

03.05.2023

WPCT 21 of 2015

Court : 04
Item : 07
Matter : WPCT
Status : DO
Bench ID : 266048
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The Union of India & Ors.
Vs.
Ashis Chakraborty & Ors.

Ms. Susmita Saha Dutta, Advocate

.....for the Petitioner/UoI

Mr. Debasish Ghosh, Advocate

Mr. Mainak Ganguly, Advocate

Mr. Subhajit Roy, Advocate

.....for the Respondents

The Union of India has filed the instant writ-petition challenging the order of the Central Administrative Tribunal, Kolkata Branch in OA 397 of 2009 whereunder a writ of mandamus was issued directing the authorities to upgrade the pay-scale of the respondents with effect from 01.01.2004 on notional basis and arrears from 21.04.2004 onwards.

The dispute pertains to the enforceability of the recommendation of the Fifth Pay Commission from retrospective dates and fixation of pay scale on the basis thereof and to give all financial benefits attributable to the posts to each of the respondents from the said date. The respondents are the Inspectors in the Income Tax Department and working as Income Tax Officer (ITO) at a pay scale of Rs.(5,500-9,000)/- and Rs.(6,500-10,500)/- with effect from 01.01.1996 respectively. After the Fifth Pay Commission was constituted, the recommendation was made for fixation of the pay scale at respective level and to grant financial benefits to each of the employees of the Government Department.

We are not oblivion of the fact that the

recommendation is not sacrosanct so as to bind the Government to accept the same and, therefore, depends upon the conscious decision of the Government to accept such recommendation in its entirety or with modification or amendment. Such recommendation does not accrue in the Government servant any enforceable right so long the same is not accepted by the Government and partakes a character of statutory document. After the recommendation is accepted by the Government either in its entirety or with modification or amendment, slew of litigations started pouring in different forums relating to the date from which it would take effect. It appears from the record that in some cases it was given effect from 01.01.1996 and in some cases it has was given effect from a date posterior thereto.

In the instant case, the effect is given on and from 21.04.2004 in terms of the Office Memorandum issued by the Ministry of Finance, Department of Expenditure, Government of India. Our attention is drawn to a Division Bench judgment of the Madras High Court passed on 03.01.2011 in WP No. 5096 of 2009 wherein the Assistant Director, Grade-II, in the office of the Director of Quality Assurance, DGS&D approached the Tribunal for fixation of their scale of pay in terms of the recommendations of the Fifth Pay Commission with effect from 01.01.1996.

It was contended before the Division Bench of the Madras High Court that similarly circumstanced persons in the other Departments of the Government of India had been granted a pay scale in commensurate

with the recommendation of the Fifth Pay Commission whereas the employees of the concerned Department have not been granted such pay scale. The approach was made to the Tribunal alleging that despite the representation having been made, there was no conscious decision taken by the appropriate authority and ultimately a direction was passed upon the Government to constitute a Special Anomaly Committee to take a decision on the grievances so raised, yet no action was taken.

In the meantime the Special Anomaly Committee referred the matter to the Sixth Pay Commission as it was constituted in the meantime and the same was taken note of by the Division Bench. The Division Bench after taking into consideration the stand of the Union of India, in the counter-affidavit filed before it that similar pay scale has been granted to some other similar posts existed in other Ministries and/or Departments on the specific recommendation of the Fifth Pay Commission, held that the petitioners are entitled to such benefit. The order of the Division Bench of the Madras High Court was carried to Supreme Court in Special Leave Petition No. 26615 of 2011 and was dismissed on 20.02.2017. The application for review was also dismissed on the ground of delay.

However, the petitioners are relying upon the decision of the Apex Court rendered in case of ***Union of India Vs. Arun Jyoti Kundu & Ors.*** reported in **(2007) 7 SCC 472** wherein the Apex Court held that the moment the Special Anomaly Committee has accepted

the demand of two sets Typist for grant of higher scale of pay, there was no justification in denying the benefits to the applicants therein who is also working as Typist in English language and in Hindi Language. The Apex Court further held that there was no provision for English and Hindi Typist and the moment the aforesaid discrepancies have been pointed out to the Anomaly Committee, a decision was taken that though they are entitled to a revised scale of pay in terms of the recommendation of the Sixth Pay Commission, the same has been made effective from a particular date which cannot be said to be discriminatory or beyond the powers of the Government in the following:-

“Once we find that it was open to the Government to extend a benefit to a set of its employees with effect from a particular day on the basis of some anomaly found in the report of the Fifth Pay Commission, there would arise no discrimination because the very implementation of the Fifth Pay Commission Report would not entitle the respondents to any benefit. The very right to their benefit arose because of the decision of the Government to extend to them a particular benefit not specified in the Fifth Pay Commission Report. It is, therefore, not possible to postulate that the decision of the Government must be given retrospective effect and if no such effect is given, the tribunal or court can interfere and direct the giving of such retrospective effect. Once it is found that paragraph 83.296 is attracted to the case, it has to be found that the applicants before the Tribunal were not entitled to any relief.”

In the present case, the effect has been given from April 21, 2004 and not from a date when the recommendation of the Fifth Pay Commission was agreed to be given effect in respect of the Government servants in various Ministries and/or Departments of the Government of India. The Tribunal proceeded on

the basis of an earlier decision taken in the case of Income Tax Gazetted Officers' Association Vs. Union of India & Ors. and disposed of the said tribunal application despite the fact that the said order of the Tribunal is yet to attain finality as the writ-petition filed before the Bombay High Court is pending.

We noticed from the aforesaid decision and the stand having been taken in all such cases, the Anomaly Committee was constituted and direction was passed upon the said Committee to take a decision. Admittedly, the Fifth Pay Commission did not take into consideration the posts held by the respondents in the Department but there was certainty of the fact that the moment the office memo dated April 21, 2004 is issued by the Department of Expenditure, Ministry of Finance, Government of India, extending the benefits under the Fifth Pay Commission, the entitlement is crystallized and fructified into a legally enforceable right.

The question, therefore, remains in the instant litigation is whether the effect can be given to such recommendation from 01.01.1996 or from a date posterior thereto. In all such cases, relied upon before us, the Special Anomaly Committee was directed to be constituted to take a conscious decision in this regard. Since it is policy decision of the Government of India and the interference under the power of judicial review is very limited in this regard, we feel that it would sub-serve the justice if the Special Anomaly Committee is constituted and a decision is taken in this regard.

The impugned order needs to be modified to the extent that the Union of India should constitute a Special Anomaly Committee to take a decision on the grievance raised by the petitioners in the representations having made in this regard and communicate such decision to the respective respondents.

We, therefore, direct that the Union of India shall constitute a Special Anomaly Committee within two months from the date of communication of this order who shall decide the representations made by the respondents annexed to the writ-petition from page 70 onwards within one month from the date of constitution of the said Committee and shall communicate the decision within a week therefrom to the respective respondents.

With these observations, the writ-petition being **WPCT 21 of 2015** is **disposed of**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

