

Supreme Court of India

P.P. Muralidharan vs Zonal Manager on 29 March, 1994

Equivalent citations: 1994 SCC (4) 349, JT 1994 (3) 148

Author: B S.P.

Bench: Bharucha S.P. (J)

PETITIONER:

P.P. MURALIDHARAN

Vs.

RESPONDENT:

ZONAL MANAGER

DATE OF JUDGMENT 29/03/1994

BENCH:

BHARUCHA S.P. (J)

BENCH:

BHARUCHA S.P. (J)

KULDIP SINGH (J)

JEEVAN REDDY, B.P. (J)

CITATION:

1994 SCC (4) 349 JT 1994 (3) 148

1994 SCALE (2) 470

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by S.C. AGRAWAL, J.- Leave granted.

2.This appeal is directed against the judgment dated February 16, 1989 of the High Court of Madras allowing Writ Appeal No. 1350 of 1988 filed by the respondents against the order dated August 10, 1988 passed by a learned Single Judge of the said High Court allowing the writ petition filed by the appellant.

3.The facts briefly stated are as follows. In the Food Corporation of India (for short 'the Corporation'), the officers are divided into four zones, viz., Northern, Eastern, Western and Southern Zones. The appellant was appointed as Stenographer Grade-II on September 1, 1969 in the office of the Corporation at Patna failing in the Eastern Zone. He was confirmed on that post with effect from September 1, 1970. Promotion to the post of Stenographer Grade1/Assistant Grade-1 was

to be from Stenographers Grade-II. On February 14, 1972, the Corporation issued a circular whereby a quota of 1 : 15 was fixed for the purpose of promotion of Stenographer, Grade-II to the cadre of Assistant, Grade-1. The said circular was challenged by way of Writ Petition No. 1080 of 1978 before the Delhi High Court.

4. The appellant was transferred from Patna in Eastern Zone to Trivandrum in Southern Zone vide order dated May 13/14, 1975. In pursuance of the said order of transfer, the appellant was relieved at Patna on June 30, 1975 and he joined duty in Trivandrum on July 7, 1975. The said transfer was made at the request of the appellant and it was directed that the appellant would not be having any lien in the Eastern Zone and that his seniority in the Southern Zone in the post Stenographer Grade-II will be from the date of his joining duty there. Consequently, the appellant was placed as the juniormost Stenographer Grade-II at Trivandrum. The writ petition filed in the Delhi High Court was allowed by judgment dated March 18, 1983 and circular dated February 14, 1972 fixing the quota for promotion from Stenographer Grade-II to Assistant, Grade-1 was quashed. The Corporation decided to implement the said judgment of the Delhi High Court and a circular dated July 19, 1985 was issued to all the zonal managers for re-fixing of seniority and promotion. In accordance with the said circular, the Zonal Manager, Eastern Zone sent a communication dated November 19, 1985 requesting the Zonal Manager, Southern Zone that the appellant may be upgraded to the post of Assistant, Grade-1 with effect from January 1, 1973 as was due to him. The Zonal Manager, Southern Zone referred the matter to the Headquarters of the Corporation at New Delhi and at the Headquarters it was decided that since the appellant had relinquished his right in the Eastern Zone on his transfer the question of extending the benefit of seniority as extended to the Stenographers of the Eastern Zone on the basis of the judgment of the Delhi High Court did not arise. In accordance with the said view, the Deputy Manager, Headquarters, New Delhi by his letter dated April 8/10, 1986 intimated that consequent on his transfer to the Southern Zone the appellant has severed his lien with the Eastern Zone and, therefore, the question of extending the benefit of seniority as extended to the Stenographer, Grade-II of the Eastern Zone on the basis of the judgment of the Delhi High Court did not arise. Feeling aggrieved by the said order, the appellant filed the writ petition giving rise to this appeal in the Madras High Court.

5. The learned Single Judge did not accept the contention of the appellant that his transfer from the Eastern Zone to the Southern Zone was in the interest of the Corporation and held that the said transfer was effected at the request of the appellant whose native place is in Kerala and on his undertaking that he would have no further lien in the Eastern Zone and that his seniority in the Southern Zone will be fixed from the date of his joining duty there. The learned Single Judge, however, held that the effect of the decision of the Delhi High Court in striking down the circular dated February 14, 1972 is that the said circular shall be deemed to have been never in existence and that if the said circular had not been in existence, the appellant would have been promoted to the post of Stenographer, Grade-1 on January 1, 1973 and that since the appellant was transferred to the Southern Zone on July 7, 1975 two years thereafter, he shall be deemed to have been serving as Stenographer, Grade-1 when he was transferred to Kerala and shall be deemed to have joined duty in Kerala as Stenographer, Grade-1. The learned Single Judge, therefore, directed that the appellant was entitled to be promoted to the post of Stenographer, Grade-1 from January 1, 1973 and was entitled to re-fixation of his salary and emoluments accordingly and his seniority in the post of

Stenographer, Grade-1 in the Southern Zone will be with reference to the date of his joining duty there, viz., July 7, 1975.

6.The said judgment of the learned Single Judge has, however, been set aside by the Division Bench of the High Court on the view that the appellant joined in the Southern Zone at Trivandrum as the juniormost Stenographer, Grade-II to which post alone there was vacancy at the time of the said transfer and that but for his giving up his seniority in the Eastern Zone he would not have got his transfer to the Southern Zone as Stenographer, Grade-II and there was nothing to show that at that particular point of time there were any vacancies in Stenographer, Grade-1/Assistant, Grade-1 (M). The learned Judges have also observed that simply because the appellant would have earned his promotion in the Eastern Zone on January 1, 1973 had he continued in the Eastern Zone by applying the decision of the Delhi High Court, the appellant cannot be deemed to have been transferred to Southern Zone as Stenographer, Grade-1 particularly in the light of the letter given by the appellant and in view of the admitted position that his lien in the Eastern Zone was cut-off when he was relieved from that zone. The appellant filed a review petition against the said decision of the Division Bench but the same was dismissed by order dated September 15, 1989. Thereupon the appellant has filed this appeal.

7.We have heard Shri Krishnamani, the learned Senior Counsel appearing for the appellant, and Shri G.L. Sanghi, the learned Senior Counsel appearing for the respondents.

8.As indicated earlier, the circular dated February 14, 1972 fixing the quota for promotion of Stenographers, Grade- 11 to the post of Assistant, Grade-1 was quashed by the Delhi High Court by judgment dated March 18, 1983. The effect of quashing of the said circular was that the appellant had to be considered for promotion to the post of Stenographer, Grade-1/Assistant, Grade-1 without reference to the said circular. Applying the said decision of the Delhi High Court the Zonal Manager of the Eastern Zone of the Corporation vide his communication dated November 19, 1985 requested the Zonal Manager, Southern Zone to upgrade the appellant to the post of Assistant, Grade-1 with effect from January 1, 1973 as was due to him. This would mean that had the appellant continued in the Eastern Zone he would have been promoted as Assistant, Grade-1 with effect from January 1, 1973. The only reason why the said proposal was not accepted was that consequent to his transfer from the Eastern Zone to the Southern Zone the appellant had severed his lien with the Eastern Zone. The said transfer, however, took place in the year 1975. Even if it is held that the lien of the appellant in the Eastern Zone got terminated on his transfer to the Southern Zone that could only be in 1975 when he was transferred. Till then the appellant was working in the Eastern Zone and was having his lien in the said zone. In view of the quashing of the circular dated February 14, 1972 he was due for promotion to the post of Assistant, Grade-1 with effect from January 1, 1973. There appears to be no reason why the said promotion should be denied to him merely because he was transferred from the Eastern Zone to the Southern Zone in the year 1975.

9.As regards the other reason given by the learned Judges of the Division Bench of the High Court that there was nothing to show that at the time when the appellant was transferred from the Eastern Zone to the Southern Zone there was any vacancy in Stenographer, Grade-1/Assistant, Grade- 1(M) and that if the appellant is treated to have been promoted as Assistant, Grade-1 in the Eastern Zone

with effect from January 1, 1973 there is nothing to show that he would have been transferred to-the Southern Zone as Stenographer, Grade-1, it may be stated that the Corporation did not raise the plea that there was no vacancy in the Southern Zone in the post of Assistant, Grade-1 at the time when the appellant was transferred from the Eastern Zone in July 1975 and that if the appellant had been promoted as Assistant, Grade-1, he would not have been transferred to the Southern Zone due to non- availability of a vacancy in the post of Assistant, Grade-1. The appellant, on the other hand, has asserted that in his review petition before the High Court he had brought to the notice of the court that there were about 59 vacancies in the post of Assistant, Grade-1 at the relevant time and there was no impediment in the way of his being transferred from the Eastern Zone to the Southern Zone in the category of Assistant, Grade1. This fact has not been disputed in the counter-affidavit filed on behalf of the respondents in this Court.

10. For the reasons aforementioned, we are of the view that the learned Single Judge rightly allowed the writ petition of the appellant and the Division Bench of the High Court was in error in reversing the said judgment of the learned Single Judge.

11. The appeal is, therefore, allowed, the judgment dated February 16, 1989 in Writ Appeal No. 1350 of 1988 passed by the Division Bench of the High Court is set aside and the judgment dated August 10, 1988 passed by the learned Single Judge is restored. No orders as to costs.