

\$~13

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

%

Judgment delivered on: 15.11.2022

+ W.P.(C) 13673/2021

SUNIL ARORA

..... Petitioner

versus

NATIONAL HUMAN RIGHTS COMMISSION Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Manindra Dubey, Advocate

For the Respondent: Appearance not given

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns judgment dated 27.10.2021 whereby the Original Application of the Petitioner seeking quashing of the order dated 12.07.2021 of the Respondent rejecting his representation has been dismissed. Petitioner had also prayed for grant of salary for the post of Joint Registrar (Law) in accordance with Fundamental Rules and Supplementary Rules (FRSR)-49 and FR-39 as he had worked on the post of Officiating Joint Registrar (Law) for a period of over four years. Said prayer was also rejected by the Tribunal.

2. The contention of the Petitioner is that he was serving as a Deputy Registrar (Law) in the National Human Rights Commission, New Delhi and upon the retirement of the Joint Registrar (Law), he was made Incharge of the post of Joint Registrar (Law) with effect from 02.05.2016 and continued to perform the duties of Joint Registrar (Law) in addition to performing his duties till 11.08.2020 when he was substantively promoted to the post of Joint Registrar (Law) by office order dated 17.08.2020.

3. Learned counsel for the Petitioner submits that since the Petitioner has performed the duties of the higher post, he was entitled to the entire emoluments including the gratuity and leave encashment attached to the said post.

4. This is disputed by learned counsel for the Respondent who submits that FR-49 would be applicable only if an incumbent is appointed in an officiating capacity to a particular higher post and is inapplicable to an incumbent who is given an additional charge even though of a higher post. He submits that there is no concept of even an officiating allowance being payable to such an incumbent. He further submits that Petitioner was merely performing routine duties and not officiating on the post of Joint Registrar (Law).

5. The Tribunal has passed a very cryptic order and has merely held as under :-

“4. After hearing the learned counsel for the applicant and perusing the record, we are of the view that the applicant has not been able to establish that he is entitled for pay and other benefits for his officiating work w.e.f. 02.05.2016 to 10.08.2020. Even otherwise, no formal order appointing the

applicant on officiating basis on the post of Joint Registrar (Law) has been issued by the respondents.

5. We do not find any merit in the O.A. and accordingly, the same is dismissed. There shall be no orders as to costs.”

6. The reasoning as emanated from the order of the Tribunal is that Petitioner has not been able to establish that he is entitled to pay and other benefits for his officiating work and that no formal order appointing the applicant on officiating basis was issued by the Respondent.

7. We may advert to the order dated 29.04.2016 which was passed making the Petitioner as an Incharge of the post of Joint Registrar (Law). The said order reads as under :-

*“No.A-12014/2/2016-Estt.
National Human Rights Commission
(Estt. Section)*

Dated, the 29th April, 2016

ORDER

Consequent upon retirement of Shri A.K. Parashar, Joint Registrar (Law) from National Human Rights Commission, on attaining the age of superannuation, Shri Sunil Arora, Dy. Registrar (Law) would remain In-charge Joint Registrar (Law) w.e.f. 2nd May, 2016, in addition to his own duties.

This has the approval of the Competent Authority.

*(D.M. Tripathy)
Under Secretary (GA)”*

8. Perusal of the order shows that not only Petitioner has been

assigned the duties of the Joint Registrar, he has been made “Incharge Joint Registrar (Law)” which duties were required to be performed by the Petitioner in addition to his own duties. Said order does not reflect that Petitioner was required to do only routine work attached to the office of Joint Registrar (Law) but Petitioner was made the “Incharge Joint Registrar (Law)”.

9. Department at times issues orders appointing officers in officiating capacity on a higher post in cases where the incumbent of the said higher post is not available for various reasons, *inter alia*, retirement, transfer, leave, etc. A person who is placed to officiate on a higher post is not treated to be promoted to the higher post but merely discharges the function attached to the higher post and on the permanent incumbent being appointed or returning said person is reverted back to his original post.¹

10. FR SR 49 may also be referred to at this juncture, which reads as under :-

“(i) Where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the competent authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post ;

(ii) Where a Government servant is formally appointment to

¹ *State of Bombay vs. F.A. Abraham 1962 Supp (2) SCR Page 92*

hold dual charge of two post in the same cadre in the same office carrying identical scales of pay, no additional pay shall be admissible irrespective of the period of dual charge:

Provided that if the Government servant is appointed to an additional post which carries a special pay, he shall be allowed such special pay;

(iii) Where a Government servant is formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post or of the highest post if he holds charge of more than two posts in addition to ten percent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 39 days but not exceeding 3 months:

Provided that if in any particular case it is considered necessary that the Government servant should hold charge of another post or posts for a period exceeding 3 months, the concurrence of the Department of Personnel and Training shall be obtained for the payment of the additional pay beyond the period of 3 months;

(iv). Where an officer is formally appointed to hold full additional charge of another post, the aggregate of pay and additional pay shall in no case exceed [Rs.80,000].

(v) No additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge;

(vi) If compensatory or sumptuary allowances are attached to one or more of the posts, the Government servant shall draw such compensatory or sumptuary allowances as the Central Government may fix:

Provided that such allowances shall not exceed the total of

the compensatory and sumptuary allowances attached to all the posts.”

11. FR 49(i) provides that where a Government servant is appointed to hold full charge of the duties of a higher post in the same office as his own then he shall be allowed to pay admissible to him if he was appointed to officiate in the higher post.

12. This Rule stipulates that where a person is appointed to hold full charges of the duties of a higher post even though he has not been appointed to officiate on the higher post, he is entitled to pay admissible to the higher post as if he was appointed to officiate on the higher post, unless pay is reduced under Rule 35. However, no additional pay is payable to the officer for performing the duties of a lower post.

13. Reading of the Rule clearly negates the contention of learned counsel for the Respondent as also of the Tribunal that since Petitioner has not been appointed to officiate in the higher post, he is not entitled to salary attached to the higher post.

14. There is a clear distinction made by the FR-49 (i) with regard to a person appointed to hold full charge of the duties of the higher post and the person appointed to officiate on the higher post. In fact the distinction is completely obliterated in its applicability in so far as payment of the pay and allowances are concerned.

15. In terms of FR-49(i), since Petitioner has been made Incharge Joint Registrar (Law), he would be entitled to the same pay and allowances as if he had been appointed to officiate in the said post.

16. This interpretation is further fortified when we look at FR-49 (ii) and (iii). FR-(ii) stipulates that where a Government servant is formally appointed to hold dual charge of two posts in the same cadre then no additional pay shall be admissible. However, there is a proviso to clause (ii) which says that in case the additional post carries special pay, said officer shall be allowed the special pay.

17. FR-49 (iii) stipulates that in case a Government servant is appointed to hold charge of two or more posts then he shall be entitled to pay of the highest post in addition to ten percent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding (45) days but not exceeding 3 months. Proviso to Rule (iii) provides that in case an incumbent is required to hold charge of another post or posts for a period exceeding 3 months, the concurrence of the Ministry of Finance is to be obtained for payment of additional pay beyond the period of three months.

18. Reliance placed by learned counsel for the Respondent on FR- 49 (v) to contend that no additional amount is payable to the Petitioner is misplaced for the reason FR 49-(v) comes into play only if an officer is appointed to hold charge of the routine duties of another post.

19. Order dated 29.04.2016 appointing the Petitioner as Incharge Joint Registrar (Law) does not stipulate that he is to perform only routine duties of the post of Joint Registrar (Law), in fact Petitioner was made the Incharge Joint Registrar and was required to perform complete duties of that of Registrar which it is not in dispute that the Petitioner performed.

20. Reference may also be had to the Office Memorandum of the Department of Personnel and Training No.4/2/89 Part II, dated 11.08.1989 which, *inter alia*, reads as under :-

“(ii). Where an officer is required only to attend to the usual routine day-to-day work of non-statutory nature attached to the post, an office order may be issued clearly stating that the officer will be performing only the routine day-to-day duties of non-statutory nature and that he would not be entitled to any additional remuneration. The office order should also specify what duties he would be discharging or what duties he would not be discharging.”

21. Said Office Memorandum stipulates that where an officer is required only to attend the usual routine day-to-day work of non- statutory nature attached to the post, the office order should clearly states that the officer will be performing only the routine day-to-day duties of non statutory nature and shall not be entitled to additional remuneration and further that the Office Order should also specify what duties he would be discharging and what duties he would not be discharging, which we notice is missing from the order dated 29.04.2016 appointing the Petitioner as an Incahrge Joint Registrar (Law).

22. In view of the above, we are unable to accept the contention of the Respondent or the reasoning of the Tribunal as contained in the impugned order dated 27.10.2021. Accordingly, the impugned order is set aside. The Original Application of the Petitioner stands allowed and Petitioner is held entitled to the emoluments attached to the post of the Joint Registrar (Law) including gratuity and leave encashment for the period between 02.05.2016 till he was regularly appointed in the forenoon of 11.08.2020 by order dated 17.08.2020.

23. We may only refer to office order dated 11.08.2020 which states that Petitioner had already been granted the financial upgradation under the MACP Scheme to the pay matrix-13. Accordingly, while computing the emoluments to be paid to the Petitioner, the emoluments already received by the Petitioner for the post of Deputy Registrar (Law) as also the emoluments received by him pursuant to the financial upgradation under MACP shall be appropriately adjusted.

24. Balance amount, if any, payable to the Petitioner shall be paid within a period of three months from today with interest at the GPF rate.

25. Petition is allowed in above terms.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

NOVEMBER 15, 2022/yg