

**SUPREME COURT OF INDIA**

Deptt., Training & Tech.

Vs.

R.L. Yadav

C.A.No.6682 of 2002

(H.K. Sema and Markaandey Katju JJ.)

30.04.2008

**ORDER**

1. Even on second call, in Court none appeared for the respondent.
2. We have heard Mr. Ashok Bhan, learned senior counsel for the appellant.
3. In a view of the question of law we propose to dispose of this appeal with a short order.
4. On 26.8.1998 the respondent Sh. R.L.Yadav who was appointed on the post of Head of the Department (Electronic) was transferred to Guru Nanak Dev Polytechnic with immediate effect to look after the work of Principal. The order clearly stated that he will not be entitled to any additional remuneration for this and also have no claim for regular appointment to the post. The order reads thus:

“Shri R.L.Yadav Head of Department (Electronic) presently posted at Ambedkar Polytechnic is transferred to Guru Nanak Dev Polytechnic with immediate effect. Shri R.L.Yadav will also look after the work of Principal. He will, however, not be entitled to any additional remuneration for this and will also have no claim for regular appointment to the post.”

5. It appears that the respondent was not paid in the pay scale of Principal.
6. Aggrieved thereby he filed Original Suit before the Tribunal. The Tribunal directed to pay the respondent in the scale of Principal. The High Court has confirmed the order of the Tribunal by the impugned order. Hence, this appeal by special leave.
7. At the outset we may point out that before the High Court the decision of this Court rendered in *Ramakant Shripad Sinai Advalpalkar vs. Union of India and others*<sup>1</sup> has been referred to. However, the High Court has followed a decision of this Court in *Selvaraj vs. Lt. Governor of Island, Port Blair and Others*<sup>2</sup> rendered by a two Judge Bench. The earlier decision is rendered by a three Judge Bench. We are of the view that the High Court

erroneously followed the decision in Selvaraj (supra). In that case the order of appointment itself stated that the appellant was to look after the higher post temporarily and in an officiating capacity. In that case the appellant was a primary school Teacher. By an order passed by the Director of Education he was asked to look after the work of Secretary (Scouts). In the order it was clearly stated that the appellant would be entitled to the salary of the post of Secretary (Scouts). It is also not disputed that the appellant was drawing the scale of Rs.1200-2040 whereas the scale of pay of Secretary (Scouts) was Rs.1640-2900.

8. In these circumstances since it was made clear in the appointment order that the appellant will be entitled to the scale of Secretary (Scouts), a direction was issued that the appellant be paid in the scale of Secretary during the time that he looks after the work of Secretary. This decision is therefore clearly distinguishable.

9. In the present case, as already noticed above, the appointment order clearly states in the order appointing the respondent on the officiating post (incharge post) that he shall not be entitled to any additional remuneration and he will also have no claim for regular appointment to the post. This is the distinguishing fact with the judgments in Ramakant Shripad case (supra) and Selvaraj case (supra) followed by the High Court.

10. In view of the aforesaid facts, we are clearly of the view that the High Court was clearly in error in following the judgment rendered in Selvaraj (supra).

11. This appeal is accordingly allowed. The orders of the High Court and the Tribunal are set aside. No costs.

<sup>1</sup>AIR 1991 SC 1145

<sup>2</sup>(1998) 4 SCC 291