

Gyan Prakash

Vs

Union of India

(K. Venkataswami, V. N. Khare JJ)

17.10.1997

JUDGMENT

K.VENKATASWAMI, J.

1. Aggrieved by the judgment of Delhi High Court in C.W.No.433/90 dated 2.4.1992, this appeal by special leave has been preferred.

2. The appellant presently a member of Delhi Higher Judicial Service who presented his case both before the High Court and this Court in person, moved the High Court by filing the said Writ Petition seeking two reliefs: (a) that the post of Senior Subordinate Judge which was classified under the Delhi Judicial Service should have been upgraded when the posts of Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate had been upgraded from Delhi Judicial Service to Delhi Higher Judicial Service in the year 1985 and (b) that the petitioner had, prior to his promotion been discharging the functions of a Senior Subordinate Judge and, therefore, during that time when he was discharging the said functions, he was entitled to pay in the scale of pay applicable to Additional District Judge.

3. It appears from the judgment under appeal that the appellant placed reliance on Section 39(3) of Punjab Courts Act which enabled him as a Senior Sub-Judge to hear appeals under certain circumstances and contended that he must be deemed to be discharging the functions of a District Judge at least for the purpose of payment of salary. He also placed reliance on Article 236(a) of the Constitution of India which defines the expression 'District Judge'. It has also been contended before the High Court that in the face of upgrading the post of Chief Metropolitan Magistrate, the denial of same privilege to the post of Senior Subordinate Judge was arbitrary and unsustainable in law.

4. The High Court in its considered and reasoned judgment found that the post of Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate were rightly upgraded and in any event by holding that the said post of Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrates were wrongly upgraded, the appellant was not going to get any relief on that account. However, the High Court made it clear that they have not examined the correctness of the allegations of the petitioner before it (appellants herein) that the posts of Chief Metropolitan Magistrates and Additional Chief Metropolitan Magistrate have been wrongly upgraded.

5. On the contention based on Section 39(3) of Punjab Courts Act, the High Court held as follows:-

"The petitioner is also claiming that he should be paid the same salary as is being paid to the Addl. District Judge for the period during which he worked as a Senior Subordinate Judge. This contention is based on the ground that under Section 39(3) of the Punjab Court Act, the High Court may, by notification, direct that appeals lying

to the District Court from all or any of the decrees or orders may be preferred to such subordinate judges as may be mentioned in the notification to be issued by the High Court. Under this provision when a Notification is issued and the appeals are, thereupon preferred, then, Section 39(3) inter alia, provides that "the Court of such other Subordinate Judge shall be deemed to be a District Court for the purposes of all appeals so preferred."

The petitioner also relies on the provisions of F.R.49 and submits that as the petitioner was discharging the duties and functions which ordinarily meant to be discharged by the District Judge, therefore, he was entitled to get the same salary as that of the Addl. District Judge. We find no merit in this contention. Section 39(3) enabled the High Court to delegate powers of the District Court in hearing the appeals to any subordinate Judge. In pursuance thereof the High Court issued a Notification on 16th May, 1993 in which it was, inter alia, provided that appeals lying to the District Court from decrees or order passed by any Subordinate Court: (a) in a small cause case of a value not exceeding Rs.500/- and (b) in an unclassified suit of a value not exceeding Rs.100/- shall be preferred to the Senior Subordinate Judge of the First Class exercising jurisdiction within such territory. It was also provided in the said Notification that the Court of such Senior Subordinate Judge of the First Class, shall be deemed to be a District Court for the purpose of all such appeals preferred to it. On 17th December, 1986 a Notification was issued under Section 39(3) by which powers were conferred on the petitioner herein to hear appeals lying to the District Court from decrees or orders passed by any Subordinate Judge: (a) in a money suit of value not exceeding Rs.1,000/-, (b) in a land suit of a value not exceeding Rs.500/- and (c) in an unclassified suit of a value not exceeding Rs.500/-. It was also stated therein that "The Hon'ble Chief Justice and Judges are further pleased to direct that the Court of such Subordinate Judge of First Class at Delhi shall be deemed to be a District Court for the purpose of all such appeals referred to it." The said provision is only a deeming provision, purpose of hearing appeals only the Subordinate Judge is deemed to be a District Court. A Senior Subordinate Judge, like other Subordinate Judges, is empowered to hear suits of a pecuniary value which the other Subordinate Judge can hear. It is in addition to that power to try the suit that a limited jurisdiction is given to hear appeals in certain cases. It cannot be that the petitioner on a single day, when he is hearing an appeal, is deemed to be District Court and entitled to higher salary but when he is trying a suit he is entitled to the pay and allowances like that of a Subordinate Judge. Furthermore, in the Notification itself the petitioner has been described as "Shri G.P. Thareja, Sub-Judge 1st Class, Delhi". The High Court has always regarded him, while he was working as a senior Subordinate Judge, as a Subordinate Judge 1st Class and not as a District Court. The fiction which is created by a law cannot be extended beyond the purpose for which the fiction is created. Because all appeals from the Subordinate Judge ordinarily lie to the District Court it is only for the purpose of appeals of limited pecuniary jurisdiction that the Senior Subordinate Judge is authorized to hear the same. Though he may be discharging the functions which the District Court would have discharged, in the absence of such a delegation, the Senior Subordinate Judge can, by no stretch of imagination, become a district Court. By delegation some functions a Senior Subordinate Judge cannot be deemed to be promoted to the District Court.

Even the provisions of F.R.49 are not applicable. The powers of the petitioner as Senior Subordinate Judge and that of the Addl. District Judge or the District Judge were not co-extensive. The pecuniary jurisdiction of the Senior Subordinate Judge to try civil suits at the time when the petitioner was working as Senior Subordinate Judge was upto Rs.25,000/-. The jurisdiction to hear the appeals was only limited to those suits whose value has been set out hereinabove. The pecuniary jurisdiction, P.112 "on the other hand, of the District Judge and the Addl. District Judge to try a suit ranged from Rs.25,000/- to Rs.1 lakh and the appeals lay from a suit valued upto Rs.10,000.00. The Addl. District

Judge and the District Judge are higher in rank than a Senior Subordinate Judge and the Addl. District Judge can also be empowered to conduct Sessions trials which power cannot be conferred on the Senior Subordinate Judge. In our opinion, therefore, there is no merit in this contention."

6. Undoubtedly the Delhi High Court recommended the inclusion of the post of Senior Sub Judge, chief Metropolitan Magistrate and Judge Small Cause Court, Delhi in the Delhi Higher Judicial Cadre. The reasons for inclusion of Senior Sub Judge in Delhi Higher Judicial Service are as follows:-

"The post of Senior Sub-Judge is of special significance in Delhi. The senior most member of Delhi Judicial Service from the cadre of 112, is invariably posted as Senior Sub-ordinate Judge. Under Section 34 of the Punjab Courts Act, 1918, he is the person appointed to receive complaints and assign to the Sub-ordinate Judges numbering about 30 daily in Delhi. Besides his work as Administrative Head, he is a Court of Appeal. Appeals lying to the District Courts from decrees or orders passed by any Sub-ordinate Judge under Section 39(3) of the Punjab Courts Act. i) In a money suit of a value not exceeding Rs. 1000/-; ii) In a land suit of a value not exceeding Rs. 500/-; iii) In an unclassified suit of a value not exceeding Rs. 500/- are preferred to him and his court is deemed to be a District Court for the purpose of such appeals preferred to it.

7. However the Delhi Administration included only the Chief Metropolitan Magistrate and Addl. Metropolitan Magistrate on the ground that those posts were expressly mentioned in the definition of District Judge under Article 236(a).

8. When the Delhi High Court again pressed for the inclusion of the posts of Senior Sub Judge/Additional Senior Sub Judge and Judge, Small Causes Court, the following reply was sent by Delhi Administration on 12.8.1991 :-

"Sub:- upgradation of the posts of Senior Sub Judge/Additional Sr. Sub-Judge and Judge, small Causes Court for inclusion in the Delhi Higher judicial Service.

Sir, I am, directed to refer to your D.O. letter No. 116/Gaz/CW/DHJS dated 2nd March 1991 on the above subject to convey that the matter has been considered carefully in consultation with the Department of Legal Affairs. It is regretted that, having regard to the relevant provision of Article 236 of the Constitution of India which define the expression 'District Judge' and 'Judicial Service', the posts of Sr. Sub-Judge/Additional Sr. Sub-Judge/Judge. Small Cause Court cannot be upgraded and included in Delhi High Court Judicial Service."

9. It is in this context the High Court while rejecting the contention based on Article 236(a) of the Constitution of India, held thus:-

"In our opinion Article 236(a) clearly specifies which posts are to be regarded as being covered by the expression "District Judge. In India different State had different designations for the various categories of judicial officers. It is not as if Assistant District Judge or a Joint District Judge exist all over India. In fact in the Union Territory of Delhi, after 1970, there was no officer who was designated as Joint

District Judge or Assistant District Judge whereas in some other parts of the country, where there did exist Joint District Judge or Assistant District Judge, there was probably no officer with the designation of Addl. District Judge. To give another example, the Chief Presidency Magistrate in Bombay was not subordinate to the District Judge but was directly subordinate to the High Court. The equivalent of the Chief Presidency Magistrate, in other parts of the State of Maharashtra in its various districts are known as Session Judges. As we read Article 236 (a) it is only those judicial officers who had the designations mentioned in the said Article who could be regarded as District Judges. Of course this did not prevent the Government from upgrading any post of that of a District Judge or to a Higher Judicial Service, as was done in the present case when the post of Chief Metropolitan Magistrate and Addl. Chief Metropolitan were upgraded."

"The post of Senior Subordinate Judge is not mentioned in Article 236(a). It is not possible for us to regard or treat the post of Senior Subordinate Judge as being the same as the post of Assistant District Judge. Similarly, even though the post of the Judge Small Cause Court under the Provincial Small Cause Court Act is subordinate to the High Court, nevertheless the post of Chief Judge of a Small Cause Court exists, by designation, under the Presidency Small Cause Courts Act and not under the Provincial Cause Courts Act. Therefore, when in Article 236(a) reference is made to Chief Judge of Small Cause, it must refer to a judicial officer holding the post having a designation of Chief Judge of Small Cause Court and this was only in the Presidency towns.

As we have already noted, it has been contended by the petitioner that the principle behind Article 236(a) should be extended and a Senior Subordinate Judge should be regarded as Assistant District Judge and the Judge Small Cause Court should be regarded as Chief Judge, Small Cause Court. The extension of a principle may be good reason for the Government to take an administrative decision to upgrade a post and place it in the High Judicial Service. Judicially however, it is not possible for us to interpret the expression "Assistant District Judge" and "Chief Judge Small Cause Court" to mean Senior Subordinate Judge or Judge Small Cause Court. In effect what the petitioner wants this Court to do is to deem the Assistant District Judge to mean Senior Subordinate Judge and Chief Judge, Small Cause Court to mean Judge Small Cause Court. It is indeed authoritatively settled by the Supreme Court in the case of Union of India Vs. Tej Ram Parashramji Bombhate (AIR 1992 SC 570) that the Court or a Tribunal has no power to compel the Government to change its policy involving expenditure and to direct the creation of any post. What the petitioner, in effect, wants this court to do is to issue a writ directing the creation of post in the Delhi Higher Judicial Service. Such a direction cannot, in our opinion, be given."

10. Ultimately the High Court dismissed the Writ Petitioner. The present appeal is filed against the judgment of the High Court against the above conclusions of the High Court.

11. The appellant appearing in person reiterated the same contentions. In addition to that, he also brought to our notice certain provision in the rule framed by the High Court under Section 35(3) of the Punjab High Court's Act for Subordinate Service attached to Civil Courts other than High Court.

12. As regards the point based on Section 39(3) of the Punjab Court Act, while agreeing with the

view expressed by the High Court, we would like to point out that the same principle has already been laid down by this Court in *M.B.Majumdar Vs.Union of India* (1990 (4) SCC 501).In that case a three Judge Bench of this court was considering the issue raised by one of the Members (Administrative Member) of Central Administrative Tribunal.Claiming equal status in all respects with Judicial Member of the same Tribunal.Rejecting such a claim, this court held as follows:-

"During the course of hearing, it was pointed out that mere substitution of a different forum for adjudication of a dispute does not result in conferring on the new forum the status of the substituted forum for purposes other than the jurisdiction and power to adjudicate that dispute unless their status be otherwise equal.To illustrate.Section 115 CPC by amendment in some States empowers the District Courts instead of High Court to decide revisions thereunder, but that does not equate the District Court with the High Court.No attempt was made on behalf of the petitioner to answer this."
(Emphasis supplied).

13.Applying the above principle to the fact of this case, also, it can be said that merely because by delegation for administrative convenience, certain limited appellate powers are delegated to the Senior Sub-Judge, that post cannot be equated to the post of District Judge or Additional District Judge.

14.The rules framed by High Court under Section 35(3) of the Punjab Court Act only enable the Senior Sub Judge to appoint in the first instance menials in his own Court and the Courts of other Sub Judges in the same District.Rule IX of the Rules reads as follows:-

"IX.Punishment :- (1) The following penalties may for good and sufficient reason be imposed upon members of the ministerial staff:-(i)Censure;(ii)Fine of an amount not exceeding one month's salary for misconduct or neglect in the performance of duties;(iii) Recovery from pay of the whole or part of any pecuniary lost caused to Government by negligence or breach of orders;(iv)Withholding of increments or promotion including stoppage at an efficiency bar;(v)Reduction to a lower post or time scale or to a lower stage in a time scale;(vi) Suspension;(vii) Removal; and (viii) Dismissal.(2) (a) Any of the above penalties may be inflicted by the District Judge, on the ministerial officers of his own court or any Court subordinate to him other than a court of small Causes, and on the menials of his own Court.(b)The Judge of a Court of small Causes may inflict any of the above penalties on the ministerial officers menials of his own Court.(c)The District Judge may, with the previous sanction of the High Court, delegate to any Subordinate Judge the power to inflict penalties given in clause (a) to be exercised by the Subordinate Judge in any specified portion of the district subject to the control of the District Court.Note:- This delegation has been made to the Senior Sub-Judge, 1st Class, in each district in regard to the process-serving establishment of all courts in district except that of the District Judge's Court and 'the Court of Judge, Small Causes, Lahore, Amritsar and Delhi.(d)Any Subordinate Judge may fine, in an amount not exceeding one month's salary, any ministerial officer of his own Court for misconduct or neglect in the performance of his duties.(e)The senior Subordinate Judge may inflict any of the above penalties on menials of his own court or the courts of other Subordinate Judges in the same district".

15.Even the above powers given by Delegation to the Senior Sub Judge will not equate/elevate him

to that of District Judge or Addl. District Judge in the light of ruling of this Court in Majumdar's case (supra).

16. As far as the contention based on Article 236(a) of the Constitution of India is concerned, here again while agreeing with the view expressed by the High Court as set out above, we would like to recall the observations of this Court in All India Judges' Association Vs. Union of India and Ors. (AIR 1992 SC 165). While dealing with Article 236(a) of Constitution of India, this Court observed as follows:—"13. If reference is made to Article 236 of the Constitution, it would be noticed that the expression "District Judge" has been defined to include Judge of a City Civil Court, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a Small Cause Court, Chief Presidency Magistrate, Additional Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge. This definition in Article 236 covers the higher section of the State Judicial Service both in the civil and criminal sides. The definition is only inclusive and in implementing the recommendations of the Law Commission to simplify the designations by saving that the hierarchy of subordinate judicial officer would be District Judge or Additional District Judge, below him Civil Judges (Senior Division) and below him Civil Judge (Junior Division Judge) does not go against the constitutional scheme nor does it require any amendment of the Constitution. If there be any laws operating in the States, perhaps the same may have to be appropriately modified or altered if the uniformity recommended by the Law Commission has to work out.

We are inclined to adopt the view of the Law Commission. On the Civil side, the State Judicial Service, therefore, should be classified as District or Additional District Judge, Civil Judge (Senior Division) and Civil Judge (Junior Division). On the criminal side, there should be a Sessions Judge or Additional Sessions Judge and below him there should be the Chief Judicial Magistrate and Magistrates provided for in the Code of Criminal Procedure. Appropriate adjustment, if any, may be made of existing posts by indicating their equivalence with any of these categories. The process of bringing about such uniformity would require some time and perhaps some monitoring. We direct that the Ministry of Law and Justice of the Union Government would carry on the monitoring activity and the State and Union Territories would follow the pattern indicated above by March 31, 1993."

Article 236(a) reads as follows:—"(a) the expression 'district judge' includes judges of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;"

17. There is no express mention in Article 236(a) about the Senior Subordinate Judge like the expressions inter alia included therein, namely, 'Chief Presidency Magistrate' and 'Additional Chief Presidency Magistrate'. May be in the event of the Delhi Administration decides to upgrade and include the post of Senior Sub-Judge in the Delhi Higher Judicial Service, the legal contentions raised by the appellant would justify such upgradation and beyond that it will not help the appellant to pray the court to issue a direction to the Administration to upgrade and include the post of Senior Subordinate Judge in the Delhi Higher Judicial Service. Normally the court will not interfere with the Administrative Policy of the Government when such policy violates some provisions of the Constitution such as Article 14, the court will step in to set right. On facts we are unable to hold that such a contingency has arisen in this case warranting interference.

18. Though the appellant in person ably presented his case by elaborately arguing the matter, we are not able to persuade ourselves to take a different view from the one taken by the High Court. The

appeal fails and it is accordingly dismissed.No costs.