

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.800 OF 2014

DISTRICT : MUMBAI

Mr. Chandrashekhar J. Kininge.)
Office of the Commissioner of Labour,)
Kamgar Bhavan, 'E' Block, Plot No.C-20,)
BKC, Bandra (E), Mumbai 400 051.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Chief Secretary,)
Govt. of Maharashtra,)
Mantralaya, Mumbai - 400 032.)
2. The Principal Secretary.)
Finance Department, Mantralaya,)
Mumbai.)
3. The Principal Secretary.)
Industry, Energy and Labour Dept.,)
Mantralaya, Mumbai.)
4. The Commissioner of Labour.)
M.S, Kamgar Bhavan, Bandra-Kurla)
Complex, Bandra (E), Mumbai 51.)...**Respondents**

Mr. N.P. Dalvi, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

~


P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 20.03.2017

JUDGMENT

1. The Applicant at present working in the Office of the Commissioner of Labour as Assistant Commissioner seeks the relief herein pertaining to the fixation of a proper pay scale on his assuming the new charge from the post of Registrar of Firms.

2. The Applicant came to be appointed as Labour Officer, Class-II through Maharashtra Public Service Commission (MPSC) on 5.2.1987 and continued as such till 29.5.1997. With effect from 30th May, 1997, he took up the post of Deputy Registrar of Firms for which also, he came to be selected through MPSC in the pay band of Rs.15000-39100 with a grade pay of Rs.6600/-. It is the case of the Applicant that he was denied the promotion to the next post there which went to one Mr. Sunil Jadhav. The Applicant unsuccessfully challenged that order by way of OA 538/2004 and at the time he brought this OA, a Writ Petition thereagainst was pending. In the meanwhile, the Applicant got appointed through MPSC to the post of Assistant Labour Commissioner Group 'A' and joined as such on 22nd January, 2013. It is the case of the Applicant



that there never was any break even of one day in demitting one Office and assuming the charge of the other. The 1st Respondent is the State of Maharashtra through the Chief Secretary, the 2nd Respondent is the Principal Secretary, Finance Department, the 3rd Respondent is the Principal Secretary, Industry, Energy and Labour Department and the 4th Respondent is the Commissioner of Labour, State of Maharashtra.

3. The order of appointment of the Applicant to the present post is at Exh. 'B', Page 15 of the Paper Book (PB). At the time, he came to be appointed as such, he was working as Deputy Registrar of Firms in the pay band already mentioned above of Rs.15600-39100 with grade pay of Rs.6600. The pay band of the post of Assistant Labour Commissioner which he is now functioning as, his pay band was Rs.9300-34800 with Grade Pay of Rs.4600. He was initially taken up on a two year probation to the post of Assistant Commissioner of Labour. There were other terms and conditions which are usual in the letters of appointment and for the purposes hereof, they need not be set out herein.

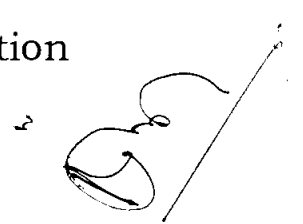
4. Exh. 'C', Page 18 of the PB is the order passed by the Registrar of Firms and it is dated 21.1.2013 thereby he



came to be relieved w.e.f. that date so as to let him take up his present assignment.

5. The Applicant then made representation on 8th February, 2013 (Exh. 'D', Page 20 of the PB). He mentioned therein that he was appointed as an Assistant Commissioner of Labour on the pay band already mentioned hereinabove (9300-34800, GP 4600) from 22.1.2013. Before that he was working in the Office of the Registrar of Firms from 30.5.1997 to 31.1.2013 at the pay scale of Rs.15000-39100 with grade pay of 6600, and therefore, he clearly mentioned in Marathi, "मी, सहायक कामगार आयुक्त, गट-अ पदावर वरिष्ठ वेतनश्रेणीतून कनिष्ठ वेतनश्रेणीत रुजू झालो आहे व सदरची वेतनश्रेणी मला मान्य आहे."

6. The Applicant clearly admitted to the fact that from a higher post and pay scale, he accepted the lower post and the pay scale. He, however, stated therein that while taking up the job of Assistant Labour Commissioner Group 'A' till the previous day i.e. 21.1.2013 as Assistant Registrar of Firms Group 'A', his basic pay was 30380 with grade pay of Rs.6600. He then mentioned in Marathi, "मी वरिष्ठ वेतनश्रेणीतून कनिष्ठ वेतनश्रेणी स्वीकारल्यामुळे मला वरिष्ठ वेतनश्रेणीतील ग्रेड पे मिळणार नाही. तथापि, माझे मूळ वेतनास संरक्षण मिळणे आवश्यक आहे." He, therefore, requested that in the present post of Assistant Commissioner of Labour, there should be a pay protection



such as it was when he demitted the office of Assistant Registrar of Firms where he was getting, as already mentioned above Rs.30380 with grade pay of Rs.4600. It was further mentioned that he had already paid back by a Reserve Bank Challan, the difference of pay from 22.1.2013 to 31.1.2013 of Rs.20,615/-. He then made some reference to his claim for House Rent Allowance (HRA) and also Travelling Allowance (TA), etc.

7. In response to the last representation, the Government in Industry, Labour and Energy Department vide its communication of 28th May, 2014 after recording the facts which have been set out above, took a specific note of an indisputable factual position that the Applicant was appointed as Assistant Commissioner of Labour on a lower pay scale when compared with what he held earlier as Assistant Registrar of Firms, and therefore, his pay scale was fixed as follows (in Marathi).

“शासन निर्णय क. वित्त विभाग, क. वेतन-१२८९/प्र.क.२/९०, सेवा-३, दि.२३.०३.१९९४ मधील अ.क. (४) नुसार श्री. चंद्रशेखर किर्निगे सहायक कामगार आयुक्त यांची पुढील प्रमाणे वेतननिश्चिती करण्यात येत आहे.


सहायक कामगार आयुक्त पदावरील मूळ वेतन रु.१२५४०+ग्रेड पे. रु.४६००/-
१७१४०/-

रु.१७१४० x ३/१०० = रु.५१४.२ म्हणजेच ५२०/- (पूर्ण दशकात)

रु.५२० x १५ (घेतलेल्या वेतनवढी) = रु.७८००/-

रु. १२५४० + ७८०० = २०३४०/- + ग्रेड पे. ४६००/-

१



त्यानुसार श्री. किर्निंगे, सहायक कामगार आयुक्त यांचे सहायक कामगार आयुक्त या पदाच्या वेतनश्रेणी रु.९३००-३४८०० +ग्रेड पे.रु.४६०० मध्ये त्यांच्या नियुक्तीच्या दि.२२.०१.२०१३ रोजी मूल वेतन रु.२०३४०+ग्रेड पे.४६००/- इतके वेतन निश्चित करण्यात येत आहे.

शासन निर्णय, वित्त विभाग, क. वेतन-१०१०/प्र.क.३८/सेवा-३, दि.२६.१२.२०११ मधील तरतुदीनुसार पुढील वेतनवाढीचा दि.०१.०७.२०१४ व त्या दिनांकास मूल वेतन रु.२१०९०+ ग्रेड पे.रु.४६००/- असे राहिल.

हे आदेश शासन निर्णय वित्त विभाग क. वेतन १२८९/प्र.क.९०, सेवा ३ दि. २३/३/१९९४ अन्वये प्रशासनीक विभागास प्रदान करण्यात आलेल्या प्राधिकारानुसार निर्गमित करण्यात येत आहेत.

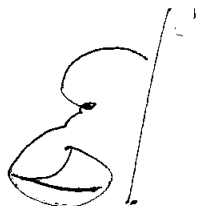
महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.

सही/-
(संजु क. गुप्ते)
शासनाचे कक्ष अधिकारी”

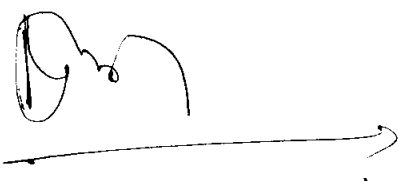
It is this order stung whereby, the Applicant is up before me by way of this OA.

8. I have perused the record and proceedings and heard Mr. N.P. Dalvi, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer (PO) for the Respondents.

9. Mr. Dalvi, the learned Advocate for the Applicant laid particular emphasize on Rules 11 to 15 of the Maharashtra Civil Services (Pay) Rules, 1981. On the other hand, according to the Respondents, this matter will not be covered by the said Pay Rules, but by the G.R. issued by the Finance Department on 23rd March, 1994, a



copy of which is at Exh. 'E', Page 22 of the PB. The said GR mentions *inter-alia* that Rule 10 of the Pay Rules take care of the situation with regard to the pay fixation on first appointment of a Government servant. Rule 11 provides for the course of action to be adopted in case of a Government servant holding a post in substantive, temporary or in officiating capacity getting promoted or appointed in a substantive, temporary or officiating capacity to another post including an ex-cadre post and then prescribes as to how that aspect of the matter will be regulated. I am not herein concerned with ex-cadre post. The said GR further mentions that there was no clear provision with regard to the manner in which the pay fixation should be done in case of those Government servants who were already in Government service upon their appointment to another post under the Government itself and in that behalf, the instructions were given thereunder as to how the pay fixation should be done. It was provided therein that in such cases, the appointment should have been made by MPSC or appropriate Selection Committee. At the time of such an appointment, if the appointing agency had prescribed a pay scale, then the pay fixation would be accordingly done as per the same. At this stage itself, I may digress a little bit and mention that neither party has placed on record for perusal the

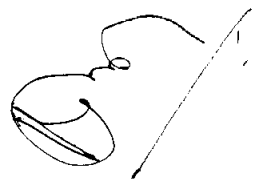
W


Advertisement issued by the MPSC for the post of Assistant Commissioner of Labour. Had that been done, then perhaps the task would have become easier.

10. Returning to the said GR, it mentions that if the appointment of which the pay has to be fixed was to a post higher than the earlier one carrying more onerous responsibility, but if no pay scale was fixed by the appointing agency, then the pay scale will be regulated by the provisions of Rule 11 of the Pay Rules. But very pertinently, this Clause will not apply to the present case because the Applicant was not on a higher post or higher pay while taking up the job of Assistant Commissioner of Labour. That aspect of the matter apparently is regulated by Clause 4 of the said GR which needs to be reproduced (in Marathi).


“(४) कमी जबाबदारीच्या किंवा वेतनश्रेणीच्या पदावर नियुक्ती झाली असल्यास पूर्वीच्या सलग सेवेत जेवढ्या वेतनवाढी देलेल्या असतील तेवढ्या कालावधीतील नियुक्ती पदावरील वेतनश्रेणीतील वेतनवाढी वेतननिश्चितीसाठी विचारात घ्याव्यात.”

11. Clause 4 fully quoted hereinabove, it must have become clear, lays down that in case, the appointment was to a post carrying a lower pay scale, then while fixing the pay scale, number of increments earned by the said employee in his immediately earlier post would be taken



into consideration. It is the case of the Respondents and it is also clear from the extract from Exh. 'A' that such increments from 1997 to 2012 for 15 years were taken into consideration while fixing up the pay scale of the Applicant to the post of Assistant Commissioner of Labour. Mr. N.P. Dalvi, the learned Advocate for the Applicant, however, was critical of such a course of action and he told me that the Respondents should have gone strictly in accordance with Rule 11 of the Pay Rules. To the extent necessary and to the extent, the issue survives after the discussion to be made now, I may offer my comments on the submissions of the learned Advocate.

12. Clause 5 of the said GR then lays down that after fixing the pay as set out in Clauses 3 and 4, the next increment will only be after the lapse of one year. Clause 6 lays down that in case, the post carried the appointment on probation, then Rule 39 of the Pay Rules would have to be followed. Clause 7 deals with the issue of Efficiency Bar which one is not concerned herein. Clause 8 of the said GR lays down that, if there was a break of more than 24 hours between demitting of the earlier Office and assumption of the charge of the present one, then the pay fixation would be in accordance with Rule 14 of the Pay Rules. I have already mentioned above that, in the present

2

→

facts such is not the affairs. The other Clauses deal with the issues pertaining to the employees already in the service of the State Government getting appointed through MPSC or Selection Committee by nomination. In that case, the Mantralaya shall be empowered to take an appropriate decision and not any Senior Officer in the present employment.

13. The above discussion must have made it very clear that the above referred GR based on which the pay fixation of the Applicant was done was clearly on the assumption that the present facts are not covered by the provisions of Rule 11 of the Pay Rules. I shall, to the extent necessary, presently run through the said Rule as well. But here, I must make it clear that the thrust of Mr. Dalvi's contention was that, his last pay has got to be protected and the move by the Respondents has created what Mr. Dalvi considers to be an anomalous situation of his pay getting reduced when compared even with the last pay drawn while working as Assistant Registrar of Firms. As to this submission of the learned Advocate, I find that even the Applicant clearly mentioned in his representation that he had applied to the lower post and lower pay scales, and therefore, it was a conscious decision on his part. That being so, he must be presumed to have had the

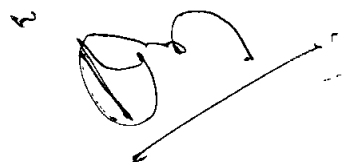


knowledge of the consequences that would ensue and if that be so, then in my opinion, the matter of pay fixation will be governed by the Rules, if applicable and the Government instrument like the GR of 23rd March, 1994 above discussed. If a literal and strict reading thereof produces a certain result, then it is not possible for the judicial forum to still go behind it and make an order which in effect would be actually contrary to the express text thereof. Therefore, on that reasoning by itself, I am afraid I am not with Mr. Dalvi.

14. In the above background, I may now turn to Rule 11 mainly to find if there is substance in Mr. Dalvi's contention that it makes provision for the fact situation such as it obtains herein. Rule 11 as it stands deals with the issue of the Government servant holding the post in any capacity getting promoted or appointed in substantive, temporary or officiating capacity to another post. As far as promotion is concerned, quite clearly, it is not the state of affairs obtaining here, and similarly, this is not an instance of assumption of duties and responsibilities of greater importance than those attaching to the old post. Rule 11(1) of the Pay Rules would, therefore, not apply. Sub-rule 2 takes care of the fact situation where Sub-rule 1 does not apply. There are three Sub Sub-clauses i.e. (a),



(b) and (c) in Rule 11(2). In this matter, it has not been demonstrated to show that there was a common stage in the posts of Assistant Registrar of Firms and Assistant Commissioner of Labour, and therefore, even Sub Sub-clauses (b) and (c) have no application and of course, Sub Sub-clause (a) surely will not apply. The 1st Proviso lays down that on appointment to the new post, the Government servant, "may at his option to be exercised within one month from the date of his appointment elect for fixation of his pay in one of the following manners.....". Admittedly, in this matter, no such option was either sought or given. In as much as there appears to be substance in the case of the Respondents that the matter is governed by the GR above referred to, I need not get drawn into the controversy of whether the option should have been asked for or voluntarily given, the fact remains that the option was not given. Rule 11(2)(d) lays down that, if the minimum of the time scale of the new post was higher than his pay in the old post, he would draw that minimum. For the reasons above discussed, this Sub-clause is not applicable at all. Rule 11(3) deals with the contingency of the appointment to the new post on the request made in that behalf and is, therefore, out of place. The issues pertaining to the selection grade, reversion from the ex-cadre post and transfer from one ex-cadre from

A handwritten signature or flourish, possibly reading 'S. S.', with a long horizontal line extending to the right.

another and those covered by the notes and instructions appended to Rule 11 are not applicable hereto.

15. It is, therefore, quite clear that it is not because it is so mentioned in the GR of 1994, but even upon a mere examination of Rule 11 *ex-facie*, the provision thereof would not apply. That would mean that the circumstances and facts such as they are herein, when the Applicant came to be appointed on a lower post, it is something which is not governed by Rule 11, but it is governed by the 1994 GR. This fact has been repeatedly iterated and reiterated in the Affidavit-in-reply filed by Mr. Sanju K. Gupta, Under Secretary on behalf of Respondent Nos.2 and 3. As just indicated upon my own analysis of the said Rule, I tend to agree with the Respondents.

16. For the foregoing, I find no merit in this Original Application and it is accordingly dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
20.03.2017

20/3/17

Mumbai

Date : 20.03.2017

Dictation taken by :

S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2017\3 March, 2017\O.A.800.14.w.3.2017.Pay Fixation.doc