
(2003) 12 SC CK 0084

In the Supreme Court Of India

Case No : Civil Appeal No. 1574 of 2000

Group General Manager (Projects), O.N.G.C.

APPELLANT

Vs

A.M. Saiyed

RESPONDENT

Date of Decision : 12-12-2003

Acts Referred:

Citation : (2004) AIRSCW 70 : (2004) 5 JT 509 : (2003) 10 SCALE 738 : (2003) 12 SCC 688 : (2003) 6 SCR 752 Supp : (2004) 2 SLJ 181 : (2003) 8 Supreme 817 : (2004) 1 UJ 721

Hon'ble Judges : S. Rajendra Babu, J;Ruma Pal, J

Bench : Division Bench

Advocate : P.P. Rao, John Mathew and K.R. Sasiprabhu, for the Appellant; R.N. Singh, H.A. Raichura, Feroj Khan Pathan, S.H. Raichura and Shailendra Singh, for the Respondent

Final Decision : Dismissed

Judgement

S. Rajendra Babu, J.—The appellant introduced Leave Fare Assistance Scheme [for short 'LFA'] for its employees and officers posted in the projects mentioned therein whose home town was situated beyond 500 kms. from the headquarters and that scheme was modified from time to time although it was originally introduced in the year 1969. By an official memorandum dated 13.12.1977, it was made clear that the assistance for visiting home town every year for the employees posted in Assam and whose home towns are situated outside Assam would not be admissible to them for their families residing at a place other than the headquarters/place of duty of the employee concerned and in that event they would be entitled to avail of the assistance for their families once in a block of two years. By another official memorandum dated 21.5.1980, the said scheme was amended to the effect that LFA can be availed of by an employee in any calendar year only if the employee has spent 9 months or more at one or more places of posting where LFA is available. By another modification made on 24.12.1981, it was further provided that in respect of employees who do not belong to North Eastern States but are working there on transfer or posting and

are separated from their families and staying alone in North Eastern States will also be entitled to travelling assistance once in six months, i.e., twice in a year instead of LFA once in a year by way of single return fare by the entitled class to the place of stay of his family. Their families are, however, entitled to LFA once in a block of two years for visiting their home town from the place of their stay subject to the condition that LFA so granted will be limited to the fare as is admissible for visiting home town or a place other than home town from place of posting of the employee. By another official memorandum dated 2.1.1982, it was clarified that the families of any employee residing at a place other than the place of posting or headquarters or home town for various reasons, shall also be entitled to LFA to visit the employee at his place of posting or headquarters and back to that place against their entitlement for visiting home towns against a particular block of two years. The clarification was issued on 23.4.1982 extending the LFA to ail work centers and it was again clarified that LFA can be availed by an employee in any calendar year only if the employee has spent nine months or more at one or more places of posting where LFA is available.

2. From September 1982 to January 1985, the respondent was working in. Assam Region. He availed of the LFA for the family for the block year 1982-83 in the month of November 1983 and similarly in April 1984, for the block year 1984-85. Thereafter, he was transferred to his home town, Ahmedabad. He made a claim for encashment for his family for other than home town for the block year 1982-85 and the same was rejected by the appellant and he retired from service on superannuation on 31.8.1983.

3. A legal notice was sent claiming LFA encashment for his family other than home town for the block, year 1982-85. The appellant sent a reply to the said notice explaining that he was not entitled to such benefit. In October 1984, he filed, a writ petition before the High Court of Gujarat alleging discrimination in the matter of grant of LFA. By an order made on 4.4.1995, the High Court disposed of the said proceedings by directing the appellant to take decision in regard to LFA to the respondent for the block years 1982-85 bearing in mind the instance of one S.L.Garde in accordance with law and it was further observed that it will be open to the authority to consider the facts of the respondent's case as well as the facts of S.L.Garde and take appropriate decision within the stipulated time.

4. On the direction issued by the High Court, the appellant considered the claim of the respondent and rejected the same on the basis that he had already availed of LFA for the block years 1982-83 and 1984-85 and it was pointed out that S.L.Garde has been wrongly granted LFA encashment for the block years 1982-35 and corrective action in that case was being taken.

5. The respondent thereafter filed a second writ petition in September 1995. The High Court dismissed the same as withdrawn and allowed the respondent to make a representation to the appellant to consider his claim. He made a representation to the appellant which was examined by the appellant and was

rejected again on the basis that during his stay at ERBC, the respondent had availed of LFA for self visiting home town during the years 1982-84 and also encashed LFA for home town for family members for the block years 1982-83 and 1984-85.

6. A third writ petition was filed by him. The learned Single Judge dismissed the said writ petition holding that he cannot agitate the same point again and again and cannot take advantage of the mistake committed by the appellant in respect of one of its employees. The matter was carried in appeal to the Division Bench.

7. The appellant took the stand that :

1. At the relevant time, an employee stationed at Eastern Region and if residing alone, was entitled to LFA twice in a year to the place of stay of his family;

2. The employee was entitled to encash LFA twice for block years 1982-85, i.e., in the block year 1982-83 and block year 1984-85 in respect of family if both these LFAS are not encashed, then and then alone he was entitled to encash LFA for the entire family for other than home town;

3. The respondent had twice availed of LFA in each of the years 1982, 1983 and 1984 and also encashed LFA for his family for block years 1982-83 in November 1984 and for 1984-85 in April 1985 while posted at ERBC.

Therefore he was not entitled to any LFA for other than his home town.

8. The Division Bench held that the respondent was entitled to get encashment of LFA other than home town once in a block of four years and directed the appellant to consider the claim of the respondent in accordance with the above directions. Hence this appeal by leave.

9. The grievance made now is that the Division Bench of the High Court should not have relied upon the explanation of the Scheme which is not applicable to the respondent inasmuch as it is applicable only to those living with their families at the place of posting. Secondly, it is submitted that the official memorandum dated 24.12.1981 held the field and it clearly stated that the families of the employees who are staying alone at the place of posting would be entitled to LFA once in a block of two years. The official memorandum dated 12.1.1990 which is prospective in nature which was issued long after the rejection of the respondent's claim and the High Court could not have placed reliance on that particular official memorandum dated 12.1.1990 and the Division Bench also could not have considered the provisions relating to LFA for home town for employees in Eastern Region and mixing up the same for encashment of LFA for entire family for other than home town.

10. The High Court proceeded to consider the matter as follows:

"It may be noted that the stand taken by the respondent is not that the claim was rejected as it was a claim for members of all the family of the appellant but as he had availed of LFA twice to home town in a block of four years. The

respondent has no case that the appellants claim for all the members of his family is not admissible. No such case has been put forward by the respondent in any affidavit filed by the respondent."

11. The stand of the appellant before the High Court as stated in the counter affidavit is as follows :

"I say and submit that an employee stationed at Eastern Region was entitled to Leave Travel Assistance (LTA) twice in year to the place of stay of his family, if residing alone in Bachelor State. The employee was entitled to encash Leave Fare Assistance twice for Block years 1982-1985, that is once for Block year 1982-1983, (Calendar years) and once for Block year 1984-1985 (Calendar years) in respect of family. If both these LFA is not encashed, then and in that event alone, an employee was entitled to encashment of LFA for the entire family for other than Home Town. Clause 4 (b) of the Scheme, is at page 530, which is already submitted to the Hon'ble Court.

I say that the petitioner, during his tenure in Eastern Region was from 1982 to January 1985, when he was transferred to home-town Ahmedabad. During his tenure, the petitioner availed:

- (i) twice Leave Travel Assistance in each year 1982, 1983 and 1984;
- (ii) encashed for entire family Leave Fare Assistance for Block years 1982-1983 - in November, 1983;
- (iii) encashed for entire family Leave Fare Assistance for Block years 1984-1985 in April, 1984.

As the petitioner has encashed Leave Fare Assistance for the Block years 1982-1983 and for the Block years 1984-1985 the petitioner was not entitled to encash for his family Leave Fare Assistance for other than Home Town and therefore when the petitioner made claim for such encashment on 30.12.1986 the same was not granted."

12. The understanding of the High Court is that the case has not been put forward by the appellant in any affidavit whereas the position has been clearly set out in the affidavit and, therefore, the High Court could not have taken the view that when in particular the scheme of the benefit had been explained from time to time and the claim had been rejected on the basis indicated in the counter affidavit, the High Court ought not have interfered in a matter of this nature, particularly as the manner in which the relevant rules could be explained. The clear stand of the appellant is that at the relevant time employee stationed at Eastern Region and if residing alone was entitled to LTA twice in year to the place of stay of his family and the employee was entitled to encash LFA twice for Block years 1982-1985, that is once for Block year 1982-1983, (Calendar years) and once for Block year 1984-1985 (Calendar years) in respect of family. If both these LFAS are not encashed, alone would entitle the respondent to encashment of LFA for the entire family for other than Home Town. The respondent during his

tenure in Eastern Region twice availed Leave Travel Assistance in each year 1982, 1983 and 1984; encashed for entire family LFA for Block years 1982-1983 - in November, 1983; and he had encashed for entire family LFA for Block years 1984- 1985 in April, 1984 and thus in respect of his family he was not entitled LFA for other than Home Town and therefore his claim for such encashment was not sustainable.

13. This aspect was totally lost sight of although specially pleaded before the High Court. Hence this appeal is allowed and the order made by the Division Bench is set aside resulting in dismissal of writ petition before the High Court.