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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and order: 3rd March 2015

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W.P.(C) 997/2015
M.R. BHANGALYA

..... Petitioner

Through: Mr. Shakti Chand Sharma, Advocate
with petitioner in person.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Vikram Jetly, CGSC for
respondent No. 1 to 3 WITH
Mr.Dinesh Kochher, US, NCSK. .

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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KAILASH GAMBHIR, J. (ORAL)

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the orders dated 26.08.2013 and 28.10.2013 passed by learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2187/2012 and R.A. No.175/2013, respectively.

2. Mr. Shakti Chand Sharma, Advocate appears for the petitioner submits that the relevant office memorandum which governs the case of the petitioner is OM dated 2nd July 1999 and as per this OM the respondent had no right to deduct the entire pension as was admissible to the petitioner from

his salary on re-employment after his retirement. The learned counsel for the petitioner also submits that the petitioner had retired from Group B post and on his re-employment, he cannot be paid a pay scale less than the one which was applicable at the relevant time. Another contention raised by the learned counsel for the petitioner is that in third and fourth spell of re-employment of the petitioner i.e. from 16.2.2001 to 30.06.2002 and 1.7.2002 to 28.01.2003, the respondents have themselves ignored the deduction of pension of the petitioner and fixed his pay at the minimum pay scale applicable however for the earlier periods of re-employment of the petitioner i.e. from 7.3.2006 to 31.3.2007 and from 10.4.1997 to 9.4.2000, the respondents have illegally deducted the pension amount from his salary.

3. Mr. Vikram Jetly, the learned CGSC appears on behalf of the respondents on advance notice and has drawn the attention of this Court to the stand taken by the respondents in their counter affidavit with regard to the non deduction of the pension amount for third and fourth spell of re-employment, wherein the respondents have categorically stated that for the said two spells, the pay of the petitioner was wrongly fixed without deducting the gross pension. The learned counsel for the respondents, on instructions from Mr. Dinesh Kochher, U.S., NCSK who is present in Court,

submits that the respondents have yet not taken any steps to recover the said excess amount paid to the petitioner.

4. We have heard the submissions made by the learned counsel for the petitioner as well as on behalf of the respondents and also gone through the impugned order and the material placed on record.

5. Indisputably, when the petitioner was re-employed, he had already attained the age of 55 years. Learned Central Administrative Tribunal has taken into consideration the OM dated 2nd July 1999 and we find merit in the reasoning given by learned Tribunal that so far as OM dated 2nd July 1999 is concerned, that cannot be seen in isolation but the same has to be read with OM dated 31.07.1986, which holds the field with regard to the fixation of pay of re-employment of the pensioner. Relevant paras of the impugned order are reproduced as under:-

5. *“We have seen the O.M. dated 02.07.1999 relied upon by the applicant. The subject of the said O.M. is as follows:-*

Recommendations of the 5th Central Pay Commission-Payment of Dearness Relief to re-employed pensioners and employed family pensioners.

Clearly this deals with payment of dearness relief to re-employed pensioners. Further, reading of Para-2 and Para-3(a) relied upon by the applicant also

makes to clear that the main subject of this O.M. is regarding payment of dearness relief and the manner in which it has to be computed in cases of re-employment. Further, para-3(d) of this O.M. reads as follows:-

While implementing these decisions, orders issued by the Department of Personnel & Training vide OM No.3/1/85-Estt(Pay-II) dated 31.07.1986 and as amended from time to time regarding fixation of pay of re-employed pensioners shall be duly kept in view.

This gives credence to the argument of the respondents that O.M. dated 02.07.1999 should not been seen in isolation but it should be read with O.M. dated 31.07.1986.”

6. We find no tangible reason to disagree with the reasoning given by learned Tribunal. Finding no merit in the present petition, the same is hereby dismissed.

KAILASH GAMBHIR, J

I.S. MEHTA, J

MARCH 03, 2015

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