
(2006) 02 GAU CK 0065
In the Gauhati High Court
Case No : WP (C) No. 7323 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Swapan Kumar Deb

RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Citation : (2006) 2 GLR 422 : (2006) 2 GLT 139

Hon'ble Judges : B. Sudershan Reddy, C.J.;H.N. Sharma, J

Bench : Division Bench

Advocate : D.C. Chakraborty, for the Appellant; U.K. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, C.J.—This writ petition is directed against the order dated 26.2.2001 made in Original Application No. 375 of 1999 on the file of the Central Administrative Tribunal, Guwahati Bench, Guwahati.

2. That, all together 28 applicants, including the sole respondent in this petition, invoked jurisdiction of the Tribunal praying for directions as against the petitioners to give effect to the Office Memo No. 20014/3/83-E-IV dated 4.12.1983 and the Office Memo bearing similar number dated 1.12.1988 and for payment of Special Duty Allowance in terms of the said Office Memoranda. Out of the 28 applicants, 23 of them earlier approached the Tribunal praying for issuance of similar directions. The learned Tribunal disposed of the Original Application directing the petitioners to pay Special Duty Allowance (SDA) with effect from 1.11.1983 or from the date on which the applicants therein joined respective - posts in the North Eastern Region, whichever was later, within a specified period. The said order attained finality and in terms of the said order the applicants were paid the special Duty Allowance.

3. On the strength of a communication dated 29.12.1990 the very petitioners herein gave the benefit to various other employees who were not even the

petitioners in Original Application No. 82/90, which was disposed of on 31.9.1990. Such decision obviously appears to have been taken in accordance with the instructions issued by the Ministry of Finance O.Ms. dated 14.12.1983 and 1.12.1988. By a subsequent order dated 9.1.1999 the authority reviewed the earlier order to the effect that the amount already paid on account of SDA to ineligible persons after 20.9.1994 were required to be recovered, which was challenged in the Original Application No. 375/99 before the Tribunal.

4. The learned Tribunal after elaborate consideration of the matter found that its earlier order dated 31.8.1990 attained its finality since the same was not assailed by the petitioners herein in any forum. It is for that reason that the learned Tribunal came to the conclusion that 23 applicants out of 28, who were given benefit of SDA, received the same under the directions of the Tribunal and, thus, the question of recovery on whatever ground did not arise. Tribunal accordingly directed the writ petitioners herein to comply with the Tribunal's order dated 31.8.1990 with a further direction not to recover the amount paid as SDA from any one of the twenty-three applicants, since the order passed by the Tribunal attained its finality.

5. So far the other applicants, who were not applicants in Original Application No. 82/90, the Tribunal did not grant any relief whatsoever on the ground that they were not entitled to any such Special Duty Allowance in view of the subsequent policy decision taken by the writ petitioners. We fail to appreciate as to why the petitioners have chosen to file the present writ petition ? The subsequent Office Memorandum issued by the authority could not have any bearing whatsoever upon the judgment of the Tribunal dated 31.8.1990 rendered in Original Application No. 82/90, which attained its finality.

6. Be that as it may, the question that falls for our consideration is no more *res integra* and squarely covered by the judgment dated 4.1.2006 rendered by this Court in Writ Petition(C) No. 5087/1999, where one of us (Hon"ble the Chief Justice) is a member. While advertng to the submissions whether subsequent decision of the Apex Court in *Union of India and others v. Executive Officers' Association Group-C* (1995) Supp. (1) SCC 757 and Office Memoranda subsequently issued will in any way affect the employees/officers to whom the benefit of SDA have already been given by virtue of decision given by the Tribunal, this Court observed : -

19. Doctrine of finality of judgment or the principles of *res judicata*, are founded on the basic principle that when a court of competent jurisdiction renders any judgment, the same ought not to be allowed to be agitated again and again. The judgment which attained finality cannot be reopened and the benefit occurred therein cannot be taken away by the authority issuing any order or office memorandum, which is contrary to such decision on the ground that the position of law has been changed because of the subsequent decision of the Apex Court, unless of course, the Apex Court" directs otherwise or such decisions of the competent court/tribunal is challenged and set aside. Such decision would

operate as res judicata between the parties to such decision. Therefore, the rights of the employees/officers accrued under the order of the learned Tribunal, which attained finality, cannot be taken away because of the subsequent decision of the Apex Court in S. Vijaykumar case. The learned Counsel for the petitioners also could not place any direction of the Apex Court that the said decision shall effect all the judgments already rendered by any competent court/tribunal.

7. No other questions arise for our consideration calling interference with the decision of the learned Tribunal made in Original Application No. 375/99. This writ petition shall stand dismissed without any order as to cost.