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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 24.04.2024***

+ W.P.(C) 6113/2019 & CM APPL. 26333/2019 -Stay
UNION OF INDIA & ANR Petitioner
Through: Mr. Tanveer Ahmed Ansari, SPC.

versus

BALWANT SINGH Respondent
Through: Mr. Om Prakash Bhatia, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 12.12.2018 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. No. 1038/2016. The petitioner also seeks to assail the order dated 30.01.2019, vide which its review petition was rejected by the Tribunal.

2. The facts of the present matter lie in a narrow compass and may be noted at the outset. On 24.04.1972, the respondent joined the services of the 'Indian Council of World Affairs', as a temporary peon. At the time of his joining service, the aforesaid council was a society registered under the Societies Registration Act, 1860. On 03.09.2001, the society was, pursuant to enactment of the Indian Council of World Affairs Act, 2001 (hereinafter referred to as "the Act"), set up as a body corporate. Consequently, all its



existing employees, along with the assets and debts of the society, became a part of this statutory autonomous organization. Vide Section 5(1)(e) of the Act it was specifically provided that all the existing service conditions of the employees of the society, unless specifically altered, would remain the same upon their becoming employees of the autonomous organization. Consequently, the pay and other service conditions of the respondent continued to be protected till he superannuated on 30.06.2012.

3. Two years after the respondent superannuated, the petitioners, on 16.09.2014, issued the 'Indian Council of World Affairs, Director General, Other Officers and Employees (Conditions of Service) Regulations, 2014', whereunder, a provision for grant of leave encashment on retirement was introduced for the first time. As per this provision, employees of the petitioner organization became entitled to encashment of earned leave on retirement as admissible to central government employees under the Central Civil Services (leave) Rules, 1972. By way of Regulation 28(2), a specific provision was made in these Regulations clearly providing that no former employee of the Council who had retired or resigned prior to the publication of these Regulations would be entitled to any post retirement benefits under the said Regulations.

4. As the respondent, who had superannuated much prior to the issuance of these Regulations, was not granted any leave encashment under these regulations, he submitted repeated representations to the petitioner. Upon the said representations being rejected on 12.05.2015, the respondent approached the learned Tribunal by way of an O.A., which has been allowed vide the impugned order. At this stage itself, it may be noted that four similar O.A.s filed by identically placed employees, who like the respondent



had superannuated before 28.09.2014, were around the same time rejected by Co-ordinate Benches of the learned Tribunal.

5. Being aggrieved, the petitioners, who were respondents before the learned Tribunal, have approached this Court. In support of the petition, learned counsel for the petitioner submits that the impugned order is wholly perverse as the learned Tribunal has failed to appreciate the plain language of Regulation 28(2), which clearly states that employees who were no longer in service, would not be entitled to benefits under the said Regulations. As a consequence of Section 5(1)(e), the respondent was entitled to protection of his service conditions prevailing at the time of promulgation of the Act on 03.09.2001. The learned Tribunal has, however, misread the provisions of Section 5(1)(e) of the Act and has come to an erroneous conclusion that the respondent would be entitled to receive even those benefits to which employees may be entitled to in the future. Furthermore, the decisions of the Coordinate Benches of the learned Tribunal rejecting similar claims of four other employees have already attained finality and, therefore, the respondent was well aware that he was not entitled to raise any claim for leave encashment.

6. On the other hand, Mr. Om Prakash Bhatia, learned counsel for the respondent supports the impugned order and submits that the learned Tribunal was justified in allowing the O.A. by directing the petitioners to grant the respondent benefits of leave encashment for the earned leave which had already accumulated to him at the time of his retirement. His plea being that once the petitioner had, in 2001, undertaken to protect the service conditions of all the employees of the erstwhile society, benefits of leave encashment as being granted to other employees, ought to be extended to



superannuated employees as well. He, therefore, prays that the writ petition be dismissed.

7. In order to appreciate the aforesaid rival submissions of the learned counsel for the parties, we may begin by noting the following extracts of the impugned order:

“3. The relevant facts of the case are that the applicant was employed in the "existing Council" of Indian Council of World Affairs" being employed in the said Council from 24.04.1972. The "existing Council" was replaced by the present "Council" i.e. Indian Council of World Affairs which is incorporated under Section 4 of the Indian Council of World Affairs Act, 2001. He was taken over by the "Council" which is formed after the commencement of the 2001 Act. Being continued to work after 2001 up to 30.06.2012 and on which day he retired. Under Section 5(l)(e) of the 2001 Act, 'an employee who was holding an office under the "existing Council" immediately before the commencement of 2001 Act is entitled to continue to enjoy the same right and privileges as to pension, gratuity and' other service matters in the new Council formed under the 2001 Act. Section 5 (1) (e) of the Act is extracted below:-

"5(1) (a) to (d)

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5 (l)(e) every employee holding any office under the existing Council immediately before that day, shall on that day, hold his office or service under the Council with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting; and shall continue to do so unless and until his employment under the Council is duly terminated or until his remuneration and other conditions of service are duly altered by the Council."

Under Section 26 of the 2001 Act, the Council Is empowered to



make regularizations. But the said regulation shall have to be consistent with the provisions of the Act. The said Section is extracted below:-

"26.(1) The Council may make regulations consistent with the provisions of this Act and the rules to carry out the provisions of this Act."

4. The counsel for the respondents vehemently contended that in view of regulation 28(2), the applicant having retired before the regulation came into effect on 16.09.2014, he is not entitled for leave encashment. In support of his contention, the counsel for respondents produced an order passed by this Tribunal in the case of Shri Kewal Kumar Vs. UOI and Ors (OA no. 1039/2016). I have perused the order dated 15.10.2018 passed in the said case of Shri Kewal Kumar (supra). Unfortunately Section 5 (l)(e) read with Section 26(1) which has been elaborated above has not been considered nor discussed nor taken into account in the said case of Kewal Kumar (supra). As such the said order dated 15.10.2018 is cannot be relied upon. .

5. In view of the facts and circumstances and analysis made above. The applicant is entitled to leave encashment as prayed for.

6. Accordingly OA is allowed. The respondents are directed to make payment of Rs. 1,45,092/- to the applicant towards earned leave encashment with interest at GPF rate from 27.10.2014 i.e. the date on which the applicant submitted application for grant of leave encashment to the respondents, until actual payment is made. Respondents are directed to pay the amount within two months from the date of receipt copy of this order."

8. From a perusal of the aforesaid extract of the impugned order, it is evident that the learned Tribunal despite noting the provisions of Regulation 28(2), which clearly barred the grant of any benefits under the said Regulations to those employees who already stood superannuated when the Regulations were issued, the learned Tribunal has proceeded to allow the



claim of the respondent accruing under the Regulations. For granting this relief, the learned Tribunal has relied on Section 5(1)(e) of the Act, which, in our considered view, was meant only to protect the pay and other service conditions of the employees as existing on 03.09.2001. The same could not, by any stretch of imagination, be read to imply that these employees would automatically be entitled to receive benefits of the service conditions, which are introduced after their superannuation. We are therefore unable to appreciate as to how the provisions of Section 5(1)(e) of the Act would come to the aid of the respondent.

9. We also find that though the decisions of the Coordinate Benches rejecting similar claims of identically placed employees were brought to the notice of the learned Tribunal, the same were simply brushed aside on the erroneous premise that Section 5(1)(e) of the Act protected all future service conditions as well. The learned Tribunal has failed to appreciate that it is always open to an employer to provide that any new benefit being introduced for its existing employees would not be extended to the superannuated employees. In the present case, once Regulation 28(2) specifically provided that the benefits under the Regulations would not be extended to superannuated employees, the respondent was clearly not entitled to claim any benefit of leave encashment which was for the first time introduced vide these Regulations.

10. In the light of the aforesaid, we are of the view that the impugned order is wholly unsustainable. The writ petition, along with the pending applications, is accordingly allowed by setting aside the impugned order and



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dismissing the O.A. filed by the respondent.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

APRIL 24, 2024

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