

R.K. Varma and ors. Vs. Delhi Electric Supply Undertaking and ors.

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Court : Delhi

Decided On : Sep-26-1975

Reported in : ILR1976Delhi125

Judge : Prakash Narain, J.

Acts : [Delhi Municipal Corporation Act, 1957](#) - Sections 92; [Constitution of India](#) - Article 16

Appeal No. : Civil Writ Appeal No. 1605 of 1973

Appellant : R.K. Varma and ors.

Respondent : Delhi Electric Supply Undertaking and ors.

Advocate for Pet/Ap. : S. Pappu,; C.N. Murthy,; S.N. Chopra and;

Judgement :

Prakash Narain, J.

(1) The petitioners by moving this court under Article 226 of the [Constitution of India](#) seek to challenge the appointment of the third respondent S. K. Kapoor, as Private Secretary to the General Manager (E), Delhi Electric Supply Undertaking of the Municipal Corporation of Delhi. According to them Kapoor has been appointed to the post of a Private Secretary illegally by an Order passed by the fourth respondent the former General Manager, who was not competent to make

the appointment. It is also urged that the appointment has been made mala fide and as an act of favoritism shown to Kapoor. The petitioners contend that they were not considered for the appointment of Private Secretary to the General Manager and this amounts to discrimination attracting Article 16 of the Constitution. It is further urged that the petitioners if they had been considered would have been found more suitable for the post than Kapoor.

(2) The petitioners, R. K. Varina, M. L. Sachdeva and O. P. Vijay, as well as Kapoor, the third respondent are all employees of the Municipal Corporation of Delhi in its Delhi Electric Supply Undertaking. Admittedly, all the four belong to the Class-11 service as mentioned in classification of services made by the regulations under Section 79(c) of the Electricity Supply Act, 1948 by the erstwhile Delhi State Electricity Board but continued in force by Section 511 of the [Delhi Municipal Corporation Act, 1957](#). hereinafter referred to as the Municipal Act.

(3) Inasmuch as the arguments at the bar have been restricted to purely legal questions, it is not necessary to set out all the facts in detail. The only relevant facts which may be set out and which are not in dispute are as stated hereafter. The petitioners as well as the third respondent are all employed on various posts in the grade of Rs. 325-900. The third respondent however, gets an additional Rs. 75.00 per month as special pay attached to the post of private Secretary to the General Manager (E). Varma is Public Relations Officer while Sachdeva and Vijay, the other two petitioners are Superintendents. Kapoor prior to his appointment as Private Secretary to the General Manager was holding the post of Second P.A. to the General Manager (E) in the pay scale of Rs. 210-530 plus Rs. 75.00 per month as special pay. The substantive appointment of Sachdeva and Vijay was also as P. As. to the Chairman and P. A. to the General Manager (E) respectively in the pay scale of Rs. 210-530 plus Rs. 75.00 as special pay. They were appointed Superintendents in officiating capacity but held a lien on their substantive posts. Kapoor also had substantive appointment as P. A. to the General Manager (E), as aforesaid, but was appointed Private Secretary to the General Manager (E) on July 31, 1971 in the scale of Rs. 325-900 plus Rs. 75.00 per month as special pay. It is not in dispute that Kapoor was junior to the petitioners in the provisional seniority list of Senior Stenographers issued on July, 8, 1969.

(4) The questions that have arisen for determination are as follows:

1. Whether the appointment of Kapoor as Private Secretary to the General Manager (E) in the pay scale of Rs. 325.00 900 plus Rs. 75.00 as special pay could be ordered by the General Manager or such appointment could only be made by the Municipal Corporation of Delhi 2. Whether the appointment of Kapoor was contrary to the regulations in force 3. Whether the appointment was violative of Article 16 of the Constitution 4. Whether the appointment of Kapoor was an act of favoritism and had on account of male fides of the fourth respondent who was the General Manager at the relevant time ?

(5) According to Section 92 of the Municipal Act the power of appointing municipal officers and other employees, whether temporary or permanent (municipal officers and employees other than those mentioned in Section 89 of the said Act) is conferred on different authorities. As far as the Delhi Electric Supply Undertaking is concerned, appointments to posts carrying a minimum monthly salary (exclusive of allowances) of Rs. 350.00 or more can be made by the Delhi Electric Supply Committee and none else. Appointments to posts carrying a minimum monthly salary (exclusive of allowances) of less than Rs. 350.00 is to be made by the General Manager (E). The first contention that has been raised is that inasmuch as Kapoor has been appointed to a post having a pay scale, minimum of which is Rs. 325.00 but becomes more than Rs. 350.00 by adding the special pay of Rs 75.00 per month, it was only the Delhi Electric Supply Committee which could have made this appointment and not the General Manager. So, what has to be construed is whether special pay attached to the post would be part and parcel of salary as envisaged by Section 92. If the answer is in the affirmative then the minimum salary becomes Rs. 400.00 and obviously the General Manager would have no power to make an appointment to a post carrying that salary. It may be noted that it is an admitted case that the appointment was made by the General Manager (E) and not by the Delhi Electric Supply Committee.

(6) Section 92 refers to the term 'salary' whereas the impugned order refers to 'pay'. The first point to be considered is whether these two words are synonymous. According to The Oxford English Dictionary the term 'salary' means, 'fixed

payment made periodically to a person as compensation for regular work'. The word 'pay' according to the dictionary means 'salary or wages'. thereforee, one may take it that in the absence of any definition of the term 'salary' the use of this term in Section 92 denotes monthly payment which can be recovered by an employee for work done by him as an employee. In other words, what is commonly known as pay would be the same thing as salary. The concept of something recoverable as of right has to be kept in view because Section 92 makes it clear that salary is that amount which does not include allowances. To elucidate one may, in the present context, take the example of dearness allowance or city compensatory allowance which is being paid to Government and other employees. Allowances cannot be claimed as of right but salary or pay can be claimed as of right. In that context salary and pay would be synonymous terms.

(7) This brings me to the consideration of what is meant by the term 'pay'. This term has been defined in Fundamental Rules compiled for the governance of service conditions of Government servants. Indeed, even special pay is defined by the Fundamental Rules. 'Pay' is of different types according to the Fundamental Rules but the pay with which we are concerned is one equated to the monthly salary. Fundamental Rule 9(21) defines the term 'pay' as under :

'21(a) Pay means the amount drawn monthly by a Government servant as (i) the pay, other than special pay or pay granted in view of his personal qualifications which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre, and (ii) overseas pay, special pay and personal pay, and (iii) any other emoluments which may be specially classed as pay by the President. (b) In the case of a military officer, in receipt of the rates of pay introduced on July 1, 1924 pay includes the amount which he receives monthly, under the following designations: (i) pay of appointment, lodging allowance and marriage allowance; and (ii) pay of rank, command pay, additional pay, Indian Army allowance, lodging allowance and marriage allowance. (c) In the case of a military officer, in receipt of the rates of pay in force before July 1, 1924, pay includes the amount which he receives monthly under the following designations : (i) Military pay and allowances and staff salary; (ii) Indian Army pay and staff salary; and (iii) Consolidated pay.'

(8) F. R. 9(25) defines 'Special Pay' as under

'25.Special Pay means an addition, of the nature of pay, to the emoluments of a post or of a Government servant, granted in consideration of ; - (a) the specially arduous nature of the duties: Or (b) a specific addition to the work or responsibility; and includes non-practicing allowance granted to doctors in lieu of private practice.'

(9) The regulations framed under Section 79(c) of the Electricity Supply Act, referred to earlier, also define the term 'pay'. Subclause (g) of clause (1) of the said regulations read as under

'PAYmeans the amount drawn monthly by a servant of the Board as: (i) the pay, other than special pay, or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre; and (ii) overseas pay, technical pay, special pay and personal pay; and (iii) any other emoluments which may be specifically classed as pay by the Board.'

(10) Both the Fundamental Rules and the Regulations, therefore, makes it clear that 'pay' does not include special pay although special pay means an addition of the nature of pay to the emoluments of a particular person who by reason of the special nature of his duties or work or the post that he may hold gets special pay over and above the pay he is entitled to in the time scale. Prima facie, therefore, when it is urged that special pay must be added to the pay to find out the salary of the person concerned, the argument cannot be accepted. If salary postulated by Section 92 of the Municipal Act is synonymous to pay then special pay cannot form part of the salary. The little difficulty that arises is that in Section 92 of the said Act salary is only distinguished from allowances and not from any other type of pay. Obviously, special pay is not an allowance. therefore, it is urged special pay becomes part of the monthly salary contemplated by Section 92 of the Act. In my opinion, this contention cannot be accepted. Special pay is either given for the specially arduous nature of duties performed by a person or because of a specific addition to the work or responsibility imposed on a person. In other words the special pay may be attached to a person or to a post. The moment a person is

transferred from that post or ceases to perform the specially arduous duties special pay will cease. A reduction in salary or pay cannot be effected by change in the nature of duties performed by a person but special pay can obviously be taken away by such a change. Furthermore as F. R. 9(25) itself makes it clear special pay is not pay but in the nature of pay. There is a meaning behind this distinction. Special pay is strictly not an allowance but assumes the nature of an allowance, though called pay because of special circumstances. F. R. 9(28) refers to substantive pay as being pay other than special pay, personal pay, or emoluments classed as pay by the President under F. R. 9(21)(a)(iii). It is urged that pay is, therefore, something distinct from substantive pay and would include special pay. If this was correct then the definition of pay in F. R. 9(21) would not have excluded special pay from the term 'pay'. In my opinion, therefore, the appointment of Kapoor in the pay scale of Rs. 325-900 plus Rs. 75 as special pay by the General Manager was within his competence as postulated by Section 92(c) of the Municipal Act.

(11) It is next contended that, admittedly, the appointment has been made in violation of the aforesaid regulations which have a force of law by virtue of Sections 511 and 516 of the Municipal Act. That these regulations apply was not seriously disputed. It is, however, contended that what has happened in the present case is that the impugned appointment has been made in accordance with certain regulations which were framed but had yet to be enforced. It is an admitted fact that the impugned post was not a post contemplated by the existing regulations. It is a new post which has been created. In my opinion it is perfectly valid for the respondents to have acted on draft regulations treating them as administrative instructions in making the impugned appointment. In the absence of any regulations it is justifiable to act on administrative instructions for filling a post.

(12) Regarding the bias of the fourth respondent or his favoritism qua Kapoor the real grievance is that Kapoor was brought in as a P. A. when he was not really entitled to that post. It is surprising that this contention is raised despite the fact that Kapoor found favor not only with the fourth respondent but also with his two other predecessors. Furthermore, it was not the fourth respondent who appointed him as a P. A. He was appointed much earlier by a predecessor. Both the

predecessor the fourth respondent Mr. Raini and Mr. Manchandani had high opinion of Kapoor. In that view of the matter no mala findes can be attributed to the fourth respondent in making the impugned appointment. Further, the post of Private Secretary to the General Manager is by its very nature a post which must be held by a person in whom the General Manager had full and absolute confidence. If no discrimination is practiced, I find nothing wrong in Kapoor being appointed to the post.

(13) Coming now the question of discrimination, it is an admitted fact that draft regulations are in existence. Action has been taken under these and not arbitrarily. The question of discrimination would come in only if a promotion is involved. Admittedly, Varma, the first petitioner is already in the grade of Rs. 325-900 and so, he could not be considered for promotion to that grade in the making of the appointment of Private Secretary which post is also in the time scale of Rs. 325-900 albeit with a special pay of Rs. 75 per month. As far as the second and the third petitioners are concerned, they have also been appointed to posts in the pay scale of Rs. 325-900 prior to the impugned appointment of Kapoor. If there is no question of promotion Article 16 cannot be said to be attracted.

(14) It has been urged that although there is no promotion involved in appointment to the post of Private Secretary all the same the, very nature of the post makes it a very important one and so, persons like petitioners should also have been considered. I fail to understand the logic behind this contention. If, admittedly, no promotion is involved and it is only a question of posting a person on a particular post, than merely because the petitioners think that the post of a Private Secretary to the General Manager is more important than the post that they are holding at present cannot persuade the court to pronounce in their favor and hold that Article 16 would be attracted. To give an illustration one may take the case of transfers. Can it be said about an employee transferred from one station to another or from one post to another that Article 16 is attracted if such transfer does not involve any promotion or demotion.

(15) The result is that I find no force in the petition. I, therefore, discharge the rule and dismiss the petition with costs. Counsel's fee Rs. 350.

