(2003) 09 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No 1916 of 1996

Mrs. Nirja Batta APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 08-09-2003

Acts Referred:
Constitution of India, 1950 — Article 14, 16

Citation : (2003) 3 ShimLC 213

Hon'ble Judges : A.K. Goel, J

Bench : Single Bench

Advocate : Ajay Sharma, for the Appellant; N.K. Thakur, Sr. C.G., SC., for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Goel, J.—Heard learned Counsel for the parties.

2. This writ petition has been filed by the Petitioner for her benefit, as well as for the benefit to persons mentioned at serial Nos. 1 to 27 in Annexure P-1l, who were/who are working on the nominal roles of Kendriya Vidyalya, Subathu, District Solan w.e.f. 1.10.1985 onwards. Any order passed in this writ petition will not only ensure for the benefit of the Petitioner, but also for the benefit of those named in Annexure P-I.

3. Admitted facts of this case are that Petitioner, alongwith others, are the employees of Kendriya Vidyalya Sangathan, Subathu, District Solan, Himachal Pradesh. Further, admitted facts of this case, are that Government of India, Ministry of Finance, vide Annexure P-2 issued notification OM No. 20014/4/81-H.IV, dated 15.11.1985. This OM was on the subject ''Grant of Special Compensatory (Remote Locality) Allowance to Central Government Employees posted in Himachal Pradesh''. As per this OM, compensatory allowance was allowed to the Central Government Employees at the places mentioned in it.

4. At the time of hearing it was not disputed on behalf of Respondents that when

staff of Central Research Institute, Kasauli was not given the benefit of Annexure P-2, and at the same time, its benefit was extended to Central Government Employees posted at Shimla, matter was taken up by the former in O.A. No. 92-HP/1988, before the Central Administrative Tribunal, Chandigarh Bench. This O.A. was finally disposed of on 19.5.1989. This order has attained finality intra parties to the O.A. as per Shri Ajay Sharma, Advocate.

5. After hearing learned Counsel for the parties, this O.A. was allowed. For ready reference, operative part of the judgment is extracted hereinbelow:

In sum, the Respondents are directed to pay the Special Compensatory (remote locality) allowance to the applicants with effect from the date the same is being paid to the Central Government employees posted at Shimla and at the same rates within a period of three months from the receipt of a copy of this judgment. The application is disposed of accordingly with no order as to costs.

6. Staff Secretary of Kendriya Vidyalya, 14, GTC, Subathu, District Solan represented to Respondent No. 2 for grant of Special Compensatory (Remote Locality) Allowance to the staff posted at Subathu District Solan, H.P. Its copies were endorsed to A.C. Kendriya Vidyalya Sangathan, Chandigarh and the Principal of the School at Subathu. Vide communication, dated 30.7.1996, Annexure P-6, this allowance was granted to the staff posted at Subathu, but after 31.5.1991.

7. It was stated by Mr. Sharma, learned Counsel appearing for the Petitioner that it is being regularly paid now. But according to him, there is no rationale basis, much-less justifiable ground for the Respondents not to allow this benefit prior to 31.5.1991 when it has been allowed to other similarly situate persons including not only to Central Government employees, but also to the employees working under its instrumentalities like Central Research Institute, Kasauli. For ready reference, Annexure P-6 is extracted hereinbelow :

Kendriya Vidyalaya Sangathan (HQ), 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.

F. 134-31/KVS/Budget

Dt. 30.7.1996.

To

The Principal,

Kendriya Vidyalaya,

SUBATHU

Subject : Regarding Special Compensatory (Remote Locality) Allowance to the K.V.S. employees posted at K.V. Subathu.

Sir,

I am to refer to your letter No. F-II-26/95-96/KV/Sub/dated 24.1.1996 on the above cited subject and to state that the grant of special compensatory (Remote Locality) Allowance in respect of Employees of K.V. Subathu prior to 31.5.1991 was referred to the Ministry of HRD Deptt. of Education, for obtaining their concurrence. Ministry of Finance has decided that it is not possible to concede the request of staff of K.V. Subathu for payment of Special Compensatory (Remote Locality) allowance prior to 31.5.1991.

Yours faithfully, Sd/- Sr. Accounts Officer.

Copy to:

The Asstt. Commissioner KVS (RO) Jammu for information & necessary action.

Sr. Accounts Officer.

8. In the aforesaid background, it was urged on behalf of the Petitioner that action of the Respondents in denying the aforesaid benefit for the period 15.11.1985 to 31.5.1991, cannot be sustained either in law or on facts, as it will amount to upholding the discriminatory action of the Respondents, this position was disputed by Mr. Thakur.

9. In the face of aforesaid facts, Respondents when put to notice, they have filed their reply(s) to the writ petition. Their stand pure and simple is, that the writ petition is not maintainable. Special Compensatory (Remote Locality) Allowance, has already been granted to the staff of Kendriya Vidyalya, Subathu, w.e.f. 31.5.1991. Further case of the Respondents is that State of H.P. was divided into four categories for the payment of the aforesaid allowance. This allowance was applicable to the persons named against each of the categories. Subathu was not included in any of the four categories, as such, they were not eligible for drawing the said allowance in terms of Annexure P-2. Regarding payment of hill compensatory allowance to the staff of Kendriya Vidyalya, according to the Respondents, Principal of the School had confirmed that they were drawing this allowance in terms of Annexure R-2, as such, they were at par with the Central Government employees.

10. Reference to the decision of the Central Administrative Tribunal in O.A. No. 92-HP/1988 is made in paragraph No. 6 of the writ petition. When a reference is made to its reply, Respondents have not disputed passing of this judgment by the Central Administrative Tribunal, Chandigarh Bench. However, a fantastic plea has been raised, that there was no direction received from the Central Administrative Tribunal, Chandigarh for extending the benefit of the aforesaid allowance to the employees of the Kendriya Vidyalya, Subathu. Respondents have, thus tried to justify non-grant of this allowance prior to 31.5.1991.

11. In the face of the above admitted facts, learned Counsel appearing for Respondents tried to justify the action of his clients in not granting the benefit from the date when it was allowed to other similarly situate persons at Shimla and elsewhere. He submitted that competent authority had allowed the benefit in

accordance with law and thus no exception can be taken to it. With a view to support the case of the Respondents, he also submitted that this Court lacks jurisdiction to decide this matter, in view of notification dated 28/30th December, 1998 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, New Delhi. According to this notification, the cases relating to Kendriya Vidyalya Sangathan were brought under the jurisdiction of the Central Administrative Tribunal. Thus, according to Mr. Thakur, this writ petition merits dismissal on this short ground.

12. According to him, this notification is applicable to the pending litigation like the present one. When he was called upon specifically to state whether this notification is procedural or is of substantive law, he submitted that this notification deals with substantive rights of the parties. However, he also stated that for determining jurisdiction of this Court, it is procedural. Therefore, it is retrospectively applicable. This argument for the reasons to be recorded hereinafter is neither open to the Respondents nor they can be permitted to raise it.

13. In this behalf, when a reference is made to the pleading of the parties, no such defence has been raised. It may be appropriately noted that in this case reply is dated 24.7.2003. However, according to Mr. Thakur, reply was filed earlier by then the learned Additional Central Government, Standing Counsel, Shri K.S. Rathore. It was returned for removal of office objections and probably it was not re-filed in the year 1997. Whatsoever was the earlier stand of the Respondent, has been incorporated in the reply filed to the writ petition. Per Mr. Thakur, stand is the same in both the replies. Reply was filed prior to issuance of the notification in question. At least that this Court did not have jurisdiction, could be highlighted in their reply filed in the year 2003. That is not the situation here. Another reason to say that notification in question is not retrospectively applicable is, that its perusal nowhere suggests that it was intended to be applied to the cases which were pending on the date of its promulgation. It hardly needs to be clarified that unless a notification was intended to be made retrospectively applicable to pending cases, it will apply prospectively. Since notification in question deals with the substantive rights of the parties, therefore, it cannot be said that it is procedural in character so as to accept the submission of Mr. Thakur that it is applicable to all pending cases.

14. Now coming to the merits of the case. Mr. Thakur could not point out any reasonable basis and/or legal ground so as show that there is any nexus between the denial of the benefit of the above noted allowance to the Petitioner or other similarly situate persons at Subathu and those posted at Shimla/Kasauli who have been allowed the benefit from 15.11.1985 to 31.5.1991. Suffice it to say in this behalf that the Respondents are always entitled to make reasonable classification, and then carve out a class within the class. But there always has to be some rationale behind such classification. Nothing is there in the pleadings, nor anything was brought to my notice on behalf of the Respondents. This is

manifestly a case of clear-cut violation of Articles 14 and 16 of the Constitution when Respondents discriminated between similarly situate persons, more particularly, when they considered the staff posted at Kendriya Vidyalaya, Subathu at par with Central Government Employees and also when benefit of the allowance in question is extended to such persons w.e.f. 1.6.1991.

15. No other point is urged.

16. In view of the aforesaid discussion, this writ petition is allowed and as a consequence of it, Annexure P-6, so far claim of the Petitioner and other similarly situate persons mentioned in Annexure P-l pertaining to grant of Special Compensatory (Remote Locality) Allowance is concerned, is hereby quashed and set aside. At the same time, it is held that all of them are entitled to it from 15.11.1985 to 31.5.1991, like their counter-parts as noted hereinabove. Thus, Respondents shall calculate the amount of this allowance payable to the Petitioner and also to those named in Annexure P-l for the period 15.11.1985 to 31.5.1991 by or before 31.12.2003 and then it shall disburse this amount by or before 31.3.2004 to all of them, failing which, all of them, shall be entitled to interest at the rate of 9% per annum w.e.f. 1.4.2004 till the date of payment of such amount.

17. Writ petition is allowed in the aforesaid terms. Costs on the parties.

