

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTIONCIVIL APPEAL NO. 4611 OF 2013THE REGIONAL DIRECTOR, EMPLOYEES STATE
INSURANCE CORPORATION & ANR.

Appellant(s)

VERSUS

SOUMITRA SENGUPTA & ORS.

Respondent(s)

J U D G M E N TKURIAN, J.

1. The appellants are aggrieved by the Judgment and order dated 25.01.2010 passed by the High Court of Orissa in W.P. (C) No. 17192 of 2009. The issue pertains to the inter-regional transfer of the first respondent from Maharashtra to Orissa.

2. It is not in dispute that at the time of transfer, the first respondent was working as an Upper Division Clerk (in short, "UDC") in the Maharashtra region. No doubt, the first respondent had applied for a transfer to Orissa region while he was working as Lower Division Clerk (in short, "LDC"). However, at the time when the inter-regional transfer to Orissa was to be effected, the first respondent had already become UDC and he was working as such in the Maharashtra region. But it is seen from the proceedings that the transfer of the first

respondent to Orissa was made as an LDC.

3. Though the learned counsel for the appellants has strenuously argued that the transfer was at the option of the first respondent and that the first respondent had subsequently appeared in the LDC examination in Orissa region and got promoted in the year 2011 in Orissa as a UDC, we find it difficult to appreciate the situation of a UDC being transferred as an LDC. Therefore, the High Court was right in its observation that as on the date of transfer of the first respondent as a UDC to Orissa, in case there was a vacancy of UDC in Orissa region, the first respondent should be considered against that vacancy.

4. Be that as it may, as rightly pointed out by the learned counsel for the appellants, against the vacancy available in 2006 in the post of UDC in Orissa, another incumbent had already been promoted and that person is not on the party array. There was only one vacancy of UDC. The first respondent, in any case, had become UDC in the year 2011 in Orissa region. We also find force in the submission of the learned counsel for the appellants that had there been a transfer as UDC, it would have otherwise blocked the chance of an incumbent in the Orissa region aspiring for promotion as a UDC.

5. Be that as it may, as for the appellants, a legally impermissible transfer as LDC has been made. The transfer has to be treated as only a transfer from Maharashtra to Orissa as UDC. Since another incumbent had occupied the vacant position, we make it clear that the first respondent will only be entitled to notional benefits in the post of UDC with effect from the date of his original transfer to Orissa till he got actual promotion through LDC route in Orissa.

6. Subject to the above modification, the appeal is dismissed. The consequential orders shall be passed within a period of three months from today. For the purpose of passing the order, if required, a supernumerary post in the cadre of UDC will be treated as created from the date of transfer of the first respondent to Orissa till he actually became UDC through LDC route. For removal of any other difficulty, it is made clear that the actual monetary benefits will be accrued to the first respondent only from the date of his actual promotion to the UDC in the year 2011. Till such time, the benefit will only be notional in the sense that the first respondent will get restoration of seniority and re-fixation of pay and such other benefits except the monetary benefits.

Pending Interlocutory Applications, if any, stand
disposed of.

.....J.
[KURIAN JOSEPH]

.....J.
[AMITAVA ROY]

New Delhi;
November 23, 2017.

ITEM NO.1

COURT NO.5

SECTION XI -A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4611/2013

REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE
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Respondent(s)

Date : 23-11-2017 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s) Mr. Santhosh Krishnan, Adv.
Ms. Sonam Anand, Adv.
Mr Yakesh Anand, Adv.
Mr. Sanjeev Anand, AOR

For Respondent(s) Mr. Sanjay K. Das, Adv.
Mr. Swetaketu Mishra, Adv.
Mr. V. K. Monga, AOR

UPON hearing the counsel the Court made the following
O R D E R

The civil appeal is dismissed in terms of the signed
non-reportable Judgment.

Pending Interlocutory Applications, if any, stand disposed of.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU DIWAN)
ASSISTANT REGISTRAR

(Signed non-reportable Judgment is placed on the file)