

39 23.11.22

Ct. No. 04

Akd

WP.CT. 103 of 2022

Union of India & Ors.

Vs.

Goutam Kundagrami & Ors.

Ms. Manashi Bhattacharya,

Mr. Rajsekhar Basu.

... for the petitioners.

Mr. Ashok Chakraborty,

Mr. Ujjal Roy,

Mr. Arpa Chakraborty.

... for the respondents.

The instant writ petition has been filed by the Union of India assailing an order dated 9th February 2018 passed in OA/350/00130/2016 directing the respondents to examine the claim of each of the applicants in the light of the circular dated 22nd January, 2015 and release wages accordingly and an order dated 1st October, 2021 passed in RA 350/1/2018, whereby and whereunder an application for review was disposed of.

The facts emanating from the instant writ petition are that the respondents were engaged as 'part-time contingent paid staff' under different Sub-Postmasters of the East Kolkata Division between the year 1980-1990 and alleged that they did not receive the enhanced Dearness Allowance since 2008. It was further alleged that the authorities failed to revise the wages consequent upon the recommendation of the 6th Central Pay Commission and they were not absorbed though otherwise entitled to. It was further alleged that though their status was shown as 'part-time contingent paid staff', yet they were getting salary on month wise basis, which was suddenly stopped on the basis of the Office Order dated. 22nd January, 2015.

The respondents further claimed that in terms of

the said order dated 22nd January, 2015 issued by the Postal Department, they are entitled to enhanced salary with effect from 1st January, 2006 and in this regard a representation was made on 4th February, 2015.

Since the authorities were keeping silent over the aforesaid issue the respondents filed a tribunal application being OA 00393/2015, which was disposed of on 13th March, 2015 directing the Senior Superintendent of Post Offices to dispose of the said representation upon consideration of the grievance raised by the respondents in the light of the circular dated 22nd January, 2015 within a stipulated time.

Pursuant to the said direction a speaking order dated 16th July, 2015 was passed by the authorities rejecting the claim of the respondents. A further challenge was made to the speaking order dated 16th July, 2015, as the said authorities did not consider the grievance of the petitioners in the light of the observations made therein by filing OA 1624 of 2015 before the Tribunal. The Tribunal set aside the said order and remitted the matter to the authorities to pass an order in terms of the order passed in earlier tribunal application. On remand, the authorities again passed a speaking order on 9th December, 2015 rejecting the claim of the petitioners, which was further challenged in OA 130 of 2016 before the Tribunal, wherein the impugned orders are passed.

One of the grounds on which challenge was made before the Tribunal was that the speaking order dated 9th December, 2015 is the replica of the earlier speaking order dated 16th July, 2015 and, therefore, the said order is liable to be set aside, as the authorities did not apply its mind nor acted in terms of the directions passed by the Tribunal.

It is contended by the Union of India before us that there is an apparent fallacy in the order of the Tribunal in directing the respondents to examine the claim in the light of the circular dated 22nd January, 2015 and release wages accordingly, as the petitioners were not the sponsored candidates from the Employment Exchange, therefore, cannot get any benefit of the circular dated 22nd January, 2015.

On a bare reading of the speaking order dated 16th July, 2015 and 9th December, 2015, we do not find any material difference in that. The content of the later speaking order is a replica of the content of the earlier speaking order. If the authorities have simply reproduced the content of the earlier speaking order, which was quashed and set aside, the later order cannot be regarded to have been passed upon due application of mind.

The question was whether the petitioners are entitled to the benefit given to the regularly appointed casual labourer in terms of the said circular dated 22nd January, 2015. The Tribunal found that the said circular did not create any difference between the regularly appointed casual labourer or the contingent paid staff and the one engaged through Employment Exchange and found that the petitioners are entitled to the benefit of the said circular and the wages calculated in pro-rata basis in terms of hours of duty put in at the minimum pay band together with admissible Dearness Allowance.

The respondents, who were the contingent paid staff, were treated as the worker at daily rated basis, which is applicable to casual labourer in terms of the opinion of the Senior Superintendent of Post Offices discerned from the speaking order dated 9th December, 2015.

Since the authorities, who were directed to take an independent decision on the applicability of the said circular dated 22nd January, 2015, have simply reproduced the content of the earlier decision, which was quashed and set aside by the Tribunal, such speaking order cannot withstand on the anvil of the decision taken upon independent application of mind.

Since the Tribunal found that the petitioners are entitled to all benefits of the said circular, we do not find any justification in interfering with the said order. Even the order passed on a review application does not invite any interference.

The writ petition is devoid of merit and the same is hereby dismissed.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)