

Ramakant Shripad Sinai Advalpalkar vs Union Of India And Others on 31 October, 1990

Equivalent citations: AIR1991SC1145, 1991SUPP(1)SCC733, AIR 1991 SUPREME COURT 1145, 1991 (2) SCC(SUPP) 733, 1991 SCC (SUPP) 2 733, 1992 SCC (L&S) 115, (1993) 3 SCT 586, (1992) 6 SERVLR 290

Bench: M. N. Venkatachaliah, N.D. Ojha, J.S. Verma

JUDGMENT

1. This appeal, by certificate, is directed against the order dated 30th April, 1973, of the Judicial Commissioner, Goa, Daman and Diu dismissing Special Civil Application No. 43 of 1972 by which appellant sought a mandamus directing the respondents to absorb him in a equivalent to that of Treasurer of a financial institution of the former Portuguese Government in Goa, after its take-over by the Indian Government.

2. The appellant was in the service of "Caixa Economica De Goa" as instrumentality of the then Portuguese Government. The petitioner joined the service as "Aspirante" said to correspond to the post of an Upper Division Clerk but he was acting in the higher post of Grade III Officer in the said Caixa Economica. On 30-8-1963 the post of Treasurer in the establishment of Caixa Economica having fallen vacant upon the death of the person who then held that post, appellant was asked to perform the duties of the treasurer on the stipulation that he would draw, besides the monthly salary of his own post as acting Grade III Officer which he then was, an allowance of Rs. 100/- per month. After the liberation of the territories in the Portuguese occupation, a question arose as to the equivalent post to which appellant would be entitled in the corresponding service in India. This was regulated by the Goa, Daman and Diu (Absorbed Employees) Act, 1965 (Act) read with the Goa, Daman and Diu (Absorbed Employees Conditions of Service) Rules, 1965. Having regard to the substantive post of aspirante held by the appellant, his post was not equated to that of the Treasurer but to a post lower in rank in the corresponding service under the Indian Government. Appellant assailed this determination of equivalence, before the learned Judicial Commissioner, who by his order dated 30-4-1973 rejected appellant's claim. In so dismissing the learned Judicial Commissioner held :

...Shri Usgaonkar's argument is that all these facts taken together and the order dated 30-8-1963 read as a whole, leave no doubt that the said order was in substance an order appointing the petitioner to hold the post of officiating treasurer.

7. The other important point is that the words "will perform" the duties of Treasurer are not isolated. They get strong support from the words "will draw the monthly salary of his post as acting Third Grade Officer", which occur in para 2 of the order. These words clearly indicate that the order does not purport in any way to promote the petitioner to the post of Treasurer but quite on the contrary specifically provide

that he shall remain in his post of Third Grade Officer.

...

10. The post against which an employee was to be absorbed (is) not determined purely by its designation. The designations of posts under the Portuguese regime very often differ from those under the Indian regime and there are many cases in which no designation is found.... In these circumstances, a correspondence based on designation would not be correct....

The Judicial Commissioner however certified the case fit for appeal.

3. Shri Dhruv Mehta, learned Counsel for the appellant, formulates three contentions in support of the appeal. The first is that the appellant's appointment on 30-8-1963 as Treasurer was a promotion though an officiating one and that, therefore, the determination of equivalence on the basis of the lower substantive post was illegal besides working serious injustice. The second contention urged with particular emphasis is that whatever might have been the substantive post held by the appellant, having regard to the width and expansive scope of the statutory definition of "Absorbed employee" in the Act even an arrangement of the kind under which the appellant was asked to perform the duties of the post of "Treasurer" would fall within it and appellant would be entitled to a higher equation. It was accordingly urged that the post of the 'Treasurer' would, in relation to the appellant, become the "Absorbed post" and appellant an "Absorbed employee" in relation thereto. The third contention is that, at all events, appellant having been allowed to function in the higher post for seven years, it would be wholly arbitrary to reduce him to a lower post.

4. On the first contention, the very terms of the office order dated 30th August, 1963 (Exhibit A) is clear and conclusive. It says :

Shri Ramakanta Sripada Sinai Advol-palcar, acting 3rd grade officer of the Caixa Economica de Goa will perform the duties of the Treasurer of Caixa Economica de Goa, vice Shri Antonio Xavier Furtado, who died this morning. Shri Advolpalcar should assume the function of the post from today.

Shri Advolpalcar will draw besides the monthly salary of his own post as acting 3rd grade officer an allowance of Rs. 100/- p.m. which is payable to the post of treasurer under the existing rules....

(Emphasis supplied) The arrangements contemplated by this order plainly does not amount to a promotion of the appellant to the post of Treasurer. The distinction between a situation where a Government servant is promoted to a higher post and one where he is merely asked to discharge the duties of the higher post is too clear to require any reiteration. Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of the higher post; but gets only that in service parlance is called a "charge allowance". Such situations are contemplated where

exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement.

We may recall the observations of this Court in the context of a rule requiring as a condition for eligibility that the "person should have worked on the post for seven years" where the difference between merely working on the post and holding a post was indicated :

13. Perhaps, there would have been some merit in the submission on behalf of the petitioner if in Rule 3(b) the words used were "who held the post" but the language in Rule 3(b) is so materially different and it speaks that a person should have worked on the post. The State was apparently wrong in introducing the element of rank for the purpose of Rule 3(b).

See : State of M. P. v. Laxmishankar Mishra .

In *Girja Shankar v. S.D.O., Harda* it was held that a "person appointed to be in charge of the current duties of the office" did not hold the rank and, therefore, could not discharge the statutory functions assigned to the post. In the present case appellant cannot, on the strength of the office order dated 30th August 1963, claim to have been promoted to the post of the "Treasurer". The first contention is, therefore, unsubstantial.

5. The second contention is that the definition of expressions "Absorbed post" and "Absorbed employee" in Section 2 of the Act are wide enough to take in their sweep not only a person holding an "Absorbed post" before the 20th day of December, 1961, but also one who has been merely serving in a higher post and that, accordingly, such higher post is also rendered, in relation to that person, "an absorbed post". We are afraid, this construction is clearly unsupportable.

The definitions of these expressions in Section 2(a) and (b) of the Act read :

(a) "absorbed employee" means a person who immediately before the 20th day of December, 1961, was holding an absorbed post and who on and after that date either served or has been serving in that or any other post in connection with the administration of the Union territory of Goa, Daman and Diu or in any of the Departments of the Central Government.

(b) "absorbed post" means a civil service or post which existed under the former Portuguese Administration in Goa, Daman and Diu immediately before the 20th day of December, 1961.

These provisions in the interpretation clause merely indicate that an "Absorbed employee" should have held the "Absorbed post" immediately before the 20th day of December, 1961, and that it did

not detract from that position if subsequently he was serving in any other post in connection with the administration of the Union territory of Goa. It is erroneous to construe that in such circumstances the 'other' post would also become an "Absorbed post" in relation to such person. He would continue to be "Absorbed employee" only in relation to the post he held immediately prior to 20th day of December, 1961. There is no substance in the second contention either.

6. The third contention is that appellant's 'in charge' arrangements in the higher post had continued for so long a period that a determination of equivalence on the basis of his lower substantive post would become arbitrary. This contention ignores the fact that an 'in charge' arrangement is not a recognition of or is necessarily based on seniority and that, therefore, no rights, equities or expectations could be built upon it. The third contention is also unmeritorious.

7. As we do not find any substance in any of the contentions raised in its support the appeal fails and is dismissed; but without an order as to costs.