
(2014) 06 CAL CK 0071
In the Calcutta High Court
Case No : W.P.C.T. No. 603 of 2005

The Chairman

APPELLANT

Vs

Kanu Chandra Sarkar

RESPONDENT

Date of Decision : 16-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) LabIC 3238 : (2015) 2 WBLR 267

Hon'ble Judges : Tapash Mookherjee, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : Dilip Kumar Chatterjee, Advocate for the Appellant; Ganesh Shrivastava and Mr. Sukanta Das, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tapash Mookherjee, J.—The judgment and order dated 19th May of 2005, passed by the Central Administrative Tribunal, Calcutta Bench, in O.A. No. 435 of 2003 has been challenged in the present application under Article 226 of the Constitution of India. By the aforesaid order the Tribunal granted the prayers of the applicants therein for allowing the applicants "patient care allowance" (here in after described in short as the P.C.A.) as per the revised rate and according to the policy in the matter of the respondents. Being aggrieved by and dissatisfied with such order of the Tribunal the Union of India and others have filed the present Writ Petition.

2. The Respondents have been working in the category of Gr. C and D in the Ordnance Factory, Health Clinic, at Dum Dum. As per the relevant policy and the Government orders all the Respondents had been granted and they are enjoying P.C.A. at the rate of Rs. 75.00 (rupees seventy-five only) per month and at the rate of Rs. 80.00 (rupees eighty only) per month prescribed for the employees under Gr. D and Gr. C respectively. Subsequently, by orders dated 28.09.1998 and 29.12.1998 the rate of P.C.A. had been revised and increased. But the benefit of such revised rate had not been extended to the present Respondents.

The Respondents submitted repeated representations before the authority for granting them P.C.A. at revised rates, but such representations had been turned down. Ultimately, the Respondents filed the O.A. No. 435 of 2003 before the Central Administrative Tribunal, Calcutta Bench, praying for the same and the Tribunal allowed the application of the Respondents and directed the present Petitioners to pay P.C.A. to the Respondents at the revised rates. Being aggrieved by such decision of the Tribunal the authorities of the Ordnance Factory Board and Ordnance Factory of Dum Dum and their officers filed the present Writ Petition.

3. Learned Advocate for the petitioner submitted that the Petitioners are engaged in a Health Clinic of Ordnance Factory, Dum Dum where there is no bed at all. According to the policy and guideline of the authority stated in order No. Z. 28015/24/2001-H, dated 04.02.2004 issued by the Ministry of Health and Family Welfare, P.C.A. is allowed to the Group-C and D employees in any Hospital, Dispensary and Clinic etc. only when there are some beds for the patients in those Hospital, Dispensary and Clinic etc. as the case may be. In the present case, the Health Clinic of the Ordnance Factory, Dum Dum where the Respondents are employed, has no bed at all. Other criteria required for entitlement to P.C.A. are not also satisfied in the case and the Respondents are not, therefore, entitled, at all, to P.C.A. at any rate and as such the Tribunal was wrong to allow the benefit of P.C.A. in favour of the Respondents which the Respondents were never entitled to.

4. On the other hand, learned Advocate for the Respondents argued that the Respondents are getting P.C.A. since the inception of the scheme. So, the issue whether or not the Respondents are entitled to P.C.A. is not relevant in the present case. He further submitted that the guideline in the matter referred to by the Petitioners does not say that employees of any Dispensary or Clinic shall be entitled to P.C.A. only when there is any bed in that Dispensary or Clinic. Learned Advocate for the Respondents submitted further that when the Respondents are entitled to and getting P.C.A., there cannot be any bar to allow such P.C.A. in the rates revised from time to time.

5. Admittedly the Respondents are receiving P.C.A. in terms of the Government order dated 10.10.1990. The Government order No. Z.28015/24/2001-H dated 04.02.2004 relied on by the Petitioners has not introduced anything new. It has just consolidated the existing policies regarding the eligibility for Hospital Patient Care Allowance and patient care allowance. Clause-II of the aforesaid order says "the Patient Care Allowance is admissible to the Group-C & D (Non-Ministerial) employees excluding nursing personnel @ Rs. 690/- (rupees six hundred ninety only) per month working in the health care delivery institutions/establishments (other than hospitals) having less than 30 beds, subject to the condition.....". The expression "having less 30 beds" itself does not suggest that there must be at least one bed in such health care delivery Institutions/Establishment as argued by the learned Advocate for the Petitioners.

If it was the policy of the authority concerned not to extend the facility of P.C.A. to the employees of any Dispensary or Clinic where there is no bed, the same should have been expressly stated in the guideline in question. But there is no such clear expression in the guideline of 2004 in question.

6. There is no material on record to suggest that patients with infectious or communicable diseases are not treated in the clinic or that the Respondents are not exposed to the hazard of infectious or communicable diseases regularly.

7. Another point raised by the learned Advocate for the Petitioners is that the Health Clinic of Ordnance Factory, Dum Dum where the Respondents are employed is in the Headquarter Office and as such the Respondents are not entitled to P.C.A. as per the guideline in question. But learned Advocate for the Petitioners failed to substantiate the point with any material.

8. As discussed earlier the Respondents are receiving P.C.A. since long before the order of 2004. The Respondents were, therefore, legally entitled to the benefit. The order of 2004 has not introduced any new policy nor has it withdrawn the facility being given to the Group-C and D employees like the Respondents. The restrictions stated in the aforesaid order are not applicable in case of the present Respondents as mentioned earlier. So, since the Respondents are receiving P.C.A. they should receive it at the rates revised from time to time. We are, therefore, of the view that the Tribunal had rightly decided the case before it and we find no reason whatsoever, to interfere with the decision of the Tribunal.

9. The petition is dismissed with no order as to costs.

10. Urgent certified photocopy of this judgment, if applied for, be supplied to the learned Advocates for the parties upon compliance of all formalities.