

(2013) 09 MAD CK 0057

In the Madras High Court

Case No : Writ Petition No. 25371 of 2013 and M.P. No. 1 of 2013

Union of India and Others

APPELLANT

Vs

Central Administrative Tribunal and Another

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2013) 7 MLJ 257

Hon'ble Judges : N. Paul Vasantha Kumar, J;M.M. Sundresh, J

Bench : Division Bench

Advocate : M. Vaidyanathan, for the Appellant;

Judgement

N. Paul Vasantha Kumar, J.—This writ petition is filed to quash the order made in O.A. No. 1293 of 2011, dated 22.11.2012. The second

respondent herein filed the said O.A. No. 1293 of 2012 praying to direct the respondents to revise and re-fix the pay and pension of the second

respondent/applicant as recommended by the 6th Pay Commission by taking into the revised pay applicable to the post of Higher Selection

Grade-I, in which the second respondent was ordered to officiate for the period from 3.11.2005 to 24.6.2006 and 26.6.2006 to 30.11.2006 and

that consequently direct the petitioners to pay gratuity, encashment leave, commutation of pension and pension etc. The said original application

was allowed considering the fact that the second respondent served in the higher post and received salary. The said order is challenged on the

ground that the second respondent was given promotion only on adhoc basis and the emoluments received cannot be treated as a salary for fixing

the pension and other terminal benefits. The said issue was already considered and decided by the Hon"ble Supreme Court in the decision

reported in Jaswant Singh Vs. Punjab Poultry Field Staff Association and Others, . In Para 11 of the said decision, it is held thus:-

(11) ... What was directed was the payment of salary and allowances of the post of chick-sexer since Gobind Singh had been discharging the duties of that post. Therefore, while the appellant's promotion to the post of chick-sexer cannot be upheld, given the fact that the appellant had discharged the duties of a chick-sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties.

2. In the decision reported in Arindam Chattopadhyay and Others Vs. State of West Bengal and Others, , it is held thus:-

(13) ... we find that although the appellants were recruited as ACDPOS, the State Government transferred and posted them to work as CDPOs in

ICDS Projects. If this would have been a stopgap arrangement for few months or the appellants had been given additional charge of the posts of

CDPO for a fixed period, they could not have legitimately claimed salary in the scale of the higher post i.e. CDPO. However, the fact of the matter

is that as on the date of filing of the original application before the Tribunal, the appellants had continuously worked as CDPOs for almost 4 years

and as on the date of filing of the writ petition, they had worked on the higher post for about 6 years. By now, they have worked as CDPOs for

almost 14 years and discharged the duties of the higher post. It is neither the pleaded case of the respondents nor has any material been produced

before this Court to show that the appellants have not been discharging the duties of the post of CDPO or the degree of their responsibility is

different from other CDPOs. Rather, they have tacitly admitted that the appellants are working as full-fledged CDPOs since July 1999. Therefore,

there is no legal or other justification for denying them salary and allowances of the post of CDPO on the pretext that they have not been promoted

in accordance with the rules. The convening of the promotion Committee or taking other steps for filling up the post of CDPO by promotion is not

in the control of the appellants. Therefore, they cannot be penalised for the Government's failure to undertake the exercise of making regular

promotions.

(14) In the result, the appeal is allowed. The impugned order as also the one

passed by the Tribunal are set aside and the respondents are directed to pay salary and allowances to the appellants in the pay scale of the post of CDPO with effect from the date they took charge of those posts. This exercise must be completed within eight weeks from today. The arrears shall be paid to the appellants within a period of nine months.

Thus, it is evident that if a government servant is given higher post, if he discharged the duties of the higher post otherwise than incharge basis, salary to the higher post shall be paid for the period he served in the higher post.

3. The learned counsel for the petitioners also produced the CCS Pension Rules and Rule 49 states that the amount of pension shall be calculated at 50% of average emoluments. The promotion order granted for one year by the Ministry of Communications & IT (Department of Posts), dated 20.11.2006 reads as follows:-

I am directed to say that the matter regarding filling up of the number of posts in the Higher Selection Grade-I lying vacant in various postal circles

was under consideration of this Department. Due to up-gradation of pay scale of HSG-I, the existing Recruitment Rules are under revision.

Pending same, it was proposed to the Department of Personnel & Training (DoP & T) to allow the Department to fill up the vacant HSG-I posts

from amongst officers holding the HSG-II norm-based posts on regular basis in relaxation of the existing Recruitment Rules. The DoP & T have,

however, agreed as a special case to allow to fill up the existing vacancies by promotion of the officers holding HSG-II norm-based posts on

regular basis (without prescription of any minimum service in HSG-II), on purely adhoc basis for a period of one-year or till the Recruitment Rules

are notified and appointments are made according to the revised Recruitment Rules, whichever is earlier.

It is requested that you may take necessary action to fill up the posts of HSG-I lying vacant on adhoc basis in the manner stated above. It may,

however, be ensured that you have already taken necessary action to fill up the posts as ordered from time to time as per the Check-list enclosed

herewith.

This issues with the approval of Secretary (Posts)

In the said order, it is not stated that the promoted persons will not get salary to promoted post and the promotion is not by way of giving incharge

or additional charge. Thus, the second respondent served/discharged the functions of regular Higher Selection Grade-I. The Tribunal also relied on the earlier order made in O.A. No. 309 of 2010, which was confirmed by this Court in W.P. No. 28689 of 2012. The said order of this Court also become final.

Considering the said Judgment as well as the undisputed fact that the second respondent served in the higher post and retired while serving in the higher post, the order of the Tribunal to pay pension on that basis is just and proper. We are unable to find any reason to interfere with the same.

Hence, this writ petition is dismissed. Consequently, M.P. No. 1 of 2013 is dismissed. No costs.