
(2016) 07 MEG CK 0007
In the Meghalaya High Court
Case No : W.P. (C) No. No. 245 of 2013

Dr. Umesh Kumar Mishra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 GauLJ 651 : (2016) 4 GauLT 464

Hon'ble Judges : Mr. Dinesh Maheshwari, CJ. and Mr. Ved Prakash Vaish, J.

Bench : Division Bench

Advocate : Mr. M. Chanda, Advocate, for the Petitioner; Mr. R. Deb Nath, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Dinesh Maheshwari, C.J.(Oral)—By way of this writ petition, the petitioner/applicant has questioned the order dated 13.03.2013 as passed in Original Application [O.A.] No. 298/2012, whereby the Central Administrative Tribunal Guwahati Bench, Guwahati ["the Tribunal"] has rejected his claim for Special Duty Allowance for the period from the month of September, 1996 to the month of August, 2008.

2. Put in brief, the relevant background aspects of the matter are as follows: On 06.07.1978, the petitioner, said to be a permanent resident of the State of Uttar Pradesh, came to be appointed as Junior Geologist in the selection conducted on All India basis; and was posted in the Paleontology Division of Geological Survey of India, North Eastern Region, Shillong. The petitioner was receiving Special Duty Allowance ["SDA"] for being posted in the North Eastern Region of the country, purportedly in terms of the Office Memoranda dated 14.12.1983 and 20.04.1987 but then, the respondents stopped making such payment of SDA to the petitioner from the month of September, 1996 and proceeded to enforce recovery of the amount already paid, with reference to the decisions of the Hon"ble Supreme Court relating to the claim of such SDA by other employees.

Being aggrieved of such denial of SDA and recovery of the amount already paid, the petitioner and 44 other employees preferred an O.A. bearing No. 209 of 1996 before the Tribunal. Several other employees working in the North Eastern Region in different departments also preferred similar O.As on similar nature grievance. All the said O.As. were disposed of by the Tribunal by way of a common order dated 05.12.1997 while holding that the applicants therein were not entitled to SDA but, while also directing that the SDA already paid to them shall not be recovered. Dissatisfied, the petitioner and 8 other employees filed a Review Application [No.3 of 1998] that was considered and granted by the Tribunal in its order dated 20.12.2000; and the respondents were directed to allow SDA to the applicants including the petitioner and also to disburse the amount already recovered. However, the order so passed by the Tribunal on 20.12.2000 was questioned before the Hon'ble Gauhati High Court by the present respondents in W.P. (C) No. 5222 of 2001.

3. It is borne out that the matters concerning several other employees on the similar nature claim of SDA were also pending before the Gauhati High Court in a batch of writ petitions led by W.P. (C) No. 5087 of 1999: The Regional Director, Employees State Insurance Corporation and others v. The Secretary, Employees State Insurance Corporation Employees Union and others. This batch of writ petitions was ultimately disposed of by way of a common order dated 04.01.2006 wherein, the Gauhati High Court, after taking note of the decision of the Hon'ble Supreme Court in the case of Union of India and others v. S. Vijayakumar and others, 1994 Supp (3) SCC 649 and the applicable Office Memoranda, held that such officers and employees were entitled to SDA who belong to the region other than the North Eastern Region. However, in the said decision, the Hon'ble Gauhati High Court also held that the persons belonging to other parts of the country, if initially appointed and posted in North Eastern Region, would not be entitled to SDA. The petitioner seeks to rely on paragraphs 12, 15 and 16 of the aforesaid order dated 04.01.2006, which could be taken note of as under:-

"12. In Union of India and others v. S. Vijayakumar and others, reported in 1994 Supp (3) SCC 649, the Apex Court by taking into account the purpose for which the office memorandum dated 14.12.83, 29.10.86 and 20.4.87 were issued, has held that such allowances were meant to attract persons outside the North Eastern Region to work in that Region because of inaccessibility and difficult terrain and with a view to attract and retain the services of the competent officers for service in North Eastern Region. It has further been held that the Central Government Civilian employees who have All India Transfer Liability would be granted the allowances on posting to any Station in the North Eastern Region and such employees would not become entitled to such allowances merely because of the Clause in the appointment order relating to All India Transfer Liability. However, the Apex Court on the basis of the concession given by the learned Additional Solicitor General has directed that the amount already drawn by the ineligible employees/officers towards SDA shall not be recovered from

them. The Apex Court in Chief General Management (Telecom), N.E. Telecom Circle and another v. Rajendra Ch. Bhattacharjee and others, reported in AIR 1995 SC 813 has also reiterated the said position.

"15. The Government of India, Ministry of Finance (Department of Expenditure) thereafter issued an office memorandum dated 13.6.2001 regarding admissibility of SDA of postal employees in their posting in N.E. Region. In the said office memorandum it has been clarified that there is no bar in eligibility of SDA for the officers belonging to North Eastern Region, if they satisfy the criteria that their appointment in service/post is made on All India basis and the promotion is also done on the basis of All India common seniority. However, it has been made clear that they will be entitled to the same, if they are posted in N.E. Region from out side the region.

"16. The learned Assistant Solicitor General, during the course of argument, has placed on record another office memorandum dated 29.5.2002 issued by the Government of India, Ministry of Finance (Department of Expenditure) wherein it is stipulated that the SDA shall be admissible to the Central Government employees having All India Transfer Liability on their posting to the North Eastern Region, including Sikkim, from outside the region. Referring to the decision of the Apex Court dated 5.10.2001 in Civil Appeal No. 7000/2001, the Ministry in the said office memorandum has also decided that the amount already paid on account of SDA to the ineligible persons not qualified to such allowances on or before 5.10.2001 will be waived. However, the recoveries, if any, already made, need not be refunded and the amount paid on account of such allowances after 5.10.2001 will be recovered."

4. On the other hand, the Tribunal has relied on paragraphs 14 and 20 of the very same order dated 04.01.2006 for dealing with the case of the petitioner; and the same being equally relevant, are reproduced hereunder:-

"14. From the aforesaid decisions of the Apex Court, it is, therefore, evident that the SDA is payable to the civilian employees of the Government of India who were initially appointed and posted outside the North Eastern Region but subsequently posted in the North Eastern Region. The benefit of such allowance is also not available to the employees/officers belonging to North Eastern Region and to such officers/persons who were appointed and posted in the said region.

"20. In view of the law laid down by the Apex Court, as discussed above and also in view of the discussion relating to the finality of judgment, we hold that the officers and employees, who belongs to the region other than the N.E. Region, will be entitled to SDA. The persons belonging to the other parts of the country other than the N.E. Region, if initially appointed and posted in N.E. Region shall not be entitled to such allowance. The Postal employees belonging to N.E. Region but posted in the said Region from out side the region on their promotion on the basis of the All India Common Seniority List shall also be entitled to SDA from the date of such posting. The employees and officers, other than, the employees

and officers mentioned above, shall not be entitled to SDA and the authorities shall be entitled to recover SDA already paid to them after 5.10.2001 in terms of the office memorandum dated 29.5.2002 and the amount already paid upto 5.10.2001 towards SDA shall not be recovered. However, the recoveries, if any already been made, need not be refunded. This is also subject to the inter party judgment and order that have been passed by any competent Court or Tribunal, which have attained its finality."

(underlining supplied for emphasis)

5. In the aforesaid order dated 04.01.2006, the Gauhati High Court finally directed as follows:-

"21. The writ petitioners in view of our aforesaid decision, are directed to scrutinise each of the claim of the officers/employees for SDA and pass necessary orders in that regard. However, the authority cannot re-open and stop payment of SDA or recover such allowances from such officers/employees, whose cases have already been decided by the learned Tribunal, prior to S. Vijayakumar's case, declaring that they are entitled to such allowances, if the said decisions have not been assailed and set aside by the Higher court."

After the decision aforesaid, the writ petition relating to the petitioner and 8 other employees [W.P.(C) No. 5222 of 2001] was taken up for consideration by the Gauhati High Court on 01.11.2006 when it was submitted ad idem by the parties that the matter was squarely covered by the aforesaid order dated 04.01.2006. Hence, the Hon"ble Gauhati High Court, without any other adjudication, proceeded to dispose of the writ petition with direction to the respondents to grant the same relief to the employees in terms of the cited case [i.e., order dated 04.01.2006 in W.P. (C) No. 5087 of 1999], if they fulfilled the criteria laid down therein and in the light of the Office Memorandum dated 13.06.2001. The Hon"ble Gauhati High Court, of course, took note of the submissions on behalf of the respondents of the said writ petition [i.e., the present petitioner and other employees] that they fulfilled all the criteria of paragraph 15 of the cited order, but did not return any finding thereupon. This order dated 01.11.2006 in W.P. (C) No. 5222 of 2001, being the mainstay of the case of the petitioner, could be taken note of as under:-

"W.P. (C) No. 5222/2001

Before

The Hon"ble Mr. Justice A.H. Saikia

The Hon"ble Mr. Justice B.D. Agarwal

1.11.06

Heard Mr. H. Rahman, learned Assistant Solicitor General appearing for the Union of India and others/petitioners as well as Mr. S. Sharma, learned counsel representing the respondents.

The legality and correctness of the judgment and order dated 20.12.2000 passed by the Central Administrative Tribunal, Guwahati Bench in Review Application No. 3/98 by which the review application was disposed of modifying the earlier order dated 5.12.97 rendered in O.A. No. 209/06 to the extent of directing the respondents/petitioners herein to grant the Special Duty Allowance (for short, "SDA") to the 9 (nine) applicants/respondents herein, being posted in North East Region from outside region has been questioned in this writ petition filed by the Union of India and others.

At the very outset, it is stated at the Bar that the issue raised in this writ petition is squarely and uniformly covered by a decision of a Division Bench of this Court passed in W.P. (C) No. 5087/1999 along with others analogous writ petitions disposed of on 4.1.06 (The Regional Director, Employees State Insurance Corporation N.E. Region Bamunimaidam v. The Secretary, Employees State Insurance Corporation Employees Union, N.E. Region, Bamunimaidam) and accordingly, it is submitted that this writ petition may also be closed in the light of the above cited case.

Having regard to the above referred case particularly, paragraphs 12, 15 and 16, wherein it was categorically held that the employees who were hailing from outside the North Eastern Region would be entitled to Special Duty Allowance on the conditions that those employees must satisfy the criteria that their appointment in service/post was made on All India basis and the promotion was also done on the basis of All India common seniority and also upon hearing the learned counsel for the parties, this writ petition stands closed with a direction that the respondents be granted the same relief in terms of the above cited case, if they fulfil the criteria laid down in the case cited as well as in the light of the Office Memorandum dated 13.6.2001 as reflected in paragraph 15 of the referred case.

At this stage Mr. S. Sharma, learned counsel for the respondents has submitted that the respondents have fulfilled all the criteria of the paragraph 15 of the above cited case.

This disposes of the writ petition."

6. In terms of the decision aforesaid, the respondents proceeded to examine the matter concerning the petitioner and 8 other employees and found that they were not entitled to SDA for having been posted directly to North Eastern Region on recruitment and being not within the purview of paragraphs 12, 15 and 16 of the order of the Hon"ble Gauhati High Court dated 04.01.2006. The claim of the petitioner and other 8 employees was, therefore, rejected by the order dated 14.05.2007 by the respondent-department with the order that the amount already paid to the employees shall not be recovered. The department concluded on matter as under:-

"11.That the details of posting of the applicants as exhibited above speaks that all the 9 applicant have joined and posted directly in GSI, NER, Shillong in the post of Geologist (Jr.)/Assistant Geologist on being selected through UPSC.

Though all the applicants were appointed on All India Seniority List and maintain common centralised seniority and have the all India transfer liability, but the applicants were not transferred to NER from outside but posted directly on recruitment.

"12. As discussed above, on taking into consideration the instruction issued by the Government of India from time to time on given effect rules and regulation, it is established that the applicants named in Para 10 of this Order are not in purview of Paras 12, 15 and 16 of the order of the Hon"ble Gauhati High Court, Guwahati in W.P. (C) No. 5087/1999 which was disposed of on 04.01.2006, as such the applicants named above are not entitled for the grant of SDA. However, as regards to the recovery of SDA it is ordered that the amount already paid to the applicants, which has already been drawn by the applicants shall not be recovered."

7. Assailing the order aforesaid, the petitioner filed the O.A. leading to this writ petition and sought the relief in the following terms:-

"8.1. That the Hon"ble Tribunal be pleased to set aside and quash the impugned letter dated 21.09.2012 and the impugned order dated 14.05.2007;

8.2. That the respondents be directed to release the SDA for the period from September, 1996 to August, 2008 to the applicant in the light of the judgment and order dated 20.12.2000 in Review Application No. 3/1998 passed by this Hon"ble Tribunal and the judgment and order dated 01.11.2006 in W.P. (C) No. 5222/2001 passed by the Hon"ble Gauhati High Court."

8. With reference to Office Memorandum issued by the Government of India, Ministry of Finance dated 29.05.2002 stating that, "the Special Duty Allowance shall be admissible to the Central Government employees having All India Transfer Liability on posting to North Eastern Region (including Sikkim) from outside the region" and with reference to the decision in the earlier round of litigation as also with reliance on the decision of the Hon"ble Supreme Court in the case of. S. Vijayakumar (supra), it was contended on behalf of the petitioner before the Tribunal that the respondents were not justified in denying him the SDA.

9. The Tribunal, in its considered order dated 13.03.2013, took a survey of the relevant Office Memoranda as also the decisions referred to by the petitioner and then, found the position rather indisputable that writ petition concerning the case of the petitioner [W.P.(C) No. 5222 of 2001] was decided by the Gauhati High Court on 01.11.2006 as being covered by the law laid down in the order dated 04.01.2006 as passed in W.P.(C) No. 5087 of 1999. With a specific reference to paragraph 20 of the order dated 04.01.2006, to the effect that "the person belonging to the other parts of the country other than the N.E. Region, if initially appointed and posted in N.E. Region, shall not be entitled to such allowance", the Tribunal found the petitioner not entitled to the relief claimed for having been initially appointed and posted in North Eastern Region and hence, dismissed the

O.A., while observing as under:-

"23. Taking into consideration the order dated 04.01.2006 passed in W.P. (C) No. 5087/1999 along with analogous cases of the decision of the Division Bench and dated 01.11.2006 passed in W.P. (C) No. 5222/2001, we observe that the order of the Tribunal passed in R.A. No. 03/1998 attained finality subject to the fulfilment of criteria laid down in the cases cited as well as in the light of the O.M. dated 13.06.2001 as reflected in the paragraph 15 of the referred case. We have also noted that the Hon''ble Gauhati High Court while passing the judgment dated 01.11.2006 in W.P. (C) No. 5222/2001, referred the paragraphs 12, 15 and 16 rendered in W.P. (C) No. 5087/1999. The Hon''ble Gauhati High Court while disposing the W.P. (C) No. 5222/2001, where the present applicant was the respondent/s, directed the petitioner/appellant to grant the same relief to the respondent/s in terms of the above cited case, if they fulfil the criteria laid down in the case cited as well in the light of the OM dated 13.06.2001 as reflected in paragraph 15 of the referred case. In W.P. (C) No. 5087/1999, Hon''ble High Court also observed the case of the Union of India and Ors. v. S. Vijayakumar and Ors. (supra), where the Hon''ble Apex Court was held that - SDA is payable to the civilian employees of the Government of India who were initially appointed and posted outside the North Eastern Region. The benefit of such allowance is also not available to the employees/officers belonging to North Eastern Region and to such officers/persons who were appointed and posted in the said region.

The Hon''ble High Court in W.P. (C) No. 5087 of 1999 by relying the Apex Court judgment in S. Vijayakumar (supra) held that -

"the, persons belonging to the other parts of the country other than the N.E. Region, if initially appointed and posted in N.E. Region shall not be entitled to such allowance."

In the instant case, the applicant is the permanent resident of Uttar Pradesh and was initially appointed as Junior Geologist through selection conducted by the Union Public Service Commission on All India basis.

25. Having heard the learned counsel for both the parties, perusal of the pleadings, reply thereon and the decision relied upon and as discussed herein above, we are not inclined to interfere with the order dated 21.09.2012 and 14.05.2007.

Accordingly, O.A. stands dismissed. There will be no order as to cost."

10. Seeking to assail the order so passed by the Tribunal, it is strenuously contended by the learned counsel for petitioner that the entire approach of the Tribunal, in assuming that the person initially appointed and posted in North Eastern Region would not be entitled to SDA, remains unjustified because such a proposition neither emanates from the applicable Office Memoranda nor from the decisions of the Hon''ble Supreme Court. On the contrary, according to the learned counsel, the Hon''ble Apex Court has held that SDA is payable to the

civilian employees of the Government of India who are appointed and posted in the North Eastern Region with the only exception being that the benefit of such allowance is not available to the employees/officers belonging to North Eastern Region who are appointed and posted in the same region.

11. Having given thoughtful consideration to the entire matter, we are clearly of the view that in the face of concluded decision in his case, the petitioner is not entitled to the reliefs as claimed; and no case for interference in the writ jurisdiction is made out, for the reasons indicated infra.

12. A recapitulation of the background aspects reminds that the claim made by the petitioner along with several other employees for SDA for the period in question had been the subject-matter of litigation earlier in O.A. No. 209 of 1996 that was decided by the Tribunal on 05.12.1997 but then, the order was reviewed on 20.12.2000 in Review Application No. 3 of 1998; and the Tribunal directed the respondents to allow SDA to the employees concerned, including the present petitioner. The said order dated 20.12.2000 was challenged by the present respondents in W.P. (C) No. 5222 of 2001 before the Gauhati High Court. While the said writ petition concerning the case of the present petitioner remained pending, the matters concerning several other employees on the similar nature claim for SDA in the batch of writ petitions led by W.P. (C) No. 5087 of 1999 were disposed of by the Gauhati High Court by way of the common order dated 04.01.2006 wherein, even while upholding the right to receive SDA in relation to several classes of employees, the High Court held that

"the persons belonging to the other parts of the country other than the N.E. Region, if initially appointed and posted in N.E. Region shall not be entitled to such allowance."

13. The significant aspect of the matter is that the writ petition filed by the present respondent against the aforesaid order dated 20.12.2000 as passed by the Central Administrative Tribunal, Guwahati Bench, Guwahati in Review Application No. 3 of 1998, (i.e., W.P. (C) No. 5222 of 2001 wherein, the present petitioner was a party as respondent No. 1) was later on considered by a Division Bench of the Gauhati High Court when it was submitted ad idem by the parties that the matter was squarely covered by the aforesaid order dated 04.01.2006 passed in the batch of writ petitions led by W.P. (C) No. 5087 of 1999. Looking to the submission so made, the Division Bench of the Gauhati High Court proceeded to close the matter in W.P. (C) No. 5222 of 2001 by its order 01.11.2006 with the direction that the respondents of the petition be granted the same relief in terms of the cited case, if they fulfil the criteria laid down as well as in the light of the Office Memorandum dated 13.6.2001.

14. Thus, the said order dated 01.11.2006 was passed on the agreed submissions of the parties that the matter was squarely covered by the aforesaid order dated 04.01.2006 as passed in the batch of writ petitions led by WP (C) No. 5087 of 1999 wherein, as noticed hereinbefore, even while upholding the

claim for SDA of several different classes of employees posted in North Eastern Region, it was clearly held that the persons coming from outside, if initially appointed in the North Eastern Region, were not entitled to SDA. Indisputable fact of the matter is that the petitioner, though hailing from an outside region, was indeed appointed initially in the North Eastern Region and continued to serve in the North Eastern Region. The petitioner clearly belongs to a particular class of employees who were held not entitled to SDA by the High Court in paragraph 20 of the order dated 04.01.2006; and the said decision binds the petitioner in view of the agreed order dated 01.11.2006 in his case.

15. The learned counsel for the petitioner has attempted to read and re-read paragraphs 12, 15 and 16 of the order dated 04.01.2006 to submit that the petitioner is the person coming from outside to North Eastern Region and hence, is entitled to SDA. This suggestion of the learned counsel for the petitioner to read only paragraphs 12, 15 and 16 of the order dated 04.01.2006 remains baseless and is rather a desperate attempt to wriggle out of the binding order dated 01.11.2006. When the writ petition relating to the petition stands closed with the directions that the relief could be available with reference to the criteria in the order dated 04.01.2006, the entire order 04.01.2006 is required to be read as a whole; and the uncomfortable or rather afflictive part for the petitioner, viz., paragraph 20 thereof, cannot be ignored.

16. Though learned counsel for the petitioner has strenuously attempted to make out a case that such adverse observations in paragraph 20 of the order dated 04.01.2006 are not in tune with the Office Memoranda and applicable decisions but, we are afraid, the present petitioner cannot be allowed to urge such a contention. This is for the simple reason that so far the petitioner's case is concerned, the same stands closed with the order dated 01.11.2006 that has attained finality and remains binding on the petitioner.

17. We would hasten to observe that we are not commenting finally on the contention sought to be urged on behalf of the petitioner as regards interpretation of the Office Memorandum in question; and for that matter, it is made clear that this order is not of adopting all the propositions emanating from the order dated 04.01.2006, which may be examined in an appropriate case at the appropriate stage. However, so far the present petitioner is concerned, the said decision binds him utterly and absolutely, in view of the order dated 01.11.2006 passed in his case.

18. Put in a nutshell, the conclusion of the matter is that so far the petitioner is concerned, the said order dated 04.01.2006 remains binding on him because of the order passed in his case on 01.11.2006; and the petitioner, though being a person belonging to a region other than the North Eastern Region of the country, but having been initially appointed and posted in the North Eastern Region and having continuously served in this Region only, is not entitled to SDA, for being hit by the criteria stated in paragraph 20 of the order dated 04.01.2006. Hence, he could not have been granted the relief as claimed before the Tribunal.

19. For what has been discussed and observed herein above, we are satisfied that the order as passed by the Tribunal dismissing the Original Application filed by the petitioner cannot be faulted at; nor it appears suffering from any jurisdictional error so as to call for interference in the writ jurisdiction of this Court.

20. Accordingly and in view of the above, this writ petition fails and is, therefore, dismissed.

21. No costs.