

(2005) 10 BOM CK 0082

In the Bombay High Court

Case No : Writ Petition No. 3663 of 2005

Employees' State Insurance Corporation, thro" Director
General and Another

APPELLANT

Vs

ESIC Officers Association and Others

RESPONDENT

Date of Decision : 14-10-2005

Acts Referred:

Citation : (2006) 108 FLR 807 : (2006) 2 LLJ 383

Hon'ble Judges : S.T. Kharche, J;D.D. Sinha, J

Bench : Division Bench

Advocate : B.P. Maldhure, for the Appellant; B. Lahiri, for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Rule. Rule made returnable forthwith by consent of parties.

2. Heard Ms. Maldhure, learned Counsel for the Petitioners and Mr. Lahiri, learned Counsel for Respondents 1 to 4.

3. This writ petition is directed against the order dated January 17, 2005 passed by the Central Administrative Tribunal, Mumbai, whereby the Original Application preferred by Respondents 1 to 4 came to be allowed and the recovery from the salary of Respondents towards the excess payment of transportation allowance for the period August 1, 1997 to February 21, 2002 was quashed. The counsel for the Petitioner states that the City of Nagpur enjoyed the status of class A till July 31, 1997 and was downgraded to B-1 status, however the employees were paid transportation allowance of A class city from August 1, 1997 to February 21, 2002. It is contended that though at the relevant time Nagpur City had B-1 status, the recovery which is initiated by the Petitioners for excess payment made to the Respondents towards transportation allowance applicable to A grade city, is just and proper and also sustainable in law. The learned Counsel contended that the Tribunal has not taken into " consideration this aspect and ignored the fact that the recovery is effected for the period only from August 1,

1997 to February 21, 2002 and the City of Nagpur at the relevant time was classified as B-1 city and therefore the Respondents were not entitled for transportation allowance which is applicable to the employees staying in A class city, and hence initiation of recovery for excess payment paid towards the transportation allowance was just and proper and was maintainable in law.

4. The learned Counsel for Respondents pointed out to us the Office Memorandum No. 2(30)/97-E.II(B) dated October 3, 1997, i.e. revised rates of CCA & HRA from August 1, 1997. It is contended that in view of Clause (3) of the above referred office memorandum, though City of Nagpur is downgraded to B-1, however the employees are required to be paid the allowance applicable to A class city. It is further contended that for the first time vide office memorandum dated February 22, 2002 issued by the Govt. of India, in para 6 it is mentioned that grant of Transportation Allowance would be governed by the new classification of the city for the purpose of CCA as given in Annexure-I to OM No. 2(30)/97-E. II(B) dated October 3, 1997. It is also mentioned therein that the HRA and CCA is not applicable to T. A. It is contended that the above office memorandum came into existence after February 22, 2002 and therefore the same is also not applicable so far as the recovery for the period from (sic) August 1, 1997 to February 21, 2002 is concerned. It is therefore, contended that the impugned order is just and proper.

5. We have considered the contentions canvassed by the respective counsel. Perused Clause (3) of O.M. No. 2(30)197-E.II(B) dated October 3, 1997, which reads thus:

The cities/towns which have been placed in a lower classification in the above mentioned lists, as compared to their existing classification, shall continue to retain the existing classification until further orders and the Central Government employees working therein will be entitled to draw the rates of CCA and HRA accordingly.

6. It is no doubt true that Nagpur was classified as A class city, however after the 5th Pay Commission Report it was downgraded to B-1 class w.e.f. August 1, 1997. The above referred Clause (3) clearly demonstrates that though the city was placed in lower classification as compared to the existing classification, it shall continue to retain the existing classification until further orders, which means that the city of Nagpur shall continue to retain the classification of A class city until further orders and the employees working therein shall be entitled to draw the rate of CCA and HRA accordingly. The classification of Nagpur city though was downgraded, in view of the above referred clause it continued, to enjoy the status of A class. In that view of the matter, it is very difficult for us to restrict this aspect only to drawing HRA and CCA and there is no rational not to extend it to transport allowance.

7. In the instant case, the recovery for excess payment towards transportation allowance is restricted only in respect of the period between September 1, 1997

to February 21, 2002 and it is not in dispute that during this period as per Clause (3) of office memorandum dated October 3, 1997 the City of Nagpur continued to enjoy the status of A class city. However, for the first time the office memorandum dated February 22, 2002 shows that after 5th Pay Commission Report, the grant of transportation allowance would be governed by new classification of the city shown in office memorandum dated October 3, 1997. In view of the above referred facts, this clause is not attracted in the present case since the period of recovery of excess payment is restricted to August 1, 1997 to February 21, 2002.

8. For the reasons stated hereinabove, the order impugned is just and proper and requires no indulgence. The petition is therefore dismissed.