

17.11.2023
Item No.10
Court No.11
Avijit Mitra

WPCT 185 of 2023

In re: An application under Article 226 of the
Constitution of India;
And

**The Medical Superintendent, ESIC Hospital and
ODC (EZ), Joka & ors.
- Versus -
Mangal Saren & ors.**

Mr. Samrat Chowdhury
...for the petitioners
Mr. Tanmoy Mukherjee,
Ms. Kankana Chakraborty,
Mr. Soumava Santra
...for the respondents

The present writ petition has been preferred
challenging an order dated 22nd June, 2023 passed by
the learned Tribunal in an original application being
OA/1304/2022.

Mr. Chowdhury, learned advocate appearing for
the respondents in the original application/petitioners
herein argues that issue as to whether the
respondents herein are identically placed with the
Laboratory Assistant/Plaster Assistants of Employees
State Insurance Corporation (in short, ESIC) is
pending consideration before the Hon'ble High Court,
Delhi and in the midst thereof, the learned Tribunal
erred in law in directing extension of the benefits of
the Grade Pay of Rs. 2,400/- to the respondents.

He further argues that in the event the order passed by the learned Tribunal is implemented, it would be an impossibility for the authorities to recover the excess amount paid to the respondents, who may attain the age of superannuation in the meantime. Such argument, as advanced, was glossed over by the learned Tribunal and no finding was returned on the said issue. Such infirmity warrants interference of this Court.

Per contra, Mr. Mukherjee, learned advocate, assisted by Ms. Chakraborty, learned advocate, appearing for the applicants/respondents herein submits that persons similarly situated with the respondents have already been granted the benefits of Grade Pay of Rs.2,400/- subject to the result of the final decision in the matter pending before the Hon'ble High Court, Delhi.

He further submits that one Uttam Sharma, similarly situated with the respondents herein, approached the learned Tribunal seeking similar benefits and on the basis of the order passed in the said original application, benefits have been extended by an order dated 20th July, 2018 with a rider that such extension would be subject to the outcome of the W.P. No.9512 (W) of 2009 pending before the Hon'ble High Court, Delhi and upon receipt of undertaking regarding refund of payments. Taking into

consideration the said order, the order impugned in the present writ petition, has been passed and there is no infirmity in the same. Let a copy of the order dated 20th July, 2018, as produced, be kept on record.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Indisputably, the respondents herein are similarly situated with other employees, who have already been extended the benefits, as sought for by the respondents in the original application subject to the result of the writ petition pending before the Hon'ble Delhi High Court and upon receipt of undertaking regarding refund of payments.

In the said conspectus, we do not find any infirmity in the order impugned in the present writ petition. Upon considering the factual issues, the learned Tribunal arrived at specific findings and the order does not suffer from any patent error of law warranting interference of this Court in the present writ petition.

Accordingly, the writ petition is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(V. M. Velumani, J.) (Tapabrata Chakraborty, J.)