ordered to officiate as Stenographer Grade-III in the office of the 3rd Respondent in the scale of pay of Rs. 1200-2040 for various spells from 19.1.1996 to 02.11.2001. On 12.01.2000, the 3rd Respondent sent a letter seeking clarifications from the 2nd Respondent stating that Petitioner officiating as Stenographer Grade-III was discharging higher responsibilities and as such pay fixation under F.R. 22(1)(a)(i) can be given to the Petitioner. The relevant portion of the said letter dated 12.1.2000 reads as under:-

2. ...(e) WEF 1.1.96 both the scales of Sr. TOA and Steno Gr. III have become same....

3. Though both the scales of Sr. TOA and Steno Gr. III are identical, the work of stenographer is of confidential nature and the official is directly attached to Higher Officers. As such it is presumed that the post of Stenographer Gr. III is involving higher responsibilities than that of Sr. TOA by virtue of their duties/responsibilities and nature of work and as such pay fixation on under FR 22(I)(a) (i) can be given for officiating from Sr. TOA to Steno Grade III.

6. F.R. 22(1)(a)(i) reads as under:-

Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or (rupees one hundred only) whichever is more.

7. Contention of Respondents 2 and 3 is that Petitioner cannot be considered under F.R. 22(1)(a)(i), since he was not promoted to the post of Stenographer Grade-III in substantive, temporary or officiating capacity and any local arrangement made dehors in the recruitment rules cannot confer benefit upon the Petitioner.

8. Even though Respondents 2 and 3 contends that F.R. 22(1)(a)(i) is not applicable, as pointed out earlier, in the letter dated 12.1.2000, the 3rd Respondent clearly stated that post of Stenographer Grade-III is involving higher responsibilities than that of the Sr. TOA by virtue of duties/responsibilities and that Petitioner may be given pay fixation under F.R. 22(1)(a)(i). By various Proceedings when the Petitioner has been ordered to officiate as Stenographer Grade-III in various spells, he cannot be denied the benefit of pay fixation under F.R. 22(1)(a)(i).

9. As pointed out earlier, by the Proceedings dated 20.9.2001, officiating order

was cancelled. On the same day, by Memo in Memo No. E3/11/PF/95-01/70, Petitioner was asked to look after duties of Stenographer in the office of the 3rd Respondent on deputation basis without only additional remuneration till alternative arrangements are made and in the said Proceedings ordering the Petitioner to officiate as Stenographer Grade-III without additional remuneration is only with effect from 20.9.2001 and not for the earlier period. While so, the Petitioner cannot be denied benefit of pay fixation under F.R. 22(1)(a)(i).

10. In paragraph (7) of the counter filed by the Respondent in the earlier W.P. No. 34974 of 2002, it was stated that Petitioner was paid honorarium from 1997 - 2000 towards performance of the official as Stenographer. The Petitioner was said to have paid honorarium for the period from 1997 - 2000 as under:-

In the present Writ Petition, Petitioner had categorically stated that he has not been paid even a single pie as honorarium for officiating as Stenographer Grade-III. According to Petitioner, the said amounts were paid to each and every staff in the administrative jurisdiction of the 3rd Respondent as honorarium mainly in appreciation and to promote enthusiasm among the staff to increase the new phone connections and to offer better service to the public without any complaint. Respondents 2 and 3 have not filed any voucher copy regarding disbursement of the honorarium to the Petitioner. Without any voucher, Tribunal was not right in saying that Petitioner was paid honorarium for the said period.

11. By various Proceedings, when the Petitioner was ordered to officiate as Stenographer Grade-III, he is entitled to pay fixation as per F.R. 22(1)(a)(i). Tribunal did not keep in view the letter of the 3rd Respondent dated 12.1.2000 requesting for pay fixation of the Petitioner as Stenographer Grade-III and other Proceedings. Therefore, we are of the view that the order of the Tribunal cannot be sustained and is liable to be set aside. In the result, the order of the Tribunal in T.A. No. 68 of 2010 dated 12.7.2012 is set aside and this Writ Petition is allowed. 3rd Respondent is directed to fix pay under F.R. 22(1)(a)(i) to the Petitioner for the period from 19.1.1996 to 02.11.2001 and to pay the arrears on such fixation and other accrued benefits to the Petitioner within a period of eight weeks from the date of receipt of copy of this order. No costs.