

(2013) 05 AHC CK 0023

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 9474 of 2010

Union of India and Others

APPELLANT

Vs

Abhilesh Kumar Singh

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2013) 6 ADJ 214 : (2013) 6 ALJ 252 : (2013) 100 ALR 83 : (2013) 3 UPLBEC 2068

Hon'ble Judges : Vineet Saran, J;B. Amit Sthalekar, J

Bench : Division Bench

Advocate : Ajay Bhanot, for the Appellant; R.A. Singh, for the Respondent

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—This writ petition has been filed by the petitioner challenging the order of the Central Administrative Tribunal, Allahabad dated 1.10.2009 passed in Original Application No. 717 of 2006 Abhilesh Kumar Singh v. Union of India and others. An original application was filed by the respondent being O.A. No. 717 of 2006, Abhilesh Kumar Singh v. Union of India and others, challenging the orders dated 20.10.2004, 25.10.2004 and 2.12.2004 as well as for a direction to provide the applicant of the O.A. (respondent herein) the benefit of financial up-gradation under the Assured Career Progression scheme (ACP Scheme) in terms of the letter dated 11.10.2004 issued by the Assistant Regional Director (S & R) Save Grain Campaign Office, Varanasi with arrears of salary.

2. The case of the respondent before the Tribunal was that he was appointed on the post of Lower Division Clerk (Group-C) in the Save Grain Campaign Office, Varanasi on compassionate ground on 26.6.1992. He was confirmed as such w.e.f. 26.6.1994 vide letter dated 20.10.1997. Thereafter by a letter dated 24.11.2003 passed by the Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, Krishi Bhawan, New

Delhi, he was declared surplus w.e.f. 20.11.2003. Thereafter he was redeployed on the post of Admn. Assistant "A" in the Regional Center for Military Airworthiness Kanpur, Ministry of Defence (RD) HAL, Kanpur but he was not relieved and continued to work in his original office at Varanasi.

3. The case of the petitioner further is that he approached the authorities several times for grant of benefit of financial up-gradation of pay-scale under the ACP scheme as he had already completed 12 years of service without any adverse remarks. He claimed parity with one Smt. Nilima Pandey, who is similarly situated and who was granted the benefit of financial up-gradation under the ACP Scheme and was granted the pay-scale of Rs. 4500-7000 w.e.f. 26.9.2002 on completion of 12 years of service vide letter dated 8.10.2002 (Para 4.7 of the OA). According to the petitioner his case was referred to the Department of Personnel and Training (DOPT for short), Ministry of Personal Grievance and Pension, New Delhi for advise. In terms of the advise given by the DOPT, the Ministry of Consumer Affairs, Food and Public Distribution vide its letter dated 22.9.2004 sanctioned the financial up-gradation to the respondent under the ACP Scheme. Acting on the letter dated 22.9.2004 the respondent was considered by the departmental screening committee for grant of financial up-gradation under the ACP Scheme and was found fit and accordingly he was granted the financial up-gradation scale of Rs. 4500-125-7000 w.e.f. 26.6.2004 vide letter dated 8.10.2004. The Assistant Director (S & R) Save Grain Campaign Office, Varanasi thereupon issued an order dated 11.10.2004 granting financial up-gradation to the respondent from the previous scale of 3050-4590 to 4500-7000 w.e.f. 26.6.2004.

4. The case of the petitioner, however, is that within a few days an order dated 20.10.2004 (impugned order) was received from the DOPT by the respondent on 25.10.2004 informing him that the benefit of financial up-gradation in the scale of 4500-7000 was being cancelled. In compliance of the order of the DOPT the Assistant Regional Director (S & R) Save Grain Campaign issued a letter dated 25.10.2005 (impugned order) cancelling the benefit of financial up-gradation granted to the respondent with immediate effect. The reason given was that the said benefit could not be given to the respondent as he had already been declared surplus in the Save Grain Campaign Office, Varanasi. It is also stated that by another letter issued by the Assistant Regional Director, Save Grain Campaign Office, Varanasi dated 29.10.2004, the respondent stood removed from his office and was directed to submit his joining in the office of Regional Director, Regional Center for Military Airworthiness, Kanpur and the respondent thereupon submitted his joining in the said office on 1.11.2004. According to the respondent he also came to know that another letter dated 2.12.2004 (impugned order) had been issued by the Regional Director, Save Grain Campaign Office, Lucknow that the departmental screening committee for financial up-gradation under the ACP Scheme had found the respondent fit and provided him the first financial up-gradation of pay in the scale of 4000-100-6000 w.e.f. 26.6.2004. Aggrieved the respondent filed the Original Application No. 717 of 2006.

5. Before the Tribunal the case was contested by the petitioners and a counter-affidavit was also filed. In the counter-affidavit, the case of the petitioners was that there were instructions to the Save Grain Campaign Office, Varanasi by the Department of Food and Public Distribution vide its letter dated 22.9.2004 to grant financial up-gradation to the respondent in the scale of 4000-6000 but the Save Grain Campaign Office, Varanasi issued an office order dated 8.10.2004 granting financial up-gradation to the respondent in the pay-scale of 4500-125-7000 instead of the pay-scale of 4000-6000. The Save Grain Campaign Office, Varanasi has also issued an office order dated 11.10.2004 fixing the pay of the respondent at Rs. 4500 w.e.f. 26.6.2004 which was subject to audit review. The case of the petitioners was that as the office order dated 8.10.2004 was in contravention of the instructions issued by the Department of Food and Public Distribution the Save Grain Campaign Office, Varanasi was advised to cancel the said office order vide the letter dated 20.10.2004 and in compliance thereof the order impugned in the Original Application was issued by the Save Grain Campaign Office, Varanasi cancelling the earlier order of grant of pay-scale of 4500-7000. The case of the petitioners-department further was that the action was taken pursuant to the Clarification No. 56 of the DOPT OM dated 18.7.2001 which reads as under:

6. The case of the petitioners further was that the Vth Central Pay Commission did not recommended any specific pay structure/ACP Groups for the post of Lower Division Clerk (LDC) in the Save Grain Campaign Office or for that matter any other category of post in that office. It was stated that as per clarification No. 56 financial up-gradation on the existing hierarchy and existing hierarchy has been defined all the restructured Groups recommended by the Vth Central Pay Commission. It was stated that the respondent being a LDC belonged to the lower category of non secretariat office staff and in terms of the Clarification No. 56 the benefit of ACP Scheme was to be allowed as per the standard hierarchical structure namely, LDC (3050-4500), UDC (4000-6000), Assistant (5500-9000) for non secretariat staff.

7. A supplementary counter-affidavit was also filed on behalf of the petitioners before the Tribunal.

8. The Tribunal, however, by the impugned order dated 1.10.2009 has, however, relied upon the Clarification No. 56 issued by the DOPT OM dated 18.7.2001 and relying upon the Full Bench decision of the Tribunal dated 16.2.2005 passed in O.A. No. 557 of 2004 (Shri Parkash Chand and 7 others v. Union of India and others) has held that the Clarification No. 56 actually modifies the Scheme, which the said Clarification could not have done and as held by the Full Bench of the Tribunal the Clarification No. 56 issued by the DOPT OM dated 18.7.2001 will have the effect of rendering condition No. 7 of the ACP Scheme redundant, taking away the right that has already accrued to the Government servant in the existing hierarchy. The Tribunal has accordingly quashed the orders dated 20.10.2004 issued by the Ministry of Consumer Affairs, Food and Public

Distribution, Department of Food and Public Distribution, New Delhi, the order dated 25.10.2004 passed by the Assistant Director (S & R) Save Grain Campaign Office, Varanasi and the consequential letter dated 2.12.2004 granting financial up-gradation to the respondent in the scale of 4000-6000 of UDC.

9. We have heard Shri Ajay Bhanot, learned counsel for the petitioners and Shri L.P. Singh alongwith Shri R.A. Singh, learned counsel for the respondent.

10. Shri Ajay Bhanot submits that the office of Save Grain Campaign Office, Varanasi is only an extension of the Department of Food and Public Distribution. The Department of Food and Public Distribution has a number of local offices, branches and other establishments in various parts of the country. The respondent was working as LDC belonging to the common category of non secretariat office staff and the standard hierarchical structure in such office is as follows:

11. He further submitted that in the Save Grain Campaign Office, Varanasi the post of UDC did not exist but that did not mean that the respondent could claim the scale of the post of Assistant of 5000-8000 or 4500-7000. If it is assumed that the respondent was entitled to be granted the scale of 4500-7000 of the post of an Assistant it would upset the standard hierarchical structure in the Department of Food and Public Distribution where the post of UDC in the scale of 4000-6000 existed. The mischief in granting the respondent out of turn benefit of scale of Assistant would be that persons would seek posting in such branches or offices of the Department of Food and Public Distribution where the post of UDC did not exist so as to take a two step jump directly to the scale of Assistant in the scale of 4500-7000 or 5000-8000 vis-?-vis his contemporaries who would have to go through the normal hierarchical structure of LDC to UDC and UDC to Assistant in the offices where the post of UDC exists.

12. Learned counsel further submitted that because the benefit granted to the respondent by the office order dated 8.10.2004 was contrary to the orders of the Department of Food and Public Distribution, therefore, the DOPT advised to cancel the same and based on the advise of the DOPT the Department of Food and Public Distribution vide letter dated 20.10.2004 advised the Save Grain Campaign Office, Varanasi to cancel the order dated 8.10.2004.

13. Further submission of learned counsel for the respondent is that the order of Tribunal was based upon the Full Bench decision of the Tribunal passed in O.A. No. 557 of 2004 (Shri Parkash Chand and 7 others v. Union of India and others) wherein the Full Bench in paragraph 12 has held that the ACP Scheme is a beneficial Scheme and once such a benefit has been accorded the same cannot be withdrawn by a "clarification" and if the State wanted it could have amended the Scheme but without amendment the benefit granted under the ACP Scheme cannot be taken away by an administrative order. The Full Bench further in paragraph 18 of the said judgment has held that the grant of benefit of ACP Scheme is to be given in the next higher Grade in accordance with the existing

hierarchy in the Cadre/category of post.

14. Shri Bhanot learned counsel for the petitioners then submitted that the conclusion drawn by the Full Bench proceeds on erroneous assumption that the ACP Scheme stood amended by the OM dated 18.7.2001 introducing the Clarification No. 56. It was submitted that the Scheme had itself been introduced by the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) OM dated 9.8.1999 and paragraph 7 of the said office memorandum provided for grant of financial up-gradation under the scheme to the next higher grade in accordance with the existing hierarchy in a cadre/category of post. It is submitted that the Clarification No. 56 has defined "existing hierarchy" to mean that if the Government has accepted a uniform standard hierarchical structure then "existing hierarchy" in relation to such common categories shall be the standard hierarchy as approved by the Government and not the hierarchy in a particular office which for functional considerations may not have all the grades.

15. The learned counsel for the respondent, however, submitted that in an identical matter also pertaining to the Save Grain Campaign Office where also the benefit of the scale of Assistant was involved, the Tribunal has passed an order dated 27.7.2010 in O.A. No. 818 of 2009. The said order of the Central Administrative Tribunal was however, challenged in a writ petition filed by the Union of India before the Andhra Pradesh High Court being W.P. No. 32010 of 2010 (Union of India Ministry of Defence and another v. T. Venket Reddy and another), wherein the High Court has held that the order of the Tribunal did not call for any interference as it was passed relying upon the decision of a co-ordinate Bench of the Tribunal in Original Application No. 717 of 2006 decided on 1.10.2004.

16. The Learned counsel for the respondent submitted that the respondent was appointed as a LDC in the Save Grain Campaign Office, Varanasi and he was rightly granted financial up-gradation in the scale of 4500-7000 but by the impugned order dated 20.10.2004 the benefit so granted has been withdrawn from him and his salary has been fixed in the scale of 4000-100-6000, which is the scale of UDC.

17. Having considered the rival submissions of the learned counsel for the parties it is noticed that the impugned order of the Tribunal dated 1.10.2009 has proceeded entirely on the analogy of the Full Bench order of the Tribunal passed in O.A. No. 557 of 2004. However, on examination of the ACP Scheme introduced by the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training vide OM dated 9.8.1999 had introduced the ACP Scheme through an office memorandum whereas the Clarification No. 56 which defines and explains existing hierarchical structure in "existing hierarchy" was also introduced by the Government of India, Ministry of Defence, Department of (Personnel and Training) through office memorandum dated 18.7.2001. Thus it cannot be said that an office memorandum introducing

the ACP Scheme has been superseded or amended by a mere administrative order, as erroneously held by the Full Bench of the Tribunal in paragraph 12 of its order. The existing hierarchical structure has been explicitly outlined in the office order dated 5.1.2007 in the Department of Food and Public Distribution of the Government of India, Ministry of Consumer Affairs wherein the standard hierarchical structure for non secretariat office staff has been given as under:

18. It is not disputed between the parties that the Save Grain Campaign Office, Varanasi is an office under the Department of Food and Public Distribution and that the post of UDC does not exist in the office at Varanasi. The respondent was erroneously granted the benefit of financial up-gradation in the pay-scale of 4500-7000 by the Save Grain Campaign Office, Varanasi but as soon as the error was detected the Department of Food and Public Distribution issued an office order dated 20.10.2004 on the advise of the DOPT and the order dated 8.10.2004 issued by the Save Grain Campaign Office, Varanasi granting the pay-scale of 4500-7000 to the respondent was cancelled by the Save Grain Campaign Office, Varanasi vide its order dated 25.10.2004. We therefore find no illegality or infirmity in the orders dated 20.10.2004 or 25.10.2004 or 2.12.2004 impugned before the Tribunal.

19. We have also considered the objection raised by the learned counsel for the respondent that the Andhra Pradesh High Court has dismissed the writ petition filed by the Union of India against an order of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad dated 27.7.2006 passed in O.A. No. 818 of 2009 in a similar matter relating to the Save Grain Campaign Office. However, paragraph 5 of the judgment of the High Court is revealing inasmuch as the High Court has justified the order of the Tribunal on the ground that the same has been passed relying upon a decision of its co-ordinate Bench dated 1.10.2009 passed in Original Application No. 717 of 2006. The order dated 1.10.2009 passed in Original Application No. 717 of 2006 is none else than the order which is impugned in the present writ petition. It appears that the SLP filed by the Union of India against the judgment of the Andhra Pradesh High Court was dismissed by order dated 17.4.2012. However it may be mentioned here that the order dated 1.10.2009 passed in original application No. 717 of 2006 which has been referred to in paragraph 5 of the judgment of the Andhra Pradesh High Court is the same order which is under challenge in the present writ petition and therefore, the judgment of the Andhra Pradesh High Court will not confer any benefit on the respondent as an illustrative precedent much less a binding precedent. Moreover, it would be relevant to quote the order dated 17.4.2012 passed by the Supreme Court, which reads as under:

Delay condoned.

We find no ground is made out to interfere in this matter. The SLP is dismissed.

20. The learned counsel for the respondent then submitted that since the writ petition filed by the Union of India in the Andhra Pradesh High Court, challenging

the order of the Central Administrative Tribunal allowing the OA No. 818 of 2009, had been dismissed and the SLP filed by the Union of India against the order of the Andhra Pradesh High Court had also been dismissed by the Supreme Court, therefore, the same constituted a binding precedent.

21. The submission of the learned counsel for the respondent is fallacious, misconceived and legally flawed.

22. The order of the Supreme Court cannot be said to be a precedent under Article 141 of the Constitution of India in so far as the controversy in the present writ petition is concerned, and at the most it may bring a finality to the dispute pending before the Andhra Pradesh High Court arising out of the order passed by the CAT, Hyderabad Bench, Hyderabad in Original Application No. 818 of 2009. It has consistently been held by the Supreme Court that an order which does not contain any reason cannot be a precedence to be followed in other cases of similar nature.

23. The Supreme Court in the case of Kunhayammed and Others Vs. State of Kerala and Another, , has held in paragraph 27 as under:

27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the Courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the Court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the Apex Court of the country. No Court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light/the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be

advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.

24. The Supreme Court in the case of Vannattankandy Ibrayi Vs. Kunhabdulla Hajee, , in paragraph 23 has held that this Court number of times has held that any SLP dismissed by this Court without giving a reason has no binding force on its subsequent decisions".

25. The Supreme Court in the case of Saurashtra Oil Mills Association, Gujarat Vs. State of Gujarat and Another, , has held that dismissal of a SLP without a speaking order would only mean that the Court was not inclined to exercise its discretion in granting leave to file appeal and the view express in the said order does not become the view of the Supreme Court. Such a non speaking order will remain a dismissal simpliciter and would not mean to be a declaration of law by the Supreme Court. The relevant paragraph 14 of the said judgment reads as under:

14. Relying upon a judgment of the High Court of Andhra Pradesh in Writ Appeals Nos. 1546 to 1549 of 1998 decided on 30.6.1999 (copy of which has been placed on the record) wherein a similar action of the Government of Andhra Pradesh relating to the similar provision was struck down and against which SLP (C) No.... CC Nos. 3461-64 of 2000 was dismissed by this Court, counsel appearing for the appellants contended that to maintain consistency in the orders passed by this Court these appeals should be accepted and the impugned judgment of the Gujarat High Court be set aside otherwise different laws declared by different High Courts in different States would prevail leading to uncertainty and confusion. The submission is misconceived. Repeatedly, it has been held that dismissal of SLP without a speaking order would only mean that the Court was not inclined to exercise its discretion in granting leave to file the appeal. It does not attract the doctrine of merger and the view expressed in the impugned order does not become the view of this Court. The dismissal of the SLP by a non-speaking order would remain a dismissal simpliciter in which permission to file the appeal to this Court is not granted. This may be because of various reasons. It would not mean to be the declaration of law by this Court. In a recent judgment of a three-Member Bench in Kunhayammed v. State of Kerala, after exhaustive consideration of the entire case law this Court has reaffirmed this position. Summing up the conclusion in clause (iv) of para 44, it was held: (SCC p.384)

44. (iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

Thus, the dismissal of the SLP in limine against the judgment of the High Court of Andhra Pradesh would not operate as a binding precedent taking away the

jurisdiction of a coequal Bench to adjudicate on the same point on merits in a case where the leave to file the appeal has been granted. Submission that different laws would be prevalent in different States because of the different views expressed by different High Courts thus creating uncertainty and confusion cannot be accepted as the law declared by this Court would be the law prevalent in the country.

26. The Supreme Court in the case of Narcotics Control Bureau Vs. Dilip Pralhad Namade, , in paragraph 13 has held as under:

13. Coming to the plea regarding long passage of time, it is to be noted that the two orders passed by this Court in SLPs (Crl.) Nos. 1136 of 2002 and 434 of 2003 referred to above do not lay down any principle of law of invariable nature to be universally applied. Furthermore, disposal of SLP against a judgment of the High Court does not mean that the said judgment is affirmed by such dismissal. The order passed in any SLP at threshold without detailed reasons does not constitute any declaration of law or constitute a binding precedent. (See Union of India v. Jaipal Singh) This Court cannot and does not reverse or modify the decree or order appealed against while deciding the petition for special leave to appeal and that too when the SLP was being dismissed. What is impugned before this Court can be reversed or modified only after granting leave and then assuming appellate jurisdiction over it. If the order impugned before this Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage. (See Kunhayammed v. State of Kerala and Ramnik Vallabhdas Madhvani v. Taraben Pravinlal Madhvani.)

27. Thus on a conspectus of the facts of the case and the case law referred to herein above we are of the view that the impugned order dated 1.10.2009 passed by the Tribunal in Original Application No. 717 of 2006, based upon the Full Bench decision of CAT passed in Original Application No. 557 of 2004, which does not lay down the correct law, is absolutely illegal and erroneous and is quashed. Writ petition is allowed. There shall be no order as to cost.