

(2004) 11 GAU CK 0027
In the Gauhati High Court
Case No : W.A. No. 115 of 2001

State of Manipur and Others

APPELLANT

Vs

Chongtham Ibocha Singh and Others

RESPONDENT

Date of Decision : 09-11-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) 2 GLR 228

Hon'ble Judges : M.B.K. Singh, J;B. Lamare, J

Bench : Division Bench

Advocate : L. Gunindro Singh and L. Shyamkishwor, for the Appellant; S. Rupachandra Singh, for the Respondent

Final Decision : Dismissed

Judgement

B. Lamare, J.—Heard Mr. L. Shyamkishwor Singh, learned Sr. counsel assisted by Mr. L. Gunindro Singh, learned Counsel appearing on behalf of the appellants as well as Mr. S. Rupachandra Singh, learned Counsel for the respondents.

2. In this appeal the appellants have assailed the judgment and order dated 1.10.2001 passed by the learned Single Judge in W.P.O No. 1190 of 2001. By the said judgment and order, the learned Single Judge has directed that the respondents/writ petitioners would be entitled to the scale of pay for the post of Assistant Engineer (Elect.) as they are allowed to performed the duties of Assistant Engineer (Elect.). While passing the judgment and order, the learned Single Judge had relied references on the decisions of the Apex Court reported as AIR 1998 SC 2099 Judhistir Mohanty Vs. State of Orissa and Others, Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, Selva Raj v. Governor of Island Port Blair and Ors.

3. The learned Counsel for the appellants has first contended that according to the orders by which the respondents were allowed to perform the duties of the higher posts, it is clearly mentioned that it shall not be entitled any extra

remuneration. In support of this contention, the learned Counsel for the appellants draws the attention of this Court to the case of H.P. State Cement Corporation Ltd. and Others Vs. B.K. Tiwari, In the said case, the Apex Court was dealing with the case when offer of appointment was made to the respondent therein to the post of Dy. Manager (P & IR) where the respondent had appealed for the post of Manager (P & IR), Subsequently, pay scale was revised from Rs. 1,400-1,800 to 1,500-2,000 for the post of Dy. Manager/Sr. Dy. Manager and redesignated the posts as Manager (Works), and from Rs. 1,500-2000 to 1,800-2250 for the post of Manager/Company Secretary and redesignated the posts as Joint Sr. Manager (Works)/Company Secretary. Therein the Apex Court held that the respondent therein was entitled to the pay scale as per the offer of appointment. The learned Counsel for the appellants also draws the attention of this Court to the case of Pabitra Mohan Dash etc. v. State of Orissa and Ors. AIR 2001 SC 560. In the case, the Apex Court held appointment of persons as Headmaster in-charge cannot claimed any right to the post of Headmaster on the basis of that appointment/even if the same has been approved by the competent authority. The in charge Headmaster is not the same as Headmaster of the school and it merely entitles a person to remain in-charge and discharge the duties of the Headmaster. The case was dealt with in accordance with the rules and regulations concerning the services of the Headmaster in the State of Orissa. That case as referred by the learned Counsel for the appellants is not applicable in this case.

4. In the case referred in the learned Single Judge, Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, the Apex Court has clearly mentioned that the appellant was working on the higher post though temporarily and in an officiating capacity pursuant to the order he was entitled to the salary of the higher post during the time when the appellant discharging duties of Secretary (Scouts) an the case of Judhistir Mohanty (supra) the Apex Court held that it is a settled position that if the government, for want of candidate, directs an officer in the lower cadre to perform the duties of the post an the higher cadre, during that period, necessarily, the incumbent would be entitled to the payment of the salary attached to the post if the incumbent had performed the duties in that post. In the ease of Secretary-cum-Chief Engineer (supra), the Apex Court has held that the Tribunal was justified in ordering payment of salary to the respondent for the post of Jr. Engineer-I with effect from 1990 when he was made to work on that post.

5. Comming to the case m hand, it is seen that the orders allowing the respondents to perform the duties of the post of Assistant Engineer (Elect) was made without extra remuneration, one of such order is reproduced below:

ORDERS BY THE GOVERNOR OF MANIPUR

Imphal, the 22nd December, 1999

No. 18/4/96-Power(Pt-I) : The Governor of "Manipur is pleased to allow S/Shri

A. Satyabarta Singh. Section Officer, Grade-I(Elect) and Shri S. Priyananda Single Section Officer, Grade-I, Electricity Department, Manipur to hold the charge of Asstt. Engineer (Elect) against the Sub-Division Office with immediate effect until further order without extra remuneration.

By orders & in the name of Government

S/d (M. Lakahimkumar Singh)

Jt. Secy(Power) to the Government of Manipur.

6. Admittedly, the respondents were allowed to perform the duties of the higher post but a condition was imposed that they should not get any extra remuneration. Article 14 of the Constitution of India makes it mandatory for the state to give equal treatment and equal protection of law to all the citizens in the country. Consequently, when the person is holding the higher post, he is always allowed to draw the pay of that higher post. Even if such condition is imposed in the instant case to hold the higher post without extra remuneration, that will amount to exploitation of the service of the respondents as they were made to perform the duties in the higher post without any extra benefit. The responsibility in the higher posts is more than that the responsibility in the lower posts, therefore, stipulation in the order that the respondents are not entitled to extra remuneration is violative of Article 14 of the Constitution.

7. For the aforesaid reasons, we are of the opinion that the order passed by the learned Single Judge suffers from no infirmity. The appeal has therefore, no merit accordingly it is dismissed.