

SUPREME COURT OF INDIA

A. Francis

Vs.

Management of Metropolitan Transport Corporation Ltd., T.N.

C.A.No.7692 of 2014

(Ranjan Gogoi and M.Y.Eqbal JJ.)

13.08.2014

JUDGMENT

RANJAN GOGOI, J.

1. Delay condoned.

2. Leave granted.

3. In view of the limited notice issued by this Court on 24th January, 2013, the only issue that has to be decided in the present appeal is the entitlement of the appellant “ A. Francis to salary in the higher post of Assistant Manager wherein he had worked from 28th February, 2001 till 31st May, 2005.

4. The appellant was initially appointed as a clerk in the Tamil Nadu State Transport Department whereafter he was transferred and absorbed in the newly formed Pallavan Transport Corporation, which Corporation subsequently came to be known as the Metropolitan Transport Corporation Ltd., Chennai. He was promoted to the post of ~Section Officer in the year 1991. As a large number of posts of Assistant Manager were lying vacant in the Corporation, by Order dated 28th February, 2001 the appellant was posted as Assistant Manager In-charge (Public Relations). The aforesaid order made it clear that the same will not confer any preferential right for regular promotion and that the appellant will continue to draw his grade pay in his present

cadre i.e. Assistant Labour Welfare Officer. Well after he had retired from service with effect from 31st May, 2005, the appellant moved a Writ Petition before the High Court of Judicature at Madras claiming, inter alia, the relief of higher salary of the post of Assistant Manager. The aforesaid Writ Petition was allowed by order dated 4th December, 2009. Aggrieved, the Corporation filed a Letters Patent Appeal before the High Court. The direction of the learned Single Judge for payment of salary of the higher post for the period in question having been reversed in the Letters Patent Appeal, the appellant is before this Court.

5. We have heard Ms. C.K. Sucharita, learned counsel appearing for the appellant and Mr. Subramonium Prasad, learned AAG, appearing for the respondent. We have carefully considered the orders passed by the learned Single Judge as well as the appellate Bench of the High Court.

6. Ms. C.K. Sucharita, learned counsel for the appellant has vehemently contended that having discharged duties in the post of Assistant Manager, the appellant is entitled to the pay and emoluments of that office which had been granted to him by the learned Single Judge. Relying on a decision of this Court in Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma & Ors.[1], learned counsel has contended that the Division Bench of the High Court was plainly wrong in reversing the direction of the learned Single Judge. In fact, learned counsel would urge that the ratio of the decision of this Court in Secretary-cum-Chief Engineer, Chandigarh (supra) is a complete answer to the issues arising in the present proceeding.

7. On the other hand, Mr. Subramonium Prasad, learned AAG, appearing for the respondent has placed before the Court the terms of the order dated 28th February 2001 by which the appellant was allowed to discharge duties in the post of Assistant Manager. It is pointed out that there was a specific condition stipulated in the order dated 28th February, 2001 with regard to salary and emoluments, namely, that the appellant would continue to draw the salary in the lower cadre i.e. Assistant Labour Welfare Officer. The claim made with regard to salary of the higher post is, therefore, not tenable in law. Learned counsel has tried to distinguish the decision of this Court in Secretary-cum-Chief Engineer, Chandigarh (supra) by contending that the same must be understood in the context of the facts of the case.

8. The order dated 28th February, 2001, by which the appellant was allowed to

discharge duties in the post of Assistant Manager had made it clear that the appellant would not be entitled to claim any benefit therefrom including higher salary and further that he would continue to draw his salary in the post of Assistant Labour Welfare Officer. If the above was an express term of the order allowing him to discharge duties in the higher post, it is difficult to see as to how the said condition can be overlooked or ignored. The decision of this Court in Secretary-cum-Chief Engineer, Chandigarh (*supra*) was rendered in a situation where the incumbent was promoted on ad hoc basis to the higher post. The aforesaid decision is also distinguishable inasmuch as there was no specific condition in the promotion order which debarred the incumbent from the salary of the higher post. Such a condition was incorporated in an undertaking taken from the employee which was held by this Court to be contrary to public policy.

9. For the aforesaid reasons, we do not find any merit in this appeal. Consequently, the same is dismissed and the order dated 29th September, 2011 passed in Writ Appeal No.1181 of 2010 by the High Court of Judicature at Madras is affirmed.

[1] (1998) 5 SCC 87