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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and order: 18th February 2015

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W.P.(C) 3100/2014

EMPLOYEES STATE INSURANCE CORPORATION (ESIC)

..... Petitioner

Through: Mr. Manish Kumar Saran, Advocate

versus

SUMER SINGH & ANR.

..... Respondents

Through: Mr. M.K. Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S. MEHTA

ORDER

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KAILASH GAMBHIR, J. (ORAL)

By this petition filed under Articles 226 and 227 of the Constitution of India the petitioner seeks to challenge the order dated 03.12.2013 passed by learned Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No. 1778/2012.

The main grievance raised by the petitioner is that the respondents were not entitled to the benefit of their previous service on the post of LDC for increments as the respondents themselves had accepted the offer for appointment to the post of LDC without reserving any right to claim the benefit of their past services for the purposes of grant of increments.

Mr. M.K. Bhardwaj, the learned counsel for the respondents on the other hand placed reliance on Rule 22-C of Fundamental Rules, Vol. I, which entitles these respondents to the benefit of counting their previous service for the purpose of grant of increments. Counsel thus submits that proviso to the said Rule clearly envisage that if a government servant who has previously held a post whether substantively or officiating and later appointed on regular basis or substantively, then this proviso shall apply in the matter of initial fixation of pay and counting of previous service for increments. The learned counsel for the respondent also submits that the said rule was the subject matter of consideration before the Hon'ble Supreme Court in the case of *D.G., Employees' State Insurance Corporation vs. B. Raghava Shetty and others*, 1995 Supp (2) SCC 681.

We have heard the submissions made by the learned counsel for the parties as well as gone through the contents of the petition and the judgment relied upon by the parties.

For better appreciation, Rule 22-C of Fundamental Rules, Vol.I is reproduced as under:-

“Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive temporary or

officiating capacity to another post carrying duties and responsibilities of greater importance than those attached to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued. Provided that the provisions of this Rule shall not apply where Government servant holding a Class-I (Group-A) post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to higher post which is also a Class-I (Group-A) post and carries a time-scale of pay with the minimum of more than Rs. 1500/-.

Provided further that the provisions of Sub-rule (3) of Rule 31 shall not be applicable in any case where the initial pay fixed under this Rule; Provided also that where a Government servant is, immediately before his promotion or appointment to a higher post, drawing pay at the maximum of the time scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by an amount equal to the last increment in the time-scale of the lower post.

Provided that if Government servant either -

i) has previously held substantively or officiated in :-

i) the same post, or

ii) a permanent or temporary post on the same time-scale, or

ii) a permanent post other than a tenure post or temporary post (including a post in a body incorporated or not, which is wholly or substantially owned or

*controlled by the Government on an identical time-scale;
or*

iii) if appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated then proviso to FR 22 shall apply in the matter of initial fixation of pay and counting of previous service for increment.”

On a cursory glance, the aforesaid Rule would reveal that the benefit of counting of previous service for the purposes of increments would be available to a person appointed substantively, temporarily or in officiating capacity in the matter of initial fixation of pay.

In the facts of the present case also, the claim of these respondents before the learned Tribunal was for counting their ad-hoc service for granting increments, which were granted to them while working as LDC on ad-hoc basis. The O.A. filed by these respondents were allowed by the Tribunal and the Tribunal placed reliance on the judgment of this Court in W.P. (C) No. 1184/2005 titled as ***Union of India and others v. Shri Kailash Chand and Anr.***, decided on 17.4.2006 and also on their decision in O.A.No.1914/2006 decided on 1.6.2007. The Tribunal has interpreted the said Rule 22-C of Fundamental Rule correctly and therefore, we find no infirmity or illegality in the impugned order passed by the learned Central
W.P. (C) No. 3100/2014

Administrative Tribunal.

Finding no merit in the present petition, the same is hereby dismissed
but without any costs.

KAILASH GAMBHIR, J

I.S. MEHTA, J

FEBRUARY 18, 2015
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