

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 27397 of 2017
and
W.M.P. No. 29297 and 29298 of 2018

1. Union of India
Rep. By Secretary to Government
Department of Financial Service
Ministry of Finance, Govt. of India,
Sansad Marg, New Delhi - 1
 2. The Under Secretary (DRT)
Department of Financial Service,
Ministry of Finance, Govt. of India,
Sansad Marg, New Delhi - 1
- ...Petitioners

Vs.

1. K. Harinarayana
2. Central Administrative Tribunal,
Rep. By its Registrar,
Madras Bench,
Chennai - 600 104
3. The Pay & Accounts Officer,
Officer of the PAO (NSO)
2nd Floor, Civil Line, Nagpur

...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the order of the 2nd respondent dated 29.09.2016 made in OA. 310/00291/2014 and to quash the same.

For Petitioners : Mr. G. Karthikeyan,
Assistant Solicitor General

For Respondents : Mr. V. Vijay Shankar for R1
R2 - Tribunal
R3 - No Appearance

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The first respondent before us was initially working in the Bank of Hyderabad. He was one of the applicants to the post of Presiding Officer to the Debts Recovery Tribunal, to which applications were called for pursuant to the advertisement made. The aforesaid post is to be fulfilled by way of direct recruitment. Thus, a candidate who applies will have to undergo the process of interview. The interview is being done by the Expert Committee constituted. Accordingly, the first respondent was selected to the post of Presiding Officer.

2. In pursuant to the aforesaid exercise done, the first respondent was given salary on a particular pay scale as advertised. He was accordingly receiving the pay scale as per the advertisement made. The post was for a period of 5 years or up to 62 years, whichever is earlier. The first respondent attained the age of superannuation while working as the Presiding Officer of the Debts Recovery Tribunal. At that point of time, the pay scale of the first respondent was sought to be revised on the premise that it would come under the Office Memorandum dated 17.06.2010 as against the Office Memorandum Dated 30.03.2010. The first respondent made a representation stating that the Office Memorandum dated 17.06.2010 is being applied for a direct recruit from among the lawyers and therefore, no different yardstick can be applied to his case unilaterally after he attained the age of superannuation. The request made was rejected and therefore he approached the Tribunal. The Tribunal applied Office Memorandum dated 30.03.2010 and granted relief, hence the present writ petition.

3. The learned Assistant Solicitor General would submit that inasmuch as the first respondent came on deputation, the Office Memorandum dated 17.06.2010 would apply. He cannot be allowed to compare himself with the lawyer who has been recruited directly. Thus, what is applicable is the Office Memorandum dated 17.06.2010. Therefore, the order of the Tribunal requires interference.

4. Learned counsel appearing for the first respondent would submit that even The Recovery of Debts to Banks and Financial Institutions Act, 1993 (Act 51 of 1993) speaks about the power for varying the salary and other allowances paid to the Presiding Officer. Reliance has been made to Section 13 of the Act ,which is extracted hereunder:-

"13. Salary and allowances and other terms and conditions of service of Presiding Officers - The salary and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, [the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal] shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of [the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal shall be varied to his] disadvantage after appointment."

5. Learned counsel also submits that what has been paid and fixed in favour of the first respondent was in tune with the advertisement made. It is not open to the petitioners to change the advertisement which forms part of the conditions of the service and is equal to an offer and acceptance. When once an offer is made on a specified term and thereafter accepted, it is not open to the petitioners to go back on that. The Office Memorandum dated 17.06.2010 has got no application as we are dealing with the case which involves a selection process and not a deputation per se. Placing reliance upon the order of appointment dated 15.06.2012, it has been stated that what has been shown is only an appointment to the post of Presiding Officer and not a deputation.

6. Heard Mr. G. Karthikeyan, learned Assistant Solicitor General appearing for the petitioners and Mr. V. Vijay Shankar learned counsel appearing for the respondent No 1.

7. We do not find any merit in this writ petition. As rightly submitted by the learned counsel appearing for the first respondent, the appointment has been made through a process of selection. When we speak of deputation, it is a movement of an employee from the parent department to another. To put it differently, the aforesaid exercise does not involve any selection process and in such a case, certainly Office Memorandum dated 17.06.2010 would apply. We are dealing with a case, in which the selection has been made by a Committee constituted pursuant to the advertisement made calling for

applications. Therefore, we have no hesitation to hold that what is applicable is the Office Memorandum dated 30.03.2010. Secondly, the rigour of Section 13 of the Act 51 of 1993 would apply. The petitioners have clearly mentioned in the advertisement itself about the pay and other emoluments for the post. We are concerned with the post alone. There can be only one post. When there is only one post, there cannot be any parity between the person who has been recruited from any department by varying the process of selection and a lawyer who was recruited by selection. Any other legal distinction would lead to absurdity.

9. Therefore, looking from any perspective, we are not able to accept the submission of the learned Assistant Solicitor General. We may also note that the order has been passed contrary to the recruitment while the first respondent was about to complete his tenure.

10. Thus, we find no merit in this writ petition. Accordingly, writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 104

2. The Pay & Accounts Officer,
Officer of the PAO (NSO)
2nd Floor, Civil Line,
Nagpur.

+1cc to Mr.G.Karthikeyan, Advocate, S.R.No.79119

W.P. No. 27397 of 2017

RK(CO)
GSP(13/12/2018)