

**SUPREME COURT OF INDIA**

Pratap Singh

Vs.

Registrar, I. G. I. T.

C.A.No.7384 of 2000

(D. P. Mohapatra and Shivaraj V. Patil, JJ.)

15.12.2000

**ORDER**

1. Leave granted.

2. Heard Shri Ashok Kumar Panda, learned senior counsel for appellant and Shri Jayant Das, learned senior counsel for respondents Nos. 1 to 3, Shri S. B. Upadhyay, learned counsel for respondents Nos. 4 to 7, and Shri Janaranjan Das, learned counsel for respondents Nos. 8 to 11.

3. Being aggrieved by the order of the High Court dismissing the writ petition OJC No. 4783, the appellant has filed this appeal by special leave assailing the judgment. The Writ Petition was filed by the appellant seeking issue of a writ of mandamus to the respondents - the Indira Gandhi Institute of Technology (for short 'IGIT'), Sarang, in the State of Orissa and the State Government for framing of specific rules governing his service conditions, for inclusion of his name in the common cadre of ministerial staff in the category of cashier/senior assistant accepting him as a ministerial staff/cashier since 17-4-1986/1-7-1986, for his placement in the gradation list of the cadre of senior assistants of the IGIT.

4. The High Court, on consideration of the matter, declined to grant any reliefs to the appellant and disposed of the writ petition with the observation "we make it clear that if in the meantime the petitioner has been regularised in the post of cashier, it is open to him to make a further representation to allow him to continue in that post".

5. The main thrust of the arguments of Shri Ashok Kumar Panda learned senior counsel for the appellant was that though the appellant was initially appointed in the post of assistant cashier he was discharging the duties of cashier. Considering the representation made by the appellant he was offered the post of cashier with effect from 1-5-1989 which fact is reflected in the tentative gradation list of the ministerial staff as on 1-6-1991 (Annexure P-11). Subsequent thereto the appellant was transferred as senior assistant with effect from 11-7-1990/16-8-90 and since then he is holding the post of senior assistant. Though the name of the appellant has been included in the gradation list as a member of the ministerial staff of the institution his entry into the present grade has been shown as on 16-8-1990 which in the submissions of Shri Panda is erroneous. According to Shri Panda the posts of cashier and senior assistant are interchangeable/inter-transferable posts, and they carry the same scale of pay. Therefore, there is no reason why the service rendered by the appellant as cashier with effect from 1-5-1989 when his appointment in that post was regularised should not be counted for the purpose of determination of seniority. If the appellant is taken to have made his entry in the present grade on 1-5-1989 then he will become senior to respondents 4 to 7 herein who are placed in the tentative gradation list at serial Nos. 3 to 6 while the appellant is placed at serial No. 7.

6. On perusal of the order under challenge we find that the High Court has not considered the question of the appellant's claim of seniority on the basis noted above. From the discussions in the judgment it appears that the High Court dismissed the writ petition mainly on the ground that the reliefs for issue of writ of mandamus directing the respondent No. 1 to formulate a policy and to prepare rules regarding service conditions cannot be entertained in a writ petition. The High Court observed :

"Though the petitioner had no right to the post of cashier at the time of initial appointment, but since he has been regularised at a subsequent stage, there is nothing wrong on the part of the administration for doing so. We fail to appreciate as to how the petitioner can ask for issuance of a writ of mandamus to command the opposite party No. 1 to formulate a policy and to prepare the service conditions to enable the petitioner to lay his claim in an imaginary fashion. Considering patiently the submissions made on behalf of the respective parties and also considering the scope of the writ petition, we are afraid we cannot ask the opposite party No. 1 by issue of a writ of mandamus to formulate a policy or rules laying down the service conditions which may be congenial to the interest of the petitioner, as is being highlighted before us."

7. Inter seniority in the grade/cadre is an important condition of service; if the appellant's claim

for encadrement with effect from the date he held the post of cashier on regular basis is accepted then it becomes necessary to consider its effect on the inter se seniority position. This aspect of the matter has not been considered by the High Court. Shri Jayant Das, learned senior counsel appearing for respondents Nos. 1 to 3, fairly stated that in fitness of things the case should be remanded to the High Court for consideration afresh.

8. The appeal is allowed. The order under challenge is set aside. The matter is remanded to the High Court for fresh disposal in accordance with law, after opportunity of hearing to the parties. Parties will bear their respective costs.

Appeal allowed.