

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.26044 of 2017

K.Kandaswamy

... Petitioner

-vs-

- 1.Union of India,
rep.by the Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai-600 002.
- 2.The Assistant Postmaster General (Staff),
O/o.the Chief Postmaster General,
Tamil Nadu Circle, Anna Salai,
Chennai-600 002.
- 3.The Postmaster General,
Western Region (TN),
Coimbatore-641 002.
- 4.The General Manager (PA & F),
Tamil Nadu Circle,
Chennai-600 008.
- 5.The Superintendent of Post Offices,
Salem East Division,
Salem-636 001.
- 6.The Registrar,
Central Administrative Tribunal,
Chennai-600 104.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling the records pertaining to the common order of the 6th respondent Tribunal made in O.A.No.476 of 2014 dated 08.12.2015 and R.A.No.12 of 2016 in O.A. No.310/00476 of 2014 and M.A.No.310/00327/2016 dated 27.04.2016 and quash the same and consequently direct the respondents 1 to 5 to pay the

officiating allowance to the petitioner for the officiating service rendered by him for the period from 20.12.2007 to 10.04.2008 and from 01.05.2008 to 31.07.2008 and to revise and re-fix the pension of the petitioner by taking into consideration the revised scale applicable to the cadre of HSG-I with all attendant service benefits.

For Petitioner :: Mr.R.Malaichamy

ORDER

(Order of the Court was made by
HULUVADI G.RAMESH, J.)

This writ petition has been filed to quash the order passed by the sixth respondent Tribunal in O.A.No.476 of 2014 dated 08.12.2015 and R.A.No.12 of 2016 in O.A.No.310/00476 of 2014 and M.A.No.310/00327/2016 dated 27.04.2016 and to direct the respondents 1 to 5 to pay officiating allowance to the petitioner for the officiating service rendered by him for the period from 20.12.2007 to 10.04.2008 and from 01.05.2008 to 31.07.2008 and to revise and re-fix the pension of the petitioner by taking into consideration the revised scale applicable to the cadre of HSG-I with all attendant and service benefits.

2.The petitioner was working as HSG-II official in the Postal Department. Since there was no HSG-I official available at Salem Head Office, he was asked to officiate as HSG-I from 20.12.2007 to 10.04.2008 and from 01.05.2008 to 31.07.2008. However, he was not paid duty pay as applicable to HSG-I official during the said periods. He retired from service on attaining the age of superannuation on 31.07.2008. The petitioner approached the Central Administrative Tribunal, Chennai, the sixth respondent herein, in O.A.No.476 of 2014 for a direction to pay the officiating allowance for the above periods, but the same has been rejected by order dated 08.12.2015. Aggrieved by the same, the petitioner once again approached the Tribunal by way of filing a Review Application in R.A.No.12 of 2016 and the same was also rejected on the ground that there was no evidence to show that the petitioner was promoted to HSG-I post even on a purely adhoc basis. Hence this writ petition.

3.The learned counsel for the petitioner has submitted that since no HSG-I official was available in the cadre of Deputy Postmaster (HSG-I), Salem Head Office, the petitioner was asked to officiate as Deputy Postmaster at Salem Head Office during the above periods and hence denying to pay the duty pay attached to the said post for the said periods, to the petitioner, is arbitrary and illegal. It is also submitted that the case of the

petitioner is not for promotion to the post of Deputy Postmaster, but only for payment of duty pay for the duties carried out by him in an officiating capacity in the higher grade of Deputy Postmaster, Salem Head Office and hence denying to pay the duty pay to the said post and to revise and re-fix the terminal benefits including pension to the petitioner, is unjustifiable. Stating so, the learned counsel for the petitioner prayed for quashing the impugned orders and to direct the respondents 1 to 5 to pay officiating allowance to the petitioner and also to revise and re-fix the pension of the petitioner by taking into consideration the revised scale applicable to the cadre of HSG-I with all attendant service benefits.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. A copy of the communication from the office of the Chief Postmaster General, Tamil Nadu Circle, Chennai-600002, dated 24.01.2014 to the petitioner has been enclosed in page-11 of the typed set of papers, in which it is stated that the petitioner was promoted to HSG-II cadre on 23.11.2007 and ordered to look after the duties of SPM, Shevapet SO without any extra remuneration on getting his willingness for functional necessity for the period from 20.12.2007 to 10.04.2008 and from 01.05.2008 till the date of retirement from service, i.e., on 31.07.2008. It is also stated that the Directorate in Letter No.137-64/2010-SPB.II dated 28.07.2011, issued instructions to regulate the pay in higher cadre to the officials eligible for promotion to the concerned cadre in accordance with the Recruitment Rules, in which it has been clarified thus:

"In accordance with Rule 27 or 50 of Postal Manual Vol.IV or as per the instructions of DOP&T and Ministry of Finance, the official who fulfills the criteria laid down in the Recruitment Rules prescribed for such post and is thus eligible to be appointed to higher post is posted to officiate against the norm based supervisory post in LSG, HSG II and HSG I cadre on a whole time basis should be remunerated by allowing the pay and allowances in the pay scale / pay band+grade pay attached to the higher posts, for the period the official continues to officiate in it, provided the provisions of FR-35 are not invoked by the appointing authority, which is normally done in case of ineligible officials being appointed to the higher posts in exigency of service."

6. Citing the above clarification, it was observed that in accordance with the Directorate letter cited above, the petitioner was not eligible to officiate against the norm based supervisory post in HSG-I Cadre and he was not entitled for

officiating pay in HSG-I post for the said post, since he had not fulfilled the criteria laid down in the Recruitment Rules prescribed for HSG-I Post.

7. In view of the above clarification, there is no justification for the petitioner to seek for revision of pay scale applicable to HSG-I post. Nowhere it is indicated that he has been promoted to HSG-I cadre, rather he has been promoted to HSG-II cadre and only on his willingness, for functional necessity, he has been asked to look after the duties of SPM, Shevapat SO without any extra remuneration. The Tribunal has observed in the order passed in the review application that there was no evidence to show that the competent authority had prepared a select list of persons from HSG-II for such adhoc promotion figuring his name. He has been asked to look after the duties of higher post without any extra remuneration on getting his willingness for functional necessity for the period from 20.12.2007 to 10.04.2008 and from 01.05.2008 till the date of retirement from service, ie., on 31.07.2008 and it cannot be termed as officiation or adhoc promotion or stop gap arrangement.

8. In the above stated circumstances, we find no reason to interfere with the impugned order passed by the sixth respondent Tribunal and accordingly the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KM
To

1. The Chief Postmaster General,
Tamil Nadu Circle, Government of India,
Anna Salai, Chennai-600 002.
2. The Assistant Postmaster General (Staff),
O/o. the Chief Postmaster General,
Tamil Nadu Circle, Anna Salai,
Chennai-600 002.

3.The Postmaster General,
Western Region (TN),
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6.The Registrar,
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Chennai-600 104.

+1 cc to M/s.R.Malaichamy Advocate sr 71637

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mr(co)
aa07/11/2017



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