

(2017) 10 AP CK 0005
In the Andhra Pradesh High Court
Case No : 8801 of 2003

Union of India & Ors

APPELLANT

Vs

Sri R. Chakrapani

RESPONDENT

Date of Decision : 05-10-2017

Acts Referred:

Citation : (2017) 10 AP CK 0005

Hon'ble Judges : C.V.Nagarjuna Reddy, Kongara Vijaya Lakshmi

Bench : DIVISION BENCH

Advocate : R.S. Murthy, K. W.J Bose

Final Decision : Allowed

Judgement

1. This writ petition is filed for a Certiorari to quash the judgment, dated 24.02.2003, in O.A.No.1514 of 2002 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short the Tribunal).
2. We have heard the learned counsel for both the parties and perused the record.
3. While the respondent was working as Shroff in South Central Railway, Secunderabad, he could not get selected for the post of Senior Shroff. He approached the Tribunal by filing O.A.Nos.277 of 1996 and 144 of 1999. He was, however, unsuccessful therein. The respondent filed W.P.No.15248 of 2000 against order, dated 07.03.2000, in O.A.No.144 of 1999 of the Tribunal. A Division Bench of this Court, by order, dated 18.12.2001, allowed the writ petition holding that the post of Senior Shroff was wrongly treated as a selection post and that in the absence of notification issued by the Railway Board, the said post is required to be treated as a non-selection post in terms of Rule 169(3) of Indian Railway Establishment Manual, Volume-I (IREM). On the said premises, the Division Bench set aside order, dated 07.03.2000, O.A.No.144 of 1999. A direction was also issued to the Railway Administration to promote the respondent to the post of Senior Shroff with effect from the date on which his

immediate junior was promoted, subject to the respondent fulfilling the other eligibility criteria prescribed under the relevant Rules and Regulations. Assailing the said order, the Railway Management has filed an appeal (civil) along with special leave petition. After granting leave, the Supreme Court has dismissed the appeal, leaving the question of law open. Following the dismissal of the appeal by the Supreme Court, the petitioners have issued Office Order No.27 of 2002, dated 02.09.2002, giving promotion to the respondent to the post of Senior Shroff with effect from 03.06.1996, the date on which his immediate junior was promoted. As the respondent was not paid arrears of salary, he has filed C.C.No.741 of 2002 in this Court. A Division Bench of this Court has dismissed the contempt case, vide its order, dated 17.09.2002. While taking note of the fact that the order passed by it in W.P.No.15248 of 2000 does not contain a specific direction to pay the arrears of salary and other dues arising out of the promotion, the Division Bench, however, left it open for the respondent to raise a demand in that regard with the Railway Administration and closed the contempt case.

4. Taking a cue from the observations in the order passed in the contempt case, the respondent has approached the Railway Administration claiming the arrears of salary. As the said representation has been rejected by the Railway Administration, vide Office Note No.27/2002 dated 02.09.2002, the respondent has filed O.A.No.1514 of 2002 before the Tribunal for a direction to the petitioners to fix his pay and allowances in the scale of pay of Rs.4,000-6000 (RPS) with effect from 03.06.1996 and to release the arrears of pay and allowances from the said date. The Tribunal has allowed the said O.A. on the reasoning that due to the fault of the petitioners, the respondent was denied promotion to the post of Senior Shroff, though he was entitled to be promoted on 03.06.1996 when his junior was promoted, and that therefore he is entitled to the monetary benefits, including the arrears of salary from 03.06.1996. Feeling aggrieved by this order, the Union of India and the Railway Administration, filed this writ petition.

5. Mr. R.S. Murthy, learned Standing Counsel for Railways submitted that the Tribunal has exceeded its jurisdiction in directing the payment of arrears when no such direction was issued by the Division Bench of this Court in W.P.No.15248 of 2000. He has further submitted that as admittedly the respondent has not discharged the functions of Senior Shroff, he is not entitled to claim the salary for the period during which he did not function in that position.

6. Sri K.W.J. Bose, learned counsel for the respondent made a strong bid to defend the order of the Tribunal. He has supported the reasoning of the Tribunal on which it has allowed the claim of the respondent viz., that as the petitioners have unduly denied the promotion to the respondent, the latter cannot be deprived of the monetary benefits legitimately due to him as a consequence of retrospective promotion.

7. We have carefully heard and considered the respective submissions of the

parties with reference to the record.

8. A perusal of the order dated 18.12.2001 in W.P.No.15248 of 2000 shows that the question that fell for consideration before this Court was whether denial of promotion to the respondent by treating the post of Senior Shroff as selection post was proper or not. On interpretation of Rules 169(3) and 211 of Indian Railway Establishment Manual (for short, the IREM), this Court held that the post of Senior Shroff is a non selection post and, therefore, it requires to be filled up only by way of promotion. This Court, accordingly, set aside the order of the Tribunal in O.A.No.144 of 1999 and issued a direction to the Railway Administration to promote the respondent to the post of Senior Shroff with effect from the date on which his junior was promoted subject to the respondent fulfilling other eligible criteria. A careful reading of the said order of this Court would show that the respondent has succeeded in getting his promotion based on the interpretation placed by this Court on the extant rules referred to above. It is not as if the respondent was denied promotion due to arbitrary or mala fide action of the petitioners. For the first time in its judgment in W.P.No.15248 of 2000, this Court has resolved the issue whether the post of Senior Shroff was a selection post or a non- selection post on the interpretation of the extant rules. As a consequence of the said judgment, the respondent was promoted to the post of Senior Shroff. It is worthy to note that while directing the promotion of the respondent, this court has not declared that he is entitled for the monetary benefits up to the date of his promotion. If the respondent felt that he was entitled to such a relief, he ought to have claimed such relief. Neither the respondent has claimed nor this Court has granted such a relief. Having not claimed such a relief, the respondent is not entitled to claim such a relief by instituting subsequent legal proceedings on the principle of constructive res judicata. Even otherwise, when this Court has not granted such a relief, in our opinion, the respondent cannot institute another round of litigation claiming such relief. As noted above, while dismissing the contempt case, this Court observed that there was no specific direction in the order passed in the writ petition to pay the arrears of salary. The mere fact that in the said order liberty was left with the respondent to raise a demand cannot be understood as this Court recognizing such a right in the respondent.

9. It bears repetition to observe that on interpreting the relevant rules in a particular manner, the petitioners have treated the post of Senior Shroff as a selection post and consequently the respondent was not promoted to that post. As the issue was resolved only for the first time in this writ petition, we are of the opinion the respondent is not entitled to the monetary benefits as per the principle of no work no pay. In our opinion, the Tribunal has committed a serious error in granting relief to the respondent. Hence, the impugned order of the Tribunal is set aside.

10. At the hearing, it is brought to the notice of this Court that in pursuance of the conditional order passed by this Court in the writ petition, the petitioners

have deposited 1/4th of the arrears of salary and the same was withdrawn by the respondent. Mr. R.S. Murthy, learned counsel for the petitioners has fairly submitted that his clients will not recover the amount that was withdrawn by the respondent. Apart from his confession, in our opinion, in the interest of equity also, the petitioners shall not recover the said amount.

11. Subject to the above direction, the writ petition is allowed. No order as to costs.

12. As a sequel to allowing the writ petition, W.P.M.P. No.11332 of 2003 is disposed of. W.P.M.P.Nos.9637 of 2004 and 2200 of 2012 are dismissed as infructuous.