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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16th July, 2018

Pronounced on: 1st August, 2018

+ W.P.(C) 4414/2016 and CM No.18474/2016

DR. ATUL KUMAR SODANI Petitioner

Through: Petitioner in person

versus

UNION OF INDIA & ORS. Respondents

Through : Dr. Ashwani Bhardwaj,
Adv.

CORAM:-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR JUSTICE C. HARI SHANKAR

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(JUDGMENT)

C. HARI SHANKAR, J.

1. The petitioner, who claims to be a freelance journalist and an “RTI and social activist”, has, by means of this writ petition, expressed his discomfiture at appointments having been effected against posts, in the Press Information Bureau (hereinafter referred to as “PIB”), which stand abolished by operation of law, and at public monies having been defrayed towards disbursement of pay and allowances to such appointees.

2. The petitioner contends that, by virtue of the fact that they had remained unfilled for more than a year, and had not been created/revived afresh with the approval of the Ministry of Information and Broadcasting (hereinafter referred to as “the

Ministry”), two posts of librarian, at the Information Centres of the PIB located at Jalandhar and New Delhi, were deemed to have been abolished with effect from 1st September, 1990 and 16th March, 1996. No pay, or allowances, the petitioner contends, could have been disbursed to persons against such posts, which were deemed to stand abolished by operation of law. Not only, the petitioner would contend, were persons appointed against these abolished posts; such incumbents were also granted benefits under the Assured Career Progression (ACP) and Modified Assured Career Progression (MACP) Schemes, resulting in elevation of their pay-scales. In total, the petitioner contends that, sans HRA, an amount of ₹ 87,929/- was being disbursed, every month, to the incumbents appointed against these abolished posts.

3. The petitioner also points out that Recruitment Rules were never framed, with respect to these posts, and financial benefits were, nevertheless, being disbursed, to the officials appointed thereagainst.

4. A legal notice, purporting to have been addressed, by the petitioner, to the respondents, in this regard, on 22nd July, 2015, met with a non-committal response, merely stating that the matter was being examined in the Ministry and that, after it was fully examined, the petitioner would be informed appropriately.

5. Following on the above asseverations, the petitioner, by means of this writ petition purporting to have been filed in public interest, prays that a writ of mandamus be issued to the respondents, to

immediately stop all kinds of payments, against the posts of librarian in the New Delhi and Jalandhar Information Centres under the PIB. Additionally, a direction is also sought for issuance of a writ of mandamus, to the respondents, to provide details of all deemed abolished posts within its jurisdiction, against which officers are drawing payments. Initiation of departmental proceedings, against the officials responsible for making of such payments, has also been prayed for.

6. We may, here, reproduce OM No. 7(7)-E (Coord)/93, dated 3rd May, 1993, issued by the Department of Expenditure, Ministry of Finance, which deems posts, unfilled for one year, to be abolished:

***“No.7(7) – E (Coord)/93
Government of India
Department of Expenditure***

New Delhi the 3rd May 1993

OFFICE MEMORANDUM

Subject: Economy in administrative expenditure of the Government./ Ban on creation of posts/Filling of vacancies/Guidelines for processing of the cases

The undersigned is directed to refer to this Ministry’s OM No. No. 7(1) – E(Coord)/84 dated 20th June, 1984 as amended time to time on the subject indicated above and to state that instructions already exist for ban on creation/filling of post(s) and the procedure for creation thereof in exceptional cases. Some doubts which arose in this regards were clarified time to time. Further instructions are, however, being sought by various

Ministries/Departments etc. regarding the following two points. The matter has been considered in this Ministry and the correct position is clarified below against each point:-

<i>POINTS</i>	<i>CLARIFICATIONS</i>
<i>(a) Whenever higher level posts are abolished, whether junior level posts are also to be abolished as a consequence thereof.</i>	<i>Yes, whenever higher posts are abolished, it will be necessary to abolish personal/supporting staff of that higher level post(s) simultaneously. In addition to such abolition, it will also be desirable to have a work sty conducted to determine what other restructuring and abolition of lower level posts would be required as a result of abolition of higher level post (s).</i>
<i>(b) If a post is vacant or held in abeyance for some time, whether the post can be filled up or revived, as the case may be, by the administrative department/Ministry</i>	<i><u>If the post is held in abeyance or remains unfilled for a period of one year or more, it would be deemed to be abolished.</u> Integrated Finance of each Ministry/Department may monitor abolition of such posts and ensure that abolition orders are issued within one month of the post remaining unfilled/held in abeyance for a period of one year. <u>If the post is required subsequently, the</u></i>

	<u>prescribed procedure for creation of new posts will have to be followed i.e. as briefly set out below:-</u>
PLAN POSTS GROUP A POSTS	Approval of Finance Minister will be required.
GROUP B,C & D POSTS	May be created with the approval of the Secretary of the Administrative Ministry/Department provided:- (i) The Expenditure on the establishment is within 10% of the project cost. (ii) The post to be created are in conformity with the prescribed norms, and (iii) Group A post (s), if necessary, have been approved by the Finance Minister.
NON PLAN POSTS (i) Group A Posts of and above the level of Joint Secretary (Rs.9500-6700)	May be created with the approval of Cabinet after obtaining the approval of Finance Ministry
(ii) Group A posts below the level of Joint Secretary and Group B,C & D Posts	May be created with the approval of Finance Minister. For creation of Non Plan posts matching savings are required, which should be by surrender of posts in the same group or of posts in the immediate line of promotion.

	<i>Posts which are found justified on the basis of workload and functional justification can only be created.</i>
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2. *All Ministers and Departments are requested to kindly note the above clarifications for strict compliance, particularly in view of the need for adopting austerity measures for containing Govt. expenditure in the economic scenario. They may also issue instructions to their attaché and subordinate offices including UT Admn., and monitor compliance. Autonomous Bodies under the control of Ministry/department may also be asked to follow these clarifications mutatis mutandis.*

3. *Hindi version is enclosed.*

*Sd/-
(D Swarup)
Joint Secretary to the Govt. of India*

*All Ministries/Departments to the Govt. of India., etc. etc.
(as per standard distribution list.)”*

7. The counter affidavit, filed on behalf of the respondents, candidly admits that (i) the post of librarian in the Information Centre, Jalandhar, became vacant in September, 1990, consequent on the transfer of Gulab Khan, the incumbent thereon, to the Information Centre, New Delhi, (ii) *the said post could not be filled till July, 1996, and was deemed to have been abolished on the expiry of one year from its becoming vacant, i.e. in September, 1991,* (iii) Gulab Khan expired on 15th March, 1996, whereupon the post of librarian at the

Information Centre, New Delhi, also became vacant and (iv) *as this post, too, could not be filled up till 2004, it was also deemed to have been abolished in March, 1997.* The respondents have asserted that no officer was posted against these posts of librarian, at the Information Centres at Jalandhar or New Delhi. At the same time, para 8 of the counter-affidavit avers thus:

“The post (of Librarian at the Information Centre, New Delhi) remained vacant till 2004 when Shri Vijay P. Nitnaware was transferred from Information Centre, Shri Nagar to this deemed abolished post. In this connection it is stated that Information Centre Srinagar were attacked by terrorist on 09.03.2004, in which the Information Centre was damaged and partly burned and as a result of which the Information Centre became non-operational for quite some time. Shri Vijay P. Nitnaware, Librarian was left without adequate work and to utilise his services, he was transferred to PIB, New Delhi by the Regional Office, Chandigarh vide order No F 2/1/01-NR 651, dated 11.03.2004 issued by Press Information Bureau, Northern Region and he joined the PIB, New Delhi and was posted at Information Centre, PIB, New Delhi vide order No 51/2004-Admn. I, dated 29.04.2004. Subsequently Ministry of Information and Broadcasting vide its ID No 25/22/2002-Press, dated 20.12.2004 stated that post of Librarian at Information Centre, New Delhi was lying vacant since 1996 and as per M/o Finances instructions such post is deemed abolished and advised to take corrective measures. PIB (NR) vide order No F.2/1/01-NR, dated 23.12.2004 shifted the capital of the post of Librarian of Information Centre, Jalandhar to Information Centre, New Delhi with effect from 27.04.2004.”

(Emphasis supplied)

8. In their response to para 10 of the writ petition, the respondents admit the grant of the benefits of one upgradation, under the MACP

scheme, to Sh. Vijay P. Nitnaware and three financial upgradations to Ms. Shakila Dikhusa, who had been appointed against the abolished post of Librarian at the Information Centre, Jalandhar. However, it is sought to be contended that the grant of the ACP or MACP benefits would be available to the officers, irrespective of whether she, or he were working against the existing or abolished posts.

9. Para 15 of the counter affidavit also admits that PIB had approached the Ministry, *vide* ID No.10/2/2013-Admn.I dated 05.04.2013 for revival of the “deemed abolished” post of librarian at the Information Centres at New Delhi and Jalandhar, and that the Ministry, *vide* its response dated 12th May, 2014, sought certain clarifications from the PIB, in order to process the case further. It is, however, candidly admitted by Dr. Ashwani Bhardwaj, learned counsel for the respondents, that no such approval, for revitalizing the abolished posts of Librarian at the Information Centre, New Delhi and Jalandhar was, in fact, received or obtained.

10. It may be noted, here, that the petitioner has also objected, in the writ petition, to the categorization of the posts at New Delhi and Jalandhar several years after they were deemed to have been abolished. However, this is not strictly germane to the relief prayed for by the petitioner; moreover, as we are of the view that the appointment of officers against the posts, which were deemed to stand abolished by operation of law was, on its face, illegal, we are not proposing to examine the said issue.

11. Interestingly, the respondents have, in their surrejoinder, sought to submit that it was only in 2012 that the fact that the post of librarian at the Information Centre, Jalandhar was deemed to have been abolished in 1997, came to light.

12. Having heard the petitioner, who appears in person and Dr. Ashwani Bhardwaj, learned counsel for the respondents, we are of the considered opinion that the manner in which respondents had acted, in the present case, is totally alien to law.

13. The respondents cannot plead ignorance of Ministry of Finance Office Memorandum (OM) No 19 (1)/IC/86 (*supra*), regarding abolition of posts which remained unfilled for a period of one year, and seek to capitalize thereon. Once the posts of librarian at the Information Centres, Jalandhar and New Delhi remained unfilled for a year i.e. till 16th March, 1996 in the case of the Information Centre, New Delhi and till 1st September, 1990 in the case of the Information Centre, Jalandhar, the said posts were deemed to have been abolished, and the respondents frankly acknowledge as much. There could be no question, therefore, of grant of any salary or emoluments, to any person working as librarian in either of the said Information Centres, after the said dates. The only option, to the respondents, would have been to seek creation of fresh posts of librarian. No authority, permitting the respondents to request the Ministry to “revive” the posts which stood abolished by operation of law, is referred to, by the respondents, or has been brought to our notice in Court. The OM dated 3rd May, 1993, is categorical in requiring that, in case a “deemed

abolished post” is required to be filled, it would have to be re-created, in accordance with the procedure and stipulations prescribed therein. There is no question, therefore, of any “revival” of a post which is deemed to stand abolished, far less of any appointment being made against such post. (In any case, it is an admitted position that the said posts have never been “revived”.) Neither have the respondents pointed out any statutory provision or executive instruction, which empowered them to shift the “capital of the post of Librarian” from the Information Centre, Srinagar to the Information Centre, New Delhi, six months after Sh. Vijay P. Nitnaware had been appointed against the said post, and to regularise the said appointment retrospectively. These are all actions which, in our view, were in the nature of knee-jerk responses, with no basis, in law, whatsoever.

14. Once the post of librarian at the Information Centres at New Delhi and Jalandhar stood abolished by operation of law, it was, *ex facie*, illegal, on the part of the respondents, to disburse payments, to Sh. Vijay P. Nitnaware and Ms. Shakila Dikhusa against the said posts. It is important to reiterate, in this regard, that para 8 of the counter affidavit specifically admits that Sh. Vijay P. Nitnaware was transferred from the Information Centre, Srinagar “to the deemed abolished post” of Librarian at the Information Centre, New Delhi. This, needless to say, was entirely unconscionable in law.

15. The respondents have sought to contend that no appointments were made against the abolished posts of librarian at the Information Centres at Jalandhar and New Delhi, but that they had transferred

librarians, holding posts at other stations, to Jalandhar and New Delhi, along with the posts. Specifically, in the case of librarian at New Delhi, it is asserted that Shri Vijay P. Nitnaware, who was working as librarian at the Information Centre at Srinagar, was transferred with the post of librarian, to New Delhi. This, in our view, is also equally impermissible and made tantamount to a fraud on the mandate contained in the OM dated 3rd May, 1993 (*supra*).

16. The said OM is categorical in stipulating that posts which remain unfilled for a period of more than one year, are deemed to stand abolished and that in case the posts require at a later point of time, they would have to be re-hyphenated created in the manner stipulated therein. When it was not permissible, for the respondents, to appoint librarians at New Delhi or Jalandhar, because of the said posts standing abolished by virtue of the aforementioned OM, posting persons as librarian, at the said stations, by purportedly transferring the posts held by them elsewhere, would amount to a circuitous attempt to circumvent the mandate of the OM, thereby seeking to do, indirectly, what could not be done directly. It is trite, in law, that it is not permissible to do, indirectly, that which cannot be done directly.

17. That any attempt to do so, would amount to a fraud on the statute (in this case, the OM). Reference may be made, in this context, to the judgments of the Supreme Court in ***Jagjir Hussain v. Ranbir Singh and District Collect, Chittoor v. Chittoor District Groundnut Traders Association***, AIR 1989 SC 989 which had been followed by

this Court, in *MTNL v. Telecom Regulatory Authority of Delhi*, AIR 2000, Delhi 208.

18. The respondents, therefore, had no authority, whatsoever, to appoint anyone as Librarian, at the Information Centres at Jalandhar after September, 1991 and New Delhi, after March, 1996. Neither could any payment have been disbursed, to the officers purportedly holding the post of librarian at these Information Centres, after the said dates.

19. However, as the issue has been raised by the petitioner, before this Court, only in 2016, and the incumbents who were appointed against the deemed abolished posts of librarian at the Information Centres at Jalandhar and New Delhi have not been impleaded as respondents in this case, we are not inclined to pass any orders against the said incumbents. It appears, from the record that, as on date, no officer is working as librarian at the Information Centre at Jalandhar or at New Delhi. We clarify that, as these posts stood abolished by operation of law, and no new post of librarian, at either of the Information Centres at Jalandhar or New Delhi, has been created, it would not be permissible to appoint anyone as librarian at either of these Information Centres, or disburse payments, to any such appointee, against such post. The act of shifting the “capital of the post of librarian”, from the Information Centre, Srinagar to the Information Centre at New Delhi, is also sans any authority of law, and is, therefore, declared illegal. The post of librarian at the Information Centre, Srinagar shall, therefore, stand revived accordingly.

20. Needless to say, this judgment shall not operate as a fetter in the way of creation of fresh posts of librarian at the Information Centres at Jalandhar or New Delhi, should the Ministry deem it appropriate, so to do, in accordance with law.

21. The writ petition is disposed of, in terms of the above observations and directions. There shall be no order as to costs.

**C. HARI SHANKAR
(JUDGE)**

ACTING CHIEF JUSTICE

AUGUST 1, 2018

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