IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.11.2018
CORAM:
THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 11051 of 2017

1. National Federation of Atomic
   Energy Employees,
   Rep. By its President,
   A. Sathasivam,
   Presently residing at
   Flat No. 302 Anand Sreeram Towers
   NGGOs Colony
   Visakhapatnam - 530007

2. S. Krishnan ...Petitioners

Vs.

1. Union of India rep by
   Under Secretary (IR & W),
   Atomic Energy Commission,
   Department of Atomic Energy,
   Anushakthi Bhavan,
   C.S.M. Marg, Mumbai - 400 001.

2. The Director,
   Indira Gandhi Centre for Atomic Research,
   Department of Atomic Energy,
   Kalpakkam - 603 102.

3. The Registrar,
   The Central Administrative Tribunal,
   Chennai Branch, High Court Complex,
   Chennai - 600 104. ...Respondents

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Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the order dated 29.08.2016 passed in O.A. No. 167 of 2015 by the Central Administrative Tribunal, Chennai Bench, quash the same and consequently direct the respondents 1st

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and 2nd to grant Night Duty Allowance from 1.1.1996 to the 2nd respondent employees on the basis of the actual salary paid to them without any ceiling.

For Petitioners : Mr. T. Varadarajulu
For Respondents : Ms. Sunitha Kumari,
Sr. Panel Counsel for Central Govt.
for R1 and R2
R3 - Tribunal

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The first petitioner herein is a Federation seeking to espouse the cause of its members who are the employees of the respondents 1 and 2. The petitioners approached the Tribunal seeking to set aside the order dated 16.09.2014 of the Respondent No.1, by which the request made to pay the night duty allowance as per the actual salary was rejected.

2. The Tribunal was pleased to dismiss the application on the ground that the decision made is one of policy, no interference can be made. Secondly, it has been held that the employees of the respondents 1 and 2 are being governed by the PRIS Scheme and there was already an order passed by the Ministry to factor both the Over Time Allowance and Night Duty Allowance with PRIS and therefore, the request made is not feasible for consideration. Challenging the same, the present writ petition is filed.

3. The learned counsel appearing for the petitioner submits that once the night duty allowance is permitted, the consequence will have to follow. In that eventuality, the allowance has to be reckoned and paid based upon the actual salary that is being paid. To buttress his submission, learned counsel has placed reliance upon a decision rendered by a Division Bench in Union of India and another v. Kanti Ballabh Joshi and others (Order dated 5.3.2012 made in Civil Writ Petition No.8637/2011).

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4. The learned counsel appearing for respondents 1 and 2 would submit that the decision has been made by the Ministry, Department of Personnel and Training (DoPT) under which the respondents 1 and 2 would come in. They are bound by the decision of the Ministry. There is no need for interference since the decision has been made after much deliberation.

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5. Admittedly, the scheme is applicable to the employees of the Department of Atomic Energy. The employees who were working in the Defence do not have any scheme, therefore, they stand apart. Thus, ceiling of Rs. 2,200/- stands unchanged. In the subsequent pay commission, the concept of Night Duty Allowance has been abolished. Therefore, no interference is required.

6. We do not find any merit in this writ petition. As rightly recorded by the Tribunal, the policy decision cannot be interfered with by the Court as if the Members of the first petitioner federation are being denied any incentive. What has been done is factoring of entitlement of Over Time allowance and Night Duty Allowance in Performance Related Incentive Scheme (PRIS). Admittedly, this Scheme is applicable to the members of the first petitioner federation. Therefore, the respondents 1 and 2 cannot be blamed for denying the benefit which the petitioners claim. An incentive, by its own nature, is by way of concession which has been given to encourage the employee. It is also a recognition of the work done. Therefore, it cannot be claimed as a matter of right except when it is put under Article 14 of the Constitution of India. A factual finding has been rendered by the Tribunal holding that the other undertakings including Defence Personnel stand on a different footing than that of respondents 1 and 2.

7. The decision relied upon also cannot be made applicable to the case on hand. It appears that in the aforesaid decision, entitlement itself is denied. It is not the case before us. As discussed above, the payment of Night Duty Allowance has been factored into Performance Related Incentive Scheme (PRIS). It is also for the employees other than those covered by the statutory OTA under the Factories Act. Therefore, we do not find any merit in this writ petition. Accordingly, this writ petition stands dismissed.

8. However, while dismissing this writ petition, we direct the Secretary to the Government of India, Department of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi to take a call on the grievances expressed by the first petitioner on behalf of its Members. Appropriate orders will have to be passed in this regard within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS vi)

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Sub Assistant Registrar

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To
1. The Under Secretary (IR & W),
Union of India
Atomic Energy Commission,
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Anushakthi Bhavan,
C.S.M. Marg, Mumbai - 400 001.

2. The Director,
Indira Gandhi Centre for Atomic Research,
Department of Atomic Energy,
Kalpakkam - 603 102.

3. The Registrar,
The Central Administrative Tribunal,
Chennai Branch, High Court Complex,
Chennai - 600 104.

4.The Secretary,
Department of Personnel,
Public Grievances of Pensions,
Department of Personnel and training,
New Delhi.

+1cc to Mr.T. Varadarajulu , Advocate SR.No. 76896
+1cc to Ms. Sunitha Kumari, , Advocate SR.No. 76591

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ASK(05/12/2018)

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