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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7712/2024 & CM APPL. 32057/2024

UNION OF INDIA & ORS. .....Petitioners

Through: Mr. Piyush Beriwal, Adv.

versus

P.S. GOSAIN .....Respondent

Through: Mr. Padma Kumar S, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

O R D E R (ORAL)

% **07.10.2024**

W.P.(C) 7712/2024 & CM APPL. 32057/2024 (stay)

1. We are constrained to observe that this litigation is completely frivolous.

2. Shortly stated, having lost a litigation against one R. Sridharan and 24 other officers[1] before the Madras Bench of the learned Central Administrative Tribunal[2], the High Court of Madras and the Supreme Court, *and* after having implemented the judgment of the Tribunal, *and* after having acknowledged before the learned Tribunal in the present case that the present respondents are identically situated *vis-a-vis* Sridharan etc., the UOI[3] is effectively seeking to re-argue before

[1] "Sridharan etc.", hereinafter
[2] "the learned Tribunal" hereinafter
[3] Union of India

this Court that Sridharan's case was wrongly decided.

3. To our mind, this is not only impermissible, but objectionable. The petitioner cannot keep flogging a dead horse, hoping that it will come back to life.

4. The respondents are Group-A and Group-B Officers in the Office of the Controller General of Defence Accounts. They were promoted as Section Officers (Accounts) on or after 1986, consequent on passing the Subordinate Accounts Service Part-II Examination[4] in the said year.

5. One L. Narahari[5], who had also passed the SAS-II Examination in the year 1986, was promoted as Section Officer (Accounts) on 19 March 1990. He was further promoted as Assistant Account Officer[6] along with the respondents on 3 July 1995. On promotion, however, the pay of Narahari as AAO was fixed above the respondents, as well as other AAOs.

6. Certain AAOs, who were aggrieved by their pay having been fixed below the pay of Narahari, approached the Bangalore Bench of the learned Tribunal by way of OA 670/1999, OA 831/1999 and OA 832/1999, of which the lead case was ***N. S. Shivakumar v UOI***. The said OA was allowed by judgment dated 10 November 2000.

7. We need not concern ourselves to any considerable degree with

[4] "the SAS-II Examination" hereinafter
[5] "Narahari" hereinafter
[6] "AAO" hereinafter

the decision in ***N S Shivakumar***, as another set of AAOs, headed by one R. Sridharan, filed OA 260/2002 before the Madras Bench of the learned Tribunal, also seeking that their pay as AAO be stepped up to be at par with the pay granted to Narahari. *Vide* judgment dated 13 November 2002, the learned Tribunal allowed OA 260/2002. That judgment was challenged before the High Court of Madras by the UOI by way of WP 20774/2003. The Madras High Court dismissed the writ petition. The order of the Madras High Court was further carried in appeal to the Supreme Court by way of SLP (C) 14167/2009, which was also dismissed by the Supreme Court on 1 October 2009.

8. What is more, the Department of Expenditure, Ministry of Finance implemented the judgment of the learned Tribunal in R. Sridharan's case by order dated 12 February 2010, but stated that they were restricting the implementation to the applicants in OA 260/2002, i.e., R. Sridharan and his colleagues.

9. The present respondents, in their OA before the learned Tribunal, claimed that they, and Sridharan etc., were identically placed. As such, the respondents also sought that their pay as AAO be stepped up to be at par with Narahari, Sridharan and other AAOs who had obtained the benefit of the judgments of the Bangalore and the Madras Benches of the learned Tribunal.

10. *In the counter affidavit filed before the learned Tribunal, the petitioners admitted that the present respondents were identically situated as Sridharan*, but nonetheless sought to contend that they could not be extended the benefit of the judgment in Sridharan's case. They sought to submit that the Department of the Expenditure had also not accorded approval to grant, to the respondents, the benefit of stepping up of their pay to be at par with the pay of Narahari.

11. The learned Tribunal, in the impugned judgment, has relied on the judgment of the Supreme Court in ***Amrit Lal Berry v Collector of Central Excise***[7], for the proposition that the benefit of a judgment passed by the Court has *ipso facto* to be extended to all persons similarly situated, even if they have themselves not approached the Court. The learned Tribunal has held that, in view of the admitted position that the respondents were placed identically to Sridharan etc., who had succeeded before the learned Tribunal and thereafter before the High Court of Madras and the Supreme Court, there was no occasion to re-invent the wheel, and that the respondents were *ipso facto* entitled to stepping up of their pay at par with Narahari, as was granted to Sridharan etc. Resultantly, the learned Tribunal disposed of the OA with the following directions:

> "16. Under the circumstances, this OA is disposed of with a direction to the respondents that they should consider the case of the applicants before us and if they are found identically placed, as the applicants who were given the benefit through the Court's order in OA 260/2002 (*supra*) then the same should be granted to them. This exercise shall be completed within two months from the date of receipt of a certified copy of this order. No order as to costs."

12. Challenging this decision, the UOI has petitioned this Court.

[7] **(1975) 4 SCC 714**

13. We have heard Mr. Piyush Beriwal at length.

14. Mr. Beriwal's contention, relying on the judgment of the Supreme Court in ***UOI v R. Swaminathan***[8], is that Sridharan etc. were actually not entitled to have their pay stepped up at par with that of Narahari. He submits that, if R. Sridharan and the other applicants in OA 260/2022 were drawing a pay which was lower than that which was being drawn by Narahari, that was only because Narahari was recipient of certain special allowances, which resulted in the overall pay being drawn by Narahari being higher than the pay drawn by R. Sridharan etc. He has sought to submit that stepping up of pay can be granted only in circumstances envisaged by FR-22(1)(a)(1)[9] of the Fundamental Rules. One of the conditions which is required to be satisfied for stepping up of pay to be allowed is that the discrepancy in pay has to be attributable solely to FR-22. In the present case, he submits that, as the difference in pay between Narahari and Sridharan etc. was not solely on account of FR-22, but because of the additional special allowances which were being drawn by Narahari on account of various factors, the discrepancy was not solely relatable to FR-22 and,

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[8] **(1997) 7 SCC 690**

[9] earlier, FR 22-C, which reads:

> "**F.R. 22 (I)** The initial pay of a government servant who is appointed to a post on a time scale of pay is regulated as follows:
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> > **(a)(1)** Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale shall be fixed by giving one increment in the level from which the Government servant is promoted and he or she shall be placed at a cell equal to the figure so arrived at in the level of the post to which promoted or appointed and if no such cell is available in the level to which promoted or appointed, he shall be placed at the next higher cell in that level."

therefore, Sridharan etc. were not entitled to stepping up of their pay at par with Narahari. Ergo, he submits, by extrapolation, the present respondents would also not be entitled to stepping up of their pay with Sridharan or with Narahari.

15. Effectively, therefore, Mr. Beriwal is seeking to re-argue R. Sridharan's case before this Bench. The corollary of his submissions is that Sridharan and the other applicants in OA 260/2002 were not entitled to stepping up of their pay as the discrepancy of their pay *vis-à-vis* Narahari was not solely attributable to FR-22(1)(a)(1).

16. It defeats comprehension as to how the petitioner can even seek to so urge, after having lost the battle with R. Sridharan in the Tribunal, thereafter in the High Court and thereafter in the Supreme Court. If the UOI is going to be permitted to re-argue matters which they have lost before the Supreme Court all over again in cases involving persons who are admittedly identically situated, it would result in endless litigation, and no legal rights would ever be crystallised. It is clearly not open to the UOI, having lost in OA 260/2002 and thereafter before the High Court of Madras in WP 20774/2003 and the Supreme Court in SLP (C) 14167/2009, to again seek to urge before this Court, that the discrepancy in the pay scales of Sridharan and Narahari was not solely attributable to FR-22(1)(a)(1) and that, therefore, Sridharan was not entitled to stepping up of pay with Narahari.

17. For better or for worse, R. Sridharan's judgment is here to stay.

18. In view of the admitted fact that the present respondents are situated identically to the applicants in R. Sridharan, there can be no question of according them differential treatment. Indeed, if one were to accept Mr. Beriwal's submissions, it would result in an anomalous situation in which the applicants in R. Sridharan's case would enjoy a higher pay scale, and the respondents in the present case, admittedly identically situated, would be drawing a lower pay scale. This is clearly impermissible in law.

19. Inasmuch as the learned Tribunal has only chosen to follow the earlier decision in ***R. Sridharan***, and as it was candidly acknowledged by the petitioner before the learned Tribunal that the present respondents and Sridharan etc. were identically situated, no case for interference with the judgment of the learned Tribunal can be said to exist.

20. We also note that, on 19 July 2024, the respondents who appeared in person had placed reliance on a judgment of this Court in WP (C) 3435-3436/2013. In that case, keeping in mind the delay that had been occasioned in approaching the Court, this Court, while otherwise upholding the decision of the learned Tribunal, directed that the respondents would be entitled to stepping up of pay on notional basis from the date persons junior to them started receiving higher scale with actual payment from one year preceding to the filing of original applications by them before the learned Tribunal.

21. Mr. Padma Kumar, learned Counsel for the respondent, on instructions, submits that his client would also be willing for identical relief.

22. Accordingly, it is clarified that the respondent would be entitled to notional stepping up of pay from the date when R. Sridharan and his colleagues were granted higher pay as per the order dated 12 February 2010 issued by the petitioner, with actual benefits from one year prior to the institution of the OAs before the learned Tribunal.

23. Let the requisite amount be paid to the respondents within four weeks from today.

24. Subject to the above caveat, the petition is dismissed, with no orders as to costs.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 7, 2024
j/ar

Click here to check corrigendum, if any