

(1999) 12 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Writ Petition No. LPA (SW) 173 of 1992

Union of India

APPELLANT

Vs

K.M.Mehrotra

RESPONDENT

Date of Decision : 15-12-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2001) 3 SCT 705

Hon'ble Judges : Tejinder Singh Doabia, J and Arun Kumar Goel, J

Bench : Division Bench

Advocate : R.K. Gupta, H. Goswami, Advocates appearing for the Parties

Judgement

Tejinder Singh Doabia, J.—A learned Single Judge of this Court had issued a mandamus directing the respondentappellants to pay leave

salary of 180 days with interest @ 15%. It is this order which is subject matter of challenge in this appeal preferred by the Union of India. It is

submitted that if the facts as pleaded by the respondentwrit petitioner are taken note of, then he is not entitled to the relief granted by the learned

Single Judge. With a view to appreciate the rival intentions put across by the learned counsel for the parties, it would be apt notice a few facts.

2. In the year 1983, an advertisement notice was issued by the Banking Service Recruitment Board, Western Group for the posts of Chief

Security Officers/Advisers in Banking service. Respondentwrit petitioner at that point of time was working as Commandant, Group Centre, CRPF,

Ban Talab, Jammu. He applied in pursuance of the advertisement notice referred to above. A No Objection Certificate in this regard was issued

by the Inspector General of Police, CRPF, New Delhi, Endorsement No. 3, on which much reliance is being placed by the respondentwrit

petitioner is to the effect that "in the event of his selection for appointment in any bank under your Board, shall continue to hold lien in CRPF for a period of two years or till his permanent absorption in his new department, whichever is earlier." This endorsement is also categorical and lays down that if the respondent writ petitioner was not to be permanently absorbed within a period of two years from the date of his appointment in the bank, he shall have to either resign from the CRPF or revert to his parent department/Office. It was in these terms and conditions, a no objection certificate was issued in his favour. The respondent writ petitioner was selected by the Banking Service Recruitment Board and was deputed with the Bank of India. A communication in this regard is annexure PC. This was issued on 28th June '83. Another communication on which reliance was being placed by the respondent writ petitioner is the one issued on 12th March '84. In this, it was provided that the pension of the writ petitioner would be calculated on the basis of the pay which he would have drawn had he continued in the Force. It was further provided that his leave balance would be transferred to the Bank of India, termed as the "present employer". The respondent writ petitioner was also to make leave salary contributions and pension contribution. This was indicated in the letter issued on 21st March '84. The requirement to make the leave salary contributions was insisted upon in terms of Art. 67 of the Civil Service Regulations. It was pointed out that otherwise it would not be possible for the Union of India and its agencies to keep the lien of the respondent writ petitioner intact. It appears that later on, as the respondent writ petitioner came to be appointed permanently as Chief Security Officer with the Bank of India, his resignation was accepted on 5th Dec '85. Another communication was issued in the month of Sept '87. This provided that for the period of service rendered by the respondent writ petitioner in the Bank of India before his permanent absorption, he would be entitled to all the benefits admissible to corresponding employees of the Organisation and would continue to be governed by the rules in all respects.

3. It is not in dispute that the respondent writ petitioner has been paid all the pensionary benefits. He has not been paid, however, the leave salary for the period of 180 days. It is this aspect of the matter which was subject matter of challenge in the writ petition. It was this relief which has been

granted by a learned Single Judge of this Court against which the Union of India is aggrieved of.

4. The Union of India submits that the question as to whether the leave salary is to be granted or not, came to be taken only after the respondent

writ petitioner was permanently absorbed in the Banking service, and therefore, the question of paying the leave salary would not arise. Another

argument which has been raised is that the leave salary was payable only in case the absorption in another service was in public interest. For this

reliance is being placed on a decision taken by the Government of India vide O.M. No. 4(5)/Pension Unit/79 dt. 9th Jan '84. It is submitted that as

the respondentwrit petitioner never came to be appointed in public interest, therefore, the question of paying leave salary to the respondentwrit

petitioner does not arise. In this contention, as indicated above, reliance is being placed on O.M. No. 4(5)/Pension Unit/79, dt, 9th Jan '84 and the

later clarification issued on 22nd April '92. Paragraph 2 of the aforesaid order i.e. 22nd April '92 is relevant and is reproduced below :

a/ Para 1 of the D.P. and A.R.'s O.M. dated 9th January, 1984, which does not provide for carry forward of leave will stand modified to the

extent that where the permanent absorption of a Central Government employee in a State Public Sector Undertaking/Autonomous Body/Joint

Sector Undertaking has taken place during the period from 9th Jan '84 to 30th March, 1987, carry forward of earned leave will be allowed to the

extent due and admissible on the date of absorption of the employee subject to the condition that the permanent absorption was in the public

interest.

b/ The first line paragraph 4 of O.M. dated 16th Oct '89, which provides that ""these orders shall take effect from the date of issue"", shall stand

modified as under

these orders shall take effect from 31.3.1987.

5. In addition to it, it is submitted that the decision to grant the benefit of leave salary was taken for the first time in the month of Jan '87 and as the

writ petitionerrespondent herein stood absorbed in the service of the Bank, therefore, the question of payment of leave salary would not arise. This

aspect of the matter has been expressly mentioned in the counter filed by the appellantUnion of India. While giving reply to ground `b', it is

submitted as under :

It is further submitted that the.....of encashment of EL in case govt. servants permanently absorbed in autonomous bodies was introduced with

the issue of Govt. of India Deptt. of Pen and Pen. Welfare OM No. 3(12)/85/P PW dt. 31.3.1987 copy of which is annexed as annexure R.1 to

the petition. Since Sh. Mehrotra has been absorbed in Bank of India from a date prior to 31.3.87, his request for encashment of earned leave is

not tenable.

Thus, the arguments raised by the counsel for Union of India are :

i/ that the absorption of the respondentwrit petitioner was not in public interest;

ii/ that the decision to grant benefit of leave encashment was taken only on 31st March '87 when the respondent had already been absorbed in the

service of Bank of India, and therefore, the question of paying this amount to the respondentwrit petitioner would not arise.

6. In addition to this, it is urged that this Court has no jurisdiction to deal with the matter. It is submitted that no cause of action has arisen within the

territorial limits of this Court. Reliance for this is being placed on a decision reported as 1994(4) SCC 711, Oil and Natural Gas Commission v.

Utpal Kumar Basu and others. This objection is sought to be countered by the learned counsel for the respondentwrit petitioner, by contending

that this objection was waived by the learned counsel for the Union of India before the learned Single Judge, and therefore, this objection cannot

be taken into consideration in the present appeal filed by the Union of India.

7. It be seen that the respondentwrit petitioner has not been able to indicate as to how any cause of action has arisen within the territorial

jurisdiction of this Court. All that has been stated is that the Union of India's counsel waived this objection when the writ petition was being heard,

and therefore, this objection now raised by the counsel for the Union of India should be ignored.

8. In this regard, the law is settled. If two Courts have jurisdiction on a particular cause of action, then by consent, the parties can confer exclusive

jurisdiction on one of the Courts. By consent, jurisdiction cannot be conferred on a Court which does not possess the basic jurisdiction. Therefore,

unless and until, it is shown that this Court had jurisdiction to entertain the writ petition, the consent of the counsel for the Union of India would not

confer jurisdiction. Therefore, the learned counsel for the Union of India is right in her submission that the parties cannot by agreement confer

jurisdiction on Courts, not inherently possessed by them. The decision given by the Supreme Court in the case of AIR 1971 SC 740, Hakam

Singh v. M/s Gammon (India) Ltd., is clear on the point. Therefore, it is held that as no cause of action arose within the territorial jurisdiction of this

Court, therefore, this Court had no jurisdiction and the consent given by the counsel for the Union of India would not confer any jurisdiction on this

Court. Independently of above, even on merits, the respondentwrit petitioner is on slippery grounds. The decision to give the benefit of encashment

of leave salary was taken on 31st March '87. Such is the specific stand taken by the Union of India. If this be the position, then the respondent

who stood absorbed earlier to 31st March '87 in another service i.e. with the Bank of India and his offer of resignation was accepted much earlier

i.e. on 5th Dec '85, cannot claim the benefit of a notification which came to be issued on a later date. Even otherwise, there is nothing on record to

indicate that the respondentwritpetitioner was permitted to join the Banking service in public interest. If this be the position, then the decision dated

22nd April '92, which decision has been noticed above would stand in the way of the respondentwrit petitioner in getting any relief from this Court.

In view of the above, it is held :

i/ that this Court had no jurisdiction in the matter;

ii/ that by consent, no jurisdiction could be conferred;

iii/ that the decision to allow the benefit of encashment of leave salary was taken only on 31st March '87 and on that date, the respondentwrit

petitioner was not in the service with the Union of India;

iv/ that the leave salary could be given only if the absorption in another institution was in public interest. This is missing in this case.

9. In view of the above, this appeal is allowed. The writ petition filed by the respondentwrit petitioner shall stand dismissed.