

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2317 OF 2012

Director General of Shipping	..	Petitioner.
v/s.		
Shri Mukkadayil Pylee John	..	Respondent.

Ms. Neeta Masurkar with Nieyaati Masurkar and Mr. Rui Rodrigues, for the Petitioner.

Mr. Sandeep Marne, for the Respondent.

CORAM: A.S.OKA &
M.S.SANKLECHA, JJ.
DATE : 8th APRIL, 2019.

P.C:-

Heard the learned Counsel appearing for the Petitioner.

2 The Petitioner is the Director General of Shipping who has taken an exception to the impugned judgment and order dated 10th February, 2011 passed by the Central Administrative Tribunal (in short ‘the Tribunal’).

3 The Respondent who is a qualified Marine Engineer, was working as a Chief Engineer in the Shipping Corporation of India (in short “SCI”) which is also a Government of India undertaking. While he was in service of SCI in the rank of Chief Engineer, he was given an offer of appointment by the present Petitioner (the Director General of Shipping) by a letter dated 7th January, 1992 for being appointed to the post of

Engineer and Shipping Surveyor which was a group 'A' post. The Respondent accepted the appointment. But that appointment was made on ad-hoc basis with effect from 5th May, 1992. He was given a regular appointment on 12th February, 1998.

4 The dispute raised by the Respondent before the Tribunal was with regard to his pay fixation. The contention of the Respondent was that after his services were regularized, he was entitled to pay protection in accordance with OM dated 7th August, 1989. The Respondent by relying upon the letter dated 7th January, 1992, contended that he was entitled to pay protection as per the said OM. The contention of the Petitioner was that the Respondent was not entitled to the benefit of said OM on the ground that while recommending his appointment, the UPSC did not make any recommendation about the pay fixation.

5 The Tribunal by the impugned order directed that the Respondent's pay from the time of his initial appointment with effect from 5th May, 1992 should be protected in accordance with OM dated 7th August, 1989. A consequential direction was issued directing that the Respondent was entitled to commensurate higher pay upon regular appointment with effect from 6th March, 1998. The order dated 7th March, 2018 passed by the First Court in Notice of Motion No. 324 of 2014 and in particular in paragraph 9 clearly records that the Petitioner has taken a decision to implement the direction from the year 1996. Thus, the question involved in this Writ Petition is very limited. Whether the Respondent is entitled to pay protection from the date of his initial appointment with effect from 5th May, 1992 or with effect from 31st October, 1996.

6 The submission of the learned Counsel appearing for the Petitioner is that, the initial appointment of the Petitioner with effect from 5th May, 1992 was on the ad-hoc basis and his employment was regularized in the year 1998 under the recommendation of the UPSC. Her submission is that, he is disentitled to the benefit of the aforesaid OM. Her next submission is that the Respondent will get pay protection from the date on which his employment was regularized.

7 We have considered the submissions. The Respondent was in the regular employment of SCI and on the basis of the offer given by the Petitioner that he was appointed on ad-hoc basis with effect from 5th May, 1992. It is an admitted position that later on Respondent's appointment was confirmed.

8 The Respondent relied upon OM dated 7th August, 1989 which is extensively quoted in paragraph 13 of the impugned judgment. In paragraph 14, the Tribunal after consideration of the said OM held thus:-

“ As can be seen from the O.M., the first paragraph is a prelude to issue of the directions as given under paragraph 2. But it is clear from the directions given that they are materially different from the prelude, inasmuch as, the method of recruitment is concerned. The background as given in the prelude is that for candidates already in Government service who are appointed on selection through U.P.S.C, pay protection was already in vogue but no such protection is granted to candidates “so appointed in Government” who were earlier working in PSUs etc. However, while giving directions it has been clearly stated that candidates who were earlier working in PSUs etc. but are appointed as direct recruits, inter alia, on selection by departmental authorities making recruitment directly, their initial pay is to be protected. No distinction is made between a regular appointee and an ad hoc appointee. We, therefore, fail to

appreciate that the applicant was not entitled to the benefit of directions as given in the O.M. dt. 7.8.1989. He was working in a PSU and he was a direct recruit under the DG(S) by virtue of recruitment made by the departmental authorities. The President of India had appointed him to his present post, though initially on ad hoc basis. Besides, the ad hoc service has subsequently been regularized.”

9 Thereafter, the Tribunal proceeded to consider the OM dated 10th July, 1998. After having perused the said OM, it is very clear that, the Tribunal was right in holding that the directions contained in the OM dated 10th July, 1998 were prospective.

10 On plain reading of the OM dated 7th August, 1989, the Respondent was entitled to protection of his pay. The Respondent was working in a public sector undertaking (i.e. SCI). The Tribunal is right in holding that the intention was to protect the pay of those who were working in public sector undertakings. Therefore the OM does not make any distinction between the regular appointee and ad-hoc appointee. One of the submission of the learned Counsel appearing for the Petitioner is that the Respondent had accepted his order of appointment and, therefore, now cannot make any grievance. The pay of the Respondent has to be fixed in accordance with law. Once it is held that OM dated 7th August, 1989 was applicable, the Tribunal was right in granting benefits to the Respondent under the OM.

11 We see no illegality or perversity in the impugned order of the Tribunal. The **Petition is rejected.**

(M.S.SANKLECHA,J.)

(A.S.OKA,J.)