
(2002) 08 GAU CK 0035
In the Gauhati High Court
Case No : Writ Petition (C) No. 729 of 2002

Thiyam Katon Singh and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 28-08-2002

Acts Referred:

Citation : (2003) 1 GLR 22

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : I. Lalitkumar, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—Heard Mr. I. Lalitkumar, learned counsel for the petitioner.

2. The petitioners, three in number, who were holding the substantive posts of Jilladars in the Revenue Department of the Government of Manipur were allowed to function as Revenue Inspectors on in-charge basis by an order dated 19th January, 1996 (Annexure-A/3). The Writ Petitioners who rendered services as Revenue inspectors claimed the benefit of pay and allowances attached to the post of Revenue inspectors and the same having been denied by the authority, the instant writ Application has been filed.

3. Mr. Lalit, learned counsel for the petitioner relies on an order dated 12.2.2001 passed by this Court in W.P. (C) No. 1278/2000 to contend that similar relief has been granted by this Court to employees who were more or less similarly situated with the present writ petitioners. I have perused the aforesaid order dated 12.2.2001 passed by this Court in W.P. (C) No. 1278/2000. This Court while rendering the aforesaid order had relied upon the decision of the Apex Court in the case of Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, A perusal of the aforesaid judgment of the Apex Court, which has been placed by the learned counsel for the petitioner would go to show that the grant of relief by the Apex Court in the aforesaid case was primarily due to the fact that the order

allowing the concerned incumbent to hold the higher post on in-charge basis contained a clear stipulation that the concerned incumbent would be entitled to the pay of the higher post. In the present case, in the order dated 19th January, 1996 (Annexure-A/3) it has been expressly stated that the writ Petitioners will draw the pay of the substantive posts of Jilladars. The ratio of the law laid down by the Apex Court in the aforesaid case would not therefore apply to the facts of the present case.

4. Reliance is also placed by the learned counsel for the petitioner on the judgment of the Apex Court in the case of *Jaswant Singh Vs. Punjab Poultry Field Staff Association and Others*,

5. The facts of the aforesaid case are clearly distinguishable from those of the present case. In the aforesaid case, the right of an incumbent to the salary attached to a higher post to which he had been promoted in a situation where the promotion order is found to be invalid as the concerned incumbent did not fulfil the eligibility criteria was considered by the Apex Court. The aforesaid decision, therefore, does not assist the petitioner to claim the reliefs that have been sought for.

6. Reliance has also placed by the learned counsel for the petitioner on a Division Bench judgment of this Court in case of *Islahuddin Shah v. The State of Manipur* reported in 1999 (3) GLT 594 . In the aforesaid case before the Division Bench, the employee concerned was ordered to work as Accounts Officer on in-charge basis in addition to his normal duties and he continued to function as Accounts Officer till 20.2.1998 on which date he retired. The claim made on behalf of the concerned employee for the salary of the higher post of Accounts Officer was allowed by this Court by relying, amongst others, on a decision of the Apex Court in case of *Judhistir Mohanty Vs. State of Orissa and Others*, I have perused the Judgment of the Apex Court in case of *Judhistir Mohanty v. State of Orissa and Ors.* (supra). In the aforesaid judgement, the Apex Court has observed as follows :

"It is settled position that if the Government, for want of candidates, directs an officer in the lower cadre to perform the duties of the post in 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. Similarly where the officer concerned is on promotion from lower cadre to the higher cadre, though on ad hoc or even temporary basis, the incumbent would be entitled to the payment of the salary attached to the post for the period of his discharging the duty in that post. In this case, neither would be applicable."

7. While applying the above ratio to the facts of the instant case it cannot be over looked that the grant of benefit of higher pay to the writ petitioners would be against the expressed condition of his service in the higher post, i.e., the petitioners would be entitled to the benefit of pay of the substantive post which question was duly taken note of by the Apex Court in *Judhistir Mohanty* (supra).

The law in this regard has been elaborately interpreted and laid down by the Apex Court in the subsequent decision in the case of Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, to mean that such benefit can only be allowed if there is no expressed prohibition against grant of such benefit in the order allowing an incumbent to hold charge of the higher office. It is the aforesaid law that will govern the facts of the present case. The Division Bench of this Court while deciding the case reported in 1999 (3) GLT 594 also had no occasion to consider as to whether the employee therein was covered by a condition of service similar to the one governing the writ petitioners in the present case. The ratio of law of the Division Bench, therefore, would not apply to the facts of the present case.

8. In view of the foregoing discussions I am inclined to take the view that the reliefs prayed for in the present application ought not be granted. The writ petition is therefore dismissed by refusing admission. No cost.