

(2002) 01 SC CK 0126

In the Supreme Court Of India

Case No : Civil Appeal 382 and 385 of 2001

P.H. Reddy and Others

APPELLANT

Vs

N.T.R.D. and Others

RESPONDENT

Date of Decision : 30-01-2002

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 226

Citation : (2002) 3 BLJR 2103 : (2002) 93 FLR 320 : (2002) 2 JT 483 : (2003) 1 RLW 111

Hon'ble Judges : S. N. Phukan, J;G. B. Pattanaik, J;Brijesh Kumar, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. These appeals are directed against a judgment of the division bench of Andhra Pradesh High Court When the matter was listed before a bench of 2-learned judges of this Court, the bench felt that there is some inconsistency between the two earlier judgments of this Court, Director General of Posts and Others Vs. B. Ravindran and Another, and Director General, ESI Corporation, New Delhi and Another Vs. Shri M.P. John and Others, , The Court referred the matter to 3-judges bench, and that is how the matter is before us. The disputes centers round the question as to the fixation of pay of an employee on retirement from defence services and re-employed in a civil post- As it appears from the records of these appeals, on retirement from army, the appellants were re-employed in the National Institute of Rural Development. On re-employment, their pay had been fixed at a particular sum. But in the year 1992, by order dated 28.8.1992, on the basis of the relevant government circulars applicable for fixation of the pay, the pay was re-fixed by the appropriate authority, and direction was issued for recovery of excess amount already paid to these appellants. Assailing the same, the appellants had moved the High Court in a writ petition, but the writ petition was not entertained on the ground of availability of an alternative remedy, and the appellants were directed to approach the appellate authority. In accordance with the said direction of the High Court, the appellants re-

approached the appellate authority, but the appellate authority affirmed the order of the original authority dated 28.8.1992, and therefore the appellants were compelled to file the fresh writ petition in the High Court. A learned single judge by order dated 13.6.1995 disposed of the writ petition quashing the order of re-fixation of salary. The employer being aggrieved by the aforesaid order of the learned single judge, approached the division bench in appeal. The division bench set aside the order of the learned single judge and allowed the appeal, and hence, the present appeals on grant of special leave

2. Mr. Rao, the learned senior counsel appearing for the appellants contended that this Court having held in the case of Director General of Posts and Others Vs. B. Ravindran and Another, that the fixation of the salary on re-employment under the basis of relevant rules and regulations cannot be altered to his detriment by a subsequent administrative circulars, and therefore, the order of the appropriate authority fixing the salary could not have been set aside and the pay could not have been re-fixed, and therefore, the learned single judge was right in his conclusion and rightly interfered with the said order of re-fixation. Mr. K. Ram Kumar appearing for the respondents, on the other hand, contended that both the circulars, one of the year 1958 and the other of the year 1983 have been duly considered in the later case of Director General, ESI Corporation, New Delhi and Another Vs. Shri M.P. John and Others, , and it has been held that the two circulars operate in two different fields and therefore, an ex-serviceman, who is re-employed, will get the minimum pay-scale in addition to his full pension as an ex-serviceman from the military authority, and this being the position, the appropriate authority, if had fixed the pay on an erroneous view, was entitled to re-fix the same, and therefore, the division bench rightly set aside the judgment of the learned single judge. We have ourselves examined the two office memorandum, one of dated 25.11.58 and the other is of 8.2.1983, and we do not see any infirmity or inconsistency with those circulars relevant in the matter of fixation of pay of an employee, who on retirement from the defence service, have been re-employed in a civil post. In our view, therefore, the judgment of this Court in the Director General, ESI, represents the correct view, and consequently the order of re-fixation done by the appropriate authority, in the case in hand, does not require any interference, but the employees-appellants, who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to re-pay the excess pay drawn, and therefore, that part of the order of the authority is set aside. The direction of the appropriate authority requiring reimbursement of the excess amount drawn is annulled.

3. The appeals are disposed of accordingly.