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06.06.2023
Court No. 8
D.Hira

WP.CT 46 of 2023

Union of India
Vs.
Subir Mukhopadhyay

Mr. Sukumar Bhattacharyya,
Mr. L. Vishal Kumar.
... for the petitioner

Mr. S.K. Datta,
Mr. Barun Chatterjee.
... for the respondent

The respondent herein is the applicant before the tribunal in O.A. no. 400 of 2021. According to the respondent, he is senior to one Shri Arshad Reza. The respondent is the Income Tax Inspector. As per the rules, the Income Tax Inspectors as well as Income Tax Officers are entitled to two advance increments on passing the Departmental Examination. The respondent passed the departmental examination in the year of 2002, that is before implementation of 6th Central Pay Commission on 1.1.2006. He was granted Rs.640/- being two advance increments of Rs.320/-. The junior to the respondent Arshad Reza passed the Departmental Examination in the year 2006 after the implementation of 6th Central Pay Commission and he was granted Rs.800/- as advance increment of Rs.400/- each. Thus, the pay anomaly arisen and the respondent is drawing less salary than his junior. The respondent gave representation to rectify the said pay anomaly to the petitioner.

The petitioner relying on the CBDT circular dated 3.3.2021 did not accept the claim of the respondent for stepping up of the pay on par with his junior.

The respondent filed O.A. No. 400 of 2021 before the Central Administrative Tribunal, Calcutta Branch. Before the Tribunal the respondent relied on judgment Karnataka High Court confirming the order of Central Administrative Tribunal, Bangalore stepping up the pay and rectify the pay the anomaly for similarly placed persons.

The petitioner before the Central Administrative Tribunal relying on the CBDT Circular dated 3.3.2021 and contended that the respondent is not entitled to for stepping up the above pay.

The Tribunal applied the ratio in the High Court of Karnataka judgment dated 23.2.2021 made in Writ Petition No. 49498 of 2019 (S-CAT) (**Union of India & Anr. vs. Gautam Kumar & Ors)** wherein the High Court of Karnataka granted the relief rectifying the pay anomaly. Similarly the Tribunal relied on the judgment of **State of Orissa & Anr. vs. Mamata Mohanty** reported in **(2011) 3 SCC 436** wherein the Hon'ble Apex Court granted relief rectifying the defects ignoring the executive instructions.

In view of the judgment of Hon'ble High Court at Karnataka the Tribunal disposed of the O.A. directing the petitioners to remove the anomaly stepping up the pay of the respondent on par with his junior from the date the said anomaly arose notionally, and on actual basis from the date of giving representation with a request of removal of anomaly. Challenging the said orders, the petitioner has come up with the present writ petition.

Mr. Bhattacharyya, learned counsel for the petitioner reiterated the submissions made before the Central Administrative Tribunal and submitted that as per CBDT circular dated 3.3.2021 and also the judgment in Paragraph 14 and 17 **Union of India vs. Indian Navy Civilian Design Officers Association & Anr.** reported in **2023 LiveLaw (SC) 129**, the respondent is not entitled to stepping up of pay and Tribunal has not properly appreciated the scope of circular. The doctrine for equal pay for equal work, is not applicable to the case of the respondent and prayed for allowing the writ petitions.

Per contra, Mr. Datta, learned counsel for the respondent reiterated the submissions made before the Administrative Tribunal and submitted that the Tribunal has passed the well-considered order taking into consideration of the judgment of Hon'ble Apex Court reported in **State of Orissa & Anr. vs. Mamata Mohanty** reported in **(2011) 3 SCC 436** and High Court of Karnataka wherein similar persons were granted relief and prayed for dismissal of the writ petitions.

Heard Mr. Bhattacharyya, learned counsel for the petitioner as well as Mr. Datta, learned counsel for the respondent.

From the above materials, it is clear that the reliance of petitioners on the CBDT circular dated 3.3.2021 is not acceptable in view of the judgment of Hon'ble Apex Court reported in **State of Orissa & Anr. vs. Mamata Mohanty.**

Further similar issue of two advance increments of Rs.640/- to senior and Rs.800/- for juniors to the Income Tax Inspectors was considered by the Central Administrative Tribunal, Bangalore and order of Central Administrative Tribunal ordering stepping up of salary was confirmed by High Court at Karnataka.

The relevant portion of the High Court at Karnataka judgment reads as paragraph 6 and 7 as follows:-

> ***"6. In the present case, advance increments have been granted to all the respondents as they qualified in the departmental examination of Inspector of Income Tax while serving as Tax Assistants. The anomaly in matter of pay fixation in the present case is only because, in the year 2010, respondent Nos. 1 to 11 have passed the departmental examination. The rate of increment was less than the rate of increment which was fixed for the year 2011 and two advance increments at the rate of Rs.640/- were granted to respondent Nos. 1 to 11 who were seniors respondent No.12, whereas in case of a junior, two advance increments were granted at the rate of Rs.800/-. In the present case, respondent No.12 who is junior and admittedly, who could not qualify in the departmental examination in time and who qualified in the examination later in the year 2011, is receiving higher pay than that of his***

seniors, who qualified in the departmental examination earlier to their junior.

7. Therefore, if the arguments canvassed by the learned counsel for Union of India are accepted, it will result in awarding a person who was not able to prove his worth in the first round of examination and will also result in penalizing the seniors who qualified in the examination in the year 2010."

It is not the case of the petitioners that the order of High Court of Karnataka was challenged before the Apex Court. The judgment relied on by Mr. Bhattacharyya, learned counsel for the petitioner is not applicable to the facts of the present case.

In view of the above facts, the respondent is entitled to stepping up of pay of salary on par with his junior and there is no reason to interfere with the well-considered order of the Tribunal.

The writ petition fails and dismissed.

Certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Ms. V.M. Velumani, J.)

(Rai Chattopadhyay, J.)