

DL. August 23,
10. 2021

Through Video Conference

W.P.C.T. 49 of 2021

The Director General, Employees
State Insurance Corporation & anr.

Vs.

Probhash Rajak & ors.

Mr. Shiv Chandra Prasad,
Mr. Nikhil Kumar Gupta,
...for the petitioners.

Mr. Bharat Bhusan,
Ms. Mankana Chakraborty,
...for the respondent no. 1.

The present writ petition has arisen out of an order dated January 27, 2021 passed by the Central Administrative Tribunal, Calcutta Bench, in connection with an original application being OA. 350/69/2021 in which the original applicant had prayed for setting aside the impugned office letter no. 412-A-11/20/ACP-MACP/07-Estt being the Office Order No. 135 of 2020 dated December 14, 2020 and for a direction upon the authorities not to give effect to the reduction of pay scale of Rs. 2,400/- and Rs. 2,800/- as also for a mandatory direction upon the authorities to not reduce the pay which the applicant are getting by the order of competent authority.

The original applicant was granted the benefit of Modified Assured Career Progression in Grade Pay of Rs. 2,800/- in Pay Band –I with effect from May 17, 2015 on completion of twenty (20) years of service in terms of the order passed by the Principal Bench of the Central Administrative Tribunal in Original

Application No. 3227 of 2011 decided on December 19, 2013 and Department of Personnel and Training Office Memorandum dated May 19, 2009 as also Head Quarter Office Memorandum dated November 30, 2009. The said order of the Principal Bench is under challenge before the High Court at Delhi and the issue is still pending.

The grievance of the original applicant before the tribunal was that by office order no. 135 of 2020 dated December 14, 2020, the respondent authorities have cancelled the earlier Assured Career Progression/Modified Assured Career Progression orders in respect of some officials including the original applicant and instead granted the original applicant first Modified Assured Career Progression in Grade Pay of Rs. 2,400/- in Pay Band – I with effect from January 2, 2019.

The contention of the learned advocate for the original applicant before the tribunal as well as before us is that while the issue is pending consideration before Delhi High Court, the authorities ought not to have issued any order in taking away the benefits granted to him in terms of the order of the Principal Bench of the tribunal treating the earlier benefit as provisional.

On consideration of the instruction dated January 19, 2021 produced by the respondent authorities, the tribunal observed as follows :-

“Irrefutably and admittedly an issue that has bearing the present case, is pending before the Hon’ble High Court at Delhi but the respondents in the meantime, without waiting for a decision on the pending issue,

have decided to take away the benefits that stand already bestowed to the applicant. Such an action of divesting him of his vested right will have civil consequences and would cause pecuniary damages to the applicant. Hence, we quash the impugned order and permit the respondents to act in accordance with law, as and when the issue is decided by the Hon'ble High Court at Delhi.”

The learned advocate appearing on behalf of the writ petitioners submits that the benefit availed of by the original applicant earlier was on the basis of an undertaking given by the original applicant to the effect that if any anomaly is found in pay fixation, the monetary benefit so received is to be refunded. The learned advocate for the petitioners has drawn our attention to the Office Order No. 135 of 2020 dated December 14, 2020 and submits that for revision of pay/grade pay under Assured Career Progression/Modified Assured Career Progression Scheme, approval has been accorded by the competent authority and it was on the basis of such circular adjustments are now being made.

However, having regard to the fact that the issue relating to the initial pay fixation from the date of appointment is pending before the Delhi High Court, we affirm the order passed by the tribunal only with a modification that Office Order dated December 14, 2020 would be made applicable on and from September 2021 without prejudice to the rights and contentions of the parties in the pending proceeding before the Delhi High Court.

The writ petition is, thus, disposed of without any order

as to costs.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

(Soumen Sen, J.)

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(Hiranmay Bhattacharyya, J.)