

**HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

WRIT PETITION No.39884 of 2018

ORDER: *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

We have heard the learned Assistant Solicitor General appearing for the petitioners and the learned counsel for the respondent.

2. In this Writ Petition filed under Article 227 of the Constitution of India, the Union of India challenges a decision of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

3. The respondent, who was around 83 years when he moved the Tribunal, while working as Junior Accounts Officer, availed voluntary retirement on 11.12.1979. His retiral benefits by way of pension based on average emoluments consequent on voluntary retirement were fixed. Thereafter, with the revisions that came through IV, V and VI Central Pay Commissions, certain revisions were made. He moved the Tribunal pleading that on account of the upgradation of the Pay Band, he was entitled to a minimum pension of Rs.9,330/- per month instead of Rs.7,250/-. The learned Tribunal adjudicated this issue on the basis of the pleadings and materials on record before it. The quality of consideration of the materials by the learned Tribunal clearly

discloses that there is no jurisdictional error or legal infirmity in the impugned decision. We also see that the learned Tribunal had followed the decision of the Division Bench of Delhi High Court in **Ram Phal v. Union of India**¹. Reverting to **Ram Phal**'s case, we see that such judgment was rendered placing reliance on **D.S. Nakara v. Union of India**² - the principle that denial of liberalized pension to those persons who had retired before the cut-off date prescribed was against the constitutional guarantee. **Union of India v. SPS Vains**³ was also relied on. In **Ram Phal**'s case, the Division Bench of Delhi High Court also followed its earlier decision in **Union of India and another v. Central Government, SAG & others**⁴. Having bestowed our consideration to the contents of the judgment of the Division Bench of Delhi High Court in **Ram Phal**'s case, we are not inclined to take a different view on that issue.

4. We record the submission of the learned Assistant Solicitor General that the decision in **Ram Phal**'s case taken by the Division Bench of Delhi High Court is pending consideration before the Hon'ble Supreme Court and certain interlocutory orders have been issued; and, in the case on hand as well, there is interdiction only as against the release of the arrears while the

¹ W.P.(C).3035 of 2016

² (1990) 4 SCC 270

³ (2008) 9 SCC 125

⁴ W.P.(C).No.1535 of 2012

respondent-pensioner is enjoying the benefit of the Tribunal's order to the extent it relates to payment of enhanced pension after the order. We have considered the monetary component of the effect of the impugned order of the Tribunal and we are of the considered view that balance of convenience and scales of justice swing in favour of letting the respondent, an octogenarian citizen, to enjoy the benefits of the order of the Tribunal subject, of course, to the right of the Government for restitution of amounts if the Tribunal's verdict or this verdict, by which, we affirm it, gets overturned at the instance of the Union of India.

5. As noted earlier, we do not see any ground of error of jurisdiction, illegality, impropriety or exclusion of materials, which were placed before the Tribunal, from the zone of consideration. The Tribunal's judgment or order does not warrant interference under Article 227 of the Constitution of India.

6. The Writ Petition fails and the same is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

Date: 31.01.2019

A. RAJASHEKER REDDY, J

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