06
22.08.2024
Ct. No. 11
Jayanta

WP.CT 166 of 2014

Biswa Nath Seth
vs
Union of India & Ors.

Mr. Kajal Ray
Mr. Suman Nandi
....For the Petitioner.
Ms. Susmita Saha Dutta

..... For the UoI/Respondents.

The present writ petition has been preferred challenging an order dated 30th April, 2014 passed by the learned Tribunal in the original application (in short, OA), being OA 105 of 2013. By the said order, the learned Tribunal refused to direct the respondents to grant the benefits of Biennial Cadre Review (in short, BCR) scheme to the petitioner with effect from date of his completion of 26 years of continuous service. The said order was passed placing reliance upon a clarificatory memo of the Rajasthan Circle dated 6th May 2013 cited by the respondents.

Mr. Ray, learned advocate appearing for the petitioner submits that the learned Tribunal erroneously applied the clarification contained in the memo dated 6th May, 2013 and refused the petitioner's prayer with an observation that if aggrieved by the said memo dated 6th May, 2013, the petitioner would be free to challenge the same by preferring a fresh original application.

He argues that the issue pertaining to grant of BCR scheme benefit upon completion of 26 years of service is no longer *res integra* and the same has already been decided by Division Bench of the Hon'ble High Court at Madras in the case of the *Union of India. –vs.– V. Pitchaipillai* in *W.P.No. 4934 of 2017 and W.M.P. No. 5165 of 2017* wherein it was observed *inter alia* as follows:

> *'However, in view of the fact that the accrued benefit under the erstwhile scheme cannot be snatched away by bringing a subsequent scheme with retrospective effect, similar cases were decided in favour of the employees for grant of benefits available under erstwhile scheme.'*

According to Mr. Ray for withdrawal of the BCR scheme on and from 31st August, 2008, the petitioner could not have been denied the benefit as he became entitled to such benefit upon completion of 26 years of service prior thereto on 2nd July, 2008. Such argument as advanced was glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

Answering our query Mr. Ray submits that the petitioner has already retired on 28th February, 2013 and he neither got Modified Career Advancement Scheme (in short, MACP) benefit nor the BCR scheme benefit upon completion of 26 years of continuous service.

Ms. Saha Dutta, learned advocate appearing for the Union of India and its functionaries being the respondents herein denies and disputes and contention of the petitioner and drawing our attention to the provisions of the BCR scheme contained in the memo dated 11th October, 1991, she submits that mere completion of 26 years of service cannot automatically entitle the petitioner to the benefits claimed. Such rendition of service must be satisfactory and the benefits can be granted subject to review of such service rendered.

She argues that the scheme mandates that although the eligibility occurs in between 01.01.94 to 01.07.94, the date of BCR grant would be 01.07.94 and not prior to that and for cases maturing between 02.07.94 to 31.12.94, the date of BCR would be from the 1st January of the next year. The petitioner's BCR was thus due on 01.01.2009 but by that time the BCR scheme stood withdrawn. In view thereof, the learned Tribunal rightly refused to exercise discretion in favour of the petitioner and the order does not suffer from any infirmity warranting interference of this Court.

Drawing our attention to the averments made in the affidavit-in-opposition, she argues that the petitioner got three promotions/upgradations and that as such he was also not entitled to any further upgradation under MACP Scheme.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Records reveal that the petitioner completed 26 years of continuous service on 2nd July, 2008. As per the BCR scheme, the eligibility accrues upon completion of such 26 years of satisfactory service. However, the scheme itself was withdrawn with effect from 31st August, 2008.

Clause ix of the memo dated 11th October, 1991 pertaining to Biennial Cadre Reviews provides *inter alia* that for cases maturing between 02.07.94 to 31.12.94, the date of BCR would be from the 1st January of the next year. The said clause needs to be considered in the back drop of the object of the BCR Scheme.

It is well-settled that either giving any restrictive meaning or reading of a clause in isolation would hamper and frustrate the meaningful definition of clause itself. The conditions, as incorporated in the scheme, need to be considered together and not in isolation. A particular clause cannot be taken up and highlighted. A beneficent scheme would be thrown out of gear in the event, a restrictive meaning is applied and benefits are not extended to petitioner, who did complete 26 years of satisfactory service before the scheme was withdrawn. For the laches on the part of the respondents to conduct review within time, the petitioner cannot be made to suffer and it would be iniquitous to deny the benefits to him since upon completion of 26 years in terms of the scheme he became entitled. Service jurisprudence evolved by this Court from time-to-time postulates that all persons similarly situated should be treated similarly and we do not find any reason to differ with the judgment delivered in the case of *V. Pitchaipillai (Supra).*

For the reasons discussed above, the order dated 30th April, 2014 passed in OA 105 of 2013 is set aside and the respondents are directed to grant the benefits of BCR scheme to the petitioner with effect from 2nd July, 2008 together with all consequential benefits.

The respondents upon granting such BCR benefits shall refix the petitioner's pay and disburse the arrears of pay calculated till the date of his retirement upon adjustment of the salary already paid to the petitioner, within a period of six weeks from the date of communication of this order and revise the pension payment order upon such refixation of pay and disburse the pension at the enhanced rate with effect from the month of October, 2024.

With these observations and directions, the present writ petition is, thus, disposed of.

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

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee,J.) **(Tapabrata Chakraborty,J.)**