

Selvaraj

Vs

Lt. Governor of Island, Port Blair and Others

Civil Appeals Nos. 1568-1569 of 1998

(S. B. Majmudar, S. P. Kurdukar JJ)

16.03.1998

ORDER

1. Leave granted. We have heard learned counsel for the appellant as well as learned counsel for Respondents 1 to 5 who are the only contesting respondents in the present case.

2. A limited notice was issued in the SLPs which has resulted into these appeals. It was to the effect "whether the petitioner is entitled to draw the salary attached to the post of Secretary (Scouts) during the time he actually worked on that post pursuant to the order at Annexure 'E' dated 28-1-1992 at page 32 of the Paper-Book. And if so, what was the scale of pay for the said post according to him". When we turned to the Order dated 28-1-1992 under which the appellant was called upon to look after the duties of the Secretary (Scouts) we find the following recitals as per Order No.276, dated 28-1-1992.

"The Director of Education, A&N Islands is pleased to order the transfer to Shri Selveraj, Primary School Teacher attached to Middle School, Kanyapuram to Directorate of Education (Scouts Section) to look after the duties of Secretary (Scouts) with immediate effect. His pay will be drawn against the post of Secretary (Scouts) under GFR 77."

3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs. 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

4. The decision of the Central Administrative Tribunal rejecting the claim of the appellant to the aforesaid limited extent is therefore required to be set aside. The appeals are allowed to the limited extent that the respondents will be called upon to make available to the appellant the difference of salary in the time scale of 1640-2900 during the period from 29-1-1992 to 19-9-1995 during which time the appellant actually worked. It is made clear that the payment of the aforesaid difference amount of salary shall not be treated to amount to any promotion given to the appellant on the said post. It is only on the ground that he had actually worked, as such this relief is being given to him. The difference of salary as aforesaid shall be paid over to the appellant within eight weeks from today. No costs.