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Court : Central Administrative Tribunal CAT Madras

Decided On : Jul-26-1999

Judge : K B Vice, B a S.

Appellant : T.K. Ramamurthy and ors.

Respondent : Union of India (Uoi) and ors.

Judgement :

1. In all these cases, a common point of law has arisen for consideration. As such, they have taken up together for disposal.
2. The official respondents have issued a General Circular on 13.2.1998 to all Heads of Telecom Circles/Metro Districts and to all other Administrative Units about the Judgment of the Supreme Court in Union of India and Anr. v. R. Swaminathan and Ors. reversing the view taken by the various Tribunals with regard to the stepping up of pay.
3. The applicant in O.A. 1012 of 1998 was the applicant in O.A. 926 of 1993 and batch before a Bench of this Tribunal in Bombay. The applicant in O.A. 64 of 1999 was the applicant in O.A. 928 of 1993 and batch before a Bench of this Tribunal in Bombay and the applicant in O.A. 366 of 1998 was the applicant in O.A. 1746 of 1993 before a Bench of this Tribunal. Both the applications filed against the orders of the Bombay Bench i.e. S.L.P. were dismissed by the Supreme Court for delay. With regard to O.A. 366 of 1998, no S.L.P. was filed by the official respondents against the orders passed in O.A. 1746 of 1993. So the orders passed either by

the Bombay Bench or by the Madras Bench had become final.

4. The argument of the learned counsel for the applicants is when the orders passed by this Tribunal in so far as the applicants are concerned have become final, it is not open to the respondents to follow the circular mentioned supra and make orders of recovery.

According to the learned counsel for the applicants, so far as the orders have become final, the orders passed by the Supreme Court in *Union of India and Anr. v. R. Swaminathan and Ors.*, 1997 SCC (L and S) 1852, cannot be applied to the applicants.

5. In our view, the Supreme Court's judgment only considered the Tribunal's orders against which appeals were filed and passed a judgment which has been reported in the case cited supra. So far as the applicants before us, it cannot be said that the subsequent judgment of the Supreme Court can be used to set aside the orders passed which have become final.

6. The learned Sr. Standing counsel, Mr. K. Kulandaivelu argued that unless and until the Supreme Court decides the case on merits, mere disposal of the SLP cannot be taken into account as the Supreme Court has considered the case not on merits. That apart, when the law is laid down by the Supreme Court, it is binding on the Tribunal under Article 141 of the Constitution. As such, the learned Sr. Standing Counsel's argument seems to be that even though the official respondents have slept over the matter still the old judgments can be tinkered by the subsequent judgment of the Supreme Court. The learned Sr. Standing Counsel also referred to the last paragraph of the judgment in *R. Swaminathan's* case.

7. We have considered carefully the various points raised by the learned Sr. Standing counsel for the respondents. We are unable to accept the point that subsequent judgment of the Supreme Court will apply retrospectively to the case which were become final either by not taken as SLP or taking up as SLP and got dismissed in limine on the ground of delay. It is true that the judgment of the Supreme Court is binding on the Tribunal under Article 141 of the Constitution of

India.

But on that facts and circumstances of this case it cannot be said that cases decided long before the judgment of the Supreme Court and which had been given a *quietus* can be reopened now and proceedings can start in those cases. To our understanding, the last paragraph in R.Swaminathan's case clearly shows that all the orders of the Tribunals which are the subject matter of the appeal are set aside, because that judgment which covers the orders of the various Tribunals and the Supreme Court rendered a consolidated view and as such the Supreme Court observed as follows in the last paragraph: "14. The appeals are, therefore, allowed and the impugned orders of different Benches of the Central Administrative Tribunal which have held to the contrary are set aside. There will, however, be no order as to costs."Madan Mohan Pathak and Anr. v. Union of India and Ors. (LIC case), 1978 (2) SCC 50, that whenever a writ of mandamus is issued and the order has become final so far as the applicants are concerned it cannot be said that the decision can be reversed by a subsequent judgment of the Supreme Court, The Supreme Court has taken a view in the case of Vallapally Plantations Pvt. Ltd. v. State of Kerala, AIR 1999 SC 1796, that it is well settled that even order which may not be strictly legal become final and are binding between the parties if they are not challenged before the Superior Courts. In our view, the Supreme Court in Swaminathans case might have indicated that the judgment will apply even retrospectively. That has not been done. As such, we do not think, the argument of the learned Sr. Standing Counsel can be accepted.

8. As such when the orders of this Tribunal have become final so far as these applicants are concerned, the Government cannot refix the salary of the applicants since the orders are in their favour and the issue cannot be re-opened now because of R. Swaminathan's case. On this simple ground, the impugned orders in these applications are set aside.

Accordingly, the O.As are allowed. No costs.

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