

(2018) 03 DEL CK 0222

In the Delhi High Court

Case No : Civil Writ Petition No. 2406 Of 2018, Civil Miscellaneous Application
No. 10034 Of 2018

Union Of India And Ors

APPELLANT

Vs

Shyam Kumar Saini

RESPONDENT

Date of Decision : 15-03-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2018) 03 DEL CK 0222

Hon'ble Judges : Hima Kohli, J;Pratibha Rani, J

Bench : Division Bench

Advocate : Amit Anand

Final Decision : Dismissed

Judgement

1. The petitioners/Union of India are aggrieved by the order dated 13.07.2017, passed by Central Administrative Tribunal, Principal Bench, allowing O.A. No.1939/2015, filed by the respondent, praying inter alia for quashing O.M. dated 25/26.08.2014 and O.M. dated 13.11.2009 that relate to grant of Child Education Allowance (in short "CEA") in so far as it runs contrary to the conditions laid down in O.M. dated 02.09.2008, wherein the recommendations made by the Sixth Central Pay Commission with regard to grant of Children Education Allowance and Reimbursement of Tuition Fee was accepted. Further, the respondent had prayed for quashment of the order dated 08.07.2014, passed by the petitioner No.3/Army Base Workshop, Agra, U.P., declining his request for being granted CEA in respect of his third born child, Master Anurag, instead of his first born child, who is differently abled and suffers from physical disability to the extent of 90% and therefore, not in a position to attend school.

2. The facts of the case lie in a narrow compass. The respondent, who is working on a civilian post of an Instrument Mechanic with the petitioner No.3, has three children, two daughters and a son. The eldest child, Ms. Soniya suffers from physical disability to the extent of 90% in terms of a certificate dated

08.04.2009, issued by the Chief Medical Officer, Agra.

3. The respondent applied to the petitioner No.3 for reimbursement of the expenses incurred by him on the education of his two younger children, namely, Ms. Priyanka (daughter) and Master Anurag (son) for the year 2013, by relying on O.M. dated 02.09.2008 whereunder, the petitioner No.1/UOI had introduced "Child Education Allowance (CEA) Scheme", permitting reimbursement for child education to a Government servant up to a maximum of two children.

4. The petitioners turned down the claim of the respondent for CEA vide order dated 08.07.2014, stating inter alia that "reimbursement could be availed by a Government servant for the two eldest surviving children only except when the number of children exceeds two due to second child birth resulting in multiple birth."

5. The grievance raised by the respondent before the Tribunal was that while passing the impugned order dated 08.07.2014, the petitioners did not take into consideration the fact that his first born child is suffering from a physical disability to the extent of 90% and she is therefore not in a position to attend school and it was in those circumstances that he had claimed CEA in respect of his two younger school going children i.e., Ms. Priyanka and Master Anurag. The respondent further contended that the petitioner No.4/Department of Personnel & Training, Ministry of Personnel, Government of India had issued an erroneous O.M. dated 25/26th August 2014, wherein it was declared that CEA is admissible only for the two eldest surviving children.

6. The petitioners filed a counter affidavit, opposing the O.A. filed by the respondent, wherein it was averred that CEA is payable only in respect of two eldest children of a government servant as mandated in O.M. dated 02.09.2008. Reliance was placed by the petitioners on O.M. dated 13.11.2009, issued by the DoPT clarifying inter alia that CEA can be claimed in respect of two eldest surviving children only "except when the number of children exceeds two due to second child birth resulting in multiple birth."

7. After examining the pleas taken by the learned counsels for the parties and considering the records, the Tribunal allowed the O.A. filed by the respondent and directed the petitioners to grant him CEA in respect of his second and third children for the following reasons:-

"12. The issue involved in the present case is entirely different visa-vis the one adjudicated in OA-4063/2011. In the instant case the applicant's first child is physically handicapped upto 90% disability and as such cannot go to school. Hence, the question of availing CEA in respect of the first child simply does not arise. The applicant has, therefore, claimed CEA for his second and third children, which is perfectly in consonance with the intent of the DoPT OM dated 02.09.2008, wherein CEA is restricted to two children only born after 31.12.1987. I have considered the DoPT OM dated 11.11.2008 (Annexure R-2) wherein certain doubts raised in regard to OM dated 02.09.2008 have been

clarified. I have also gone through Annexure R-3 OM dated 13.11.2009, wherein it has been clarified "that Children Education Allowance is admissible for the two eldest surviving children only, except when the number of children exceeds two due to second child birth resulting in multiple births."

13. Neither DoPT OM dated 11.11.2008 (Annexure R-2) nor DoPT OM dated 13.11.2009 (Annexure R-3) have dealt with the issue of first child being severally physically handicapped and is unable to go to school, as is the case in the present OA. A meaningful and constructive reading of all these DoPT OM's dated 02.09.2008, 11.11.2008 and 13.11.2009 would indicate that CEA is restricted to just two children and in respect of a Government servant having more than two children, the CEA would be restricted to first two children only. In the instant case, as noticed hereinabove, the first child of the applicant is simply not in a position to go to school due to her physical disability. Hence, the applicant's contention that CEA in respect of his second and third children should be permitted merits consideration. Such a claim is perfectly in consonance with the spirit of the three DoPT OM's, referred to hereinabove." (emphasis added)

8. Aggrieved by the aforesaid order, the petitioners have filed the present petition. Learned counsel for the petitioners submits that while passing the impugned order, the Tribunal overlooked the O.M. dated 02.09.2008 and the clarification issued by the DoPT vide O.M. dated 13.11.2009, both of which have made it clear that CEA is restricted only to the first two children of the government servant and cannot be extended to any two children, as interpreted by the Tribunal.

9. We have considered the submissions made by learned counsel for the petitioners. The undisputed facts of the case are that the first born child of the respondent is suffering from a physical disability to the extent of 90%, in terms of a certificate dated 08.04.2009, issued by the Chief Medical Officer, Agra. Due to the extent of the disability, the eldest child of the respondent is not in a position to attend school and resultantly, he cannot claim CEA for her. It is in these circumstances that the respondent had approached the petitioners with a request to consider granting him CEA in respect of his second and third children, who are both school going.

10. The recommendations made by the Sixth Central Pay Commission, as referred to in OM dated 02.09.2008, make it clear that "under the Scheme of CEA, reimbursement can be availed by government servants upto a maximum of two children", with an annual ceiling fixed for reimbursement at Rs.12,000/-. The recommendations made by the Pay Commission in respect of Education Allowance was as follows:-

"Keeping the various factors in view, the Commission recommends merger of Children Education Allowance and Reimbursement of Tuition Fee which will henceforth be reimbursement upto the maximum of Rs.1000 per child per month subject to a maximum of 2 children. Hostel subsidy may be reimbursed upto the

maximum limit of Rs.3000 per month per child. The limits would be automatically raised by 25% every time the Dearness Allowance on the revised pay bands goes up by 50%."

11. The underlying aim and objective of the aforesaid recommendation was to ensure that children of government servants are able to get quality education in reputed schools, right from class Nursery to 12th and for the said purpose, reimbursement has been permitted not only in respect of the tuition fee, but also in respect of admission fee, laboratory fee, special fee charged for agriculture, electronics, music or any other subject. This is over and above the fee that is reimbursable on account of practical work under the programme of working experience, fee paid for the use of any aid or appliance for the child, library fee, games/sports fee and fee for any extra- curricular activities. Besides the above, text books and notebooks, two sets of uniforms and one set of school shoes can also be claimed for a child in each year.

12. In our opinion, the aforesaid beneficial policy decision must be given a wide amplitude and interpreted in such a manner that it can be extended to two children of a government servant, as far as is possible. No doubt, the pre-condition attached to grant of CEA in terms of O.M. dated 13.11.2009, is that reimbursement can be claimed in respect of two elder surviving children only, except when the number of children exceeds two due to multiple births, but the recommendation of the Sixth Central Pay Commission was for extension of the Scheme of CEA to a maximum of two children. The O.M. dated 13.11.2009 did not contemplate a situation where the older child is not in a position to attend school due to an extreme disability. In the present case, the first born child of the respondent is not attending school due to the fact that she is differently abled and suffers a disability to the extent of 90%. That being the position, a pragmatic view was taken by the Tribunal that held that the respondent's claim for grant of CEA to his two younger school going children, could not be disallowed. We concur with the said decision. There is no good reason to deprive the second and third born children of the respondent of the benefit of CEA when at the end of the day, the cap on two children, will still be maintained.

13. Given the aforesaid peculiar facts and circumstances of the case, we do not find any illegality, arbitrariness or infirmity in the impugned order that warrants interference under Article 226 of the Constitution of India. It is however made clear that the impugned order shall not be treated as a precedent in any other case as it is the fact situation of the said case that has persuaded the Tribunal to relax the norms for extension of CEA to the respondent. The present petition is accordingly dismissed in limine alongwith the pending application.