

UNION OF INDIA & ANR.
v.
G. RAJANNA & ORS.
(Civil Appeal No. 6590-6592 of 2008)

OCTOBER 15, 2008

**[DR. ARIJIT PASAYAT, C.K. THAKKER AND
D.K. JAIN, JJ.]**

Service Law:

Career advancement – Promotion under – Claim by Malis – Rejected by Central Administrative Tribunal on the ground that the incumbents did not possess the requisite qualification for the higher post – Allowed by the High Court – HELD: The observation of the Tribunal to the effect that the employees cannot claim scale of Lower Division Clerks by way of in situ promotion runs contrary to the stand taken by Union of India all through – The High Court has correctly analysed the office Memorandum, and also rightly noted that object of office Memorandum related to non-functional posts and fixation of pay scales, is to see that Group 'C' and Group 'D' employees are not allowed to stagnate in the same cadre – Judgment of the High Court is based on a correct interpretation of the relevant clause of the office Memorandum and no interference is called for – Government of India Office Memorandum dated 13.9.1991 as modified by Office Memorandum dated 6.11.1991 – Clauses 2(c) and 2(f).

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.6590-6592 of 2008.

From the final Judgment and Order dated 14.12.2004 of the High Court of Karnataka at Bangalore in Writ Petitions Nos. 30501-30503 of 2000.

A Mohan Parasaran, ASG., Sadhana Sandhu, D.S. Mahra and Shreekant N. Terdal for the Appellants.

Anis Ahmed Khan, B.S. Banthia, Vikas Upadhyay and Asha Gopalan Nair for the Respondents.

B The Order of the Court was delivered :

O R D E R

DR. ARIJIT PASAYAT, J. Leave granted.

C Questioning correctness of the judgment rendered by the
Division Bench of the Karnataka High Court the Union of India
and the Director, Central Poultry Breeding Farm Hassarghatta,
Bangalore having filed these appeals. The controversy lies
within a very narrow compass. The respondents who were
D working as Malis (Gardeners) claimed promotion on the basis
of office memorandum dated 13th September, 1991 as
modified by the office memorandum dated 6th November, 1991.
Both the office memorandums related to Career advancements
of Group 'C' and Group 'D' employees. Originally the
E employees were given a scale of pay of Rs.950/- – Rs.1540/-
with a starting pay of Rs.950/- with effect from 1st April, 1991.
Subsequently, it was clarified that they were entitled to lesser
scale of pay i.e. Rs.775/- – Rs.1025/-. The basis of the claim
of the employees was sub-para (f) of the office memorandum
F dated 13th September, 1991 which reads as under :-

“Employees given promotion in situ will continue to be borne on the seniority list of the lower cadre/post and will be considered for functional promotion against available vacancies as per provisions of the Recruitment Rules.”

G The appellants placed reliance on Clause 2(c) and Clause 2(f) of the aforesaid office memorandum. After considering the rival stand of the Central Administrative Tribunal, Bangalore Bench (in short the 'CAT') which heard the original application
H Nos. 573, 666 and 667 of 1999 observed that the applicants

cannot claim the scale of Lower Division Clerk by way of in-situ promotion. Therefore, the prayer made for relief was rejected by the CAT. The respondents-employees moved the Karnataka High Court in Writ Petition Nos. 30501-30503 of 2000. The High Court accepted the stand of the employees and observed as under :-

“No doubt, the CAT has adverted to the facts pleaded in the original applications of the petitioners with reference to the statement of counter filed by the respondents. The CAT has proceeded to examine the claim of these petitioners with reference to the prescriptions of the qualification under the Cadre and Recruitment Rules for fixation of the higher pay scales to their posts irrespective of the fact as to whether it is a functional or non-functional. The object of the office Memorandum referred to supra with non-functional posts, fixation of pay-scales is to see the Group 'C' and 'D' employees in the offices of the respondents shall not be allowed to stagnate in the same cadre and therefore, certain monetary benefits are fixed by the respondents as provided at paragraph 20 of the office Memorandum produced at Annexure 'C'. Non consideration of this important aspect of the matter and rejection of the claim of the petitioners by the CAT solely on this ground that they do not possess the qualification of Matriculation as per C & R Rules has rendered the impugned order erroneous in law.”

Learned Additional Solicitor General appearing for the appellants submitted that the High Court misconstrued the scope and ambit of Clause 2(c) and 2(f) of the office Memorandum. Learned counsel for the employees supported the judgment of the High Court.

It is to be noted that the Tribunal's conclusion is based on a reading of Clause 2(c) and 2(f) of the office Memorandum dated 13th September, 1991 as modified subsequently by office Memorandum dated 6th November, 1991. Clause 2 of the office Memorandum dated 6th November, 1991 reads as

A under :-

B "It is clarified that in terms of para 2(a) of O.M. dated
C 13.9.1991, in situ promotion is to be allowed only to the next
D higher scale available in the line of promotion if the requisite
E conditions are fulfilled. In other words, subject to the satisfaction
F of the conditions prescribed in the said O.M. Group 'D'
employees in the scale of Rs.750-940 will normally be
considered for in situ promotion to the next higher scale of
Rs.775-1025 as that is the next available scale in most of the
organisations. So is the case for promotion of employees in
the scale of Rs.800-1150 are to be promoted to the scale of
Rs.825-1200. However if in any particular organisation
promotions of Group 'D' employees are required to be made
in a higher scale instead of scale indicated here, in accordance
with the Rules of Recruitment, in situ promotion will also be
allowed to the scale to which promotions are made in that
organisation."

E The observation of the Tribunal to the effect that the
employees cannot claim scale of Lower Division Clerks by way
of in situ promotion runs contrary to the stand taken by the
Union of India all through. The High Court in our view has
correctly analysed the office Memorandum and also rightly
noted that object of office Memorandum related to non-
functional posts and fixation of pay scales is to see that Group
F 'C' and Group 'D' employees in the offices of the present
appellants are not allowed to stagnate in the same cadre and
certain monetary benefits are fixed by the noted paragraph of
the office Memorandum.

G In our considered view, the judgment of the High Court is
based on a correct interpretation of the relevant clause of the
office Memorandum and no interference is called for in these
appeals. Hence the appeals fail and are dismissed but without
any order as to costs.

H R.P.

Appeals dismissed.