

Union of India (Uoi) and ors. Vs. Kesho Ram and ors.

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Court : Delhi

Decided On : Apr-13-2005

Reported in : 119(2005)DLT511

Judge : Mukundakam Sharma and; Rekha Sharma, JJ.

Acts : Civil Services Regulations

Appeal No. : WP(C) 5195, 5196 and 5197/2005

Appellant : Union of India (Uoi) and ors.

Respondent : Kesho Ram and ors.

Advocate for Def. : Deepak Verma, Adv.

Advocate for Pet/Ap. : R.V. Sinha, Adv

Disposition : Petition dismissed

Judgement :

Mukundakam Sharma, J.

1. This writ petition is directed against the impugned judgment and order dated 15th October, 2001 which is passed by the learned Central Administrative Tribunal whereby the learned Tribunal has held that the subsequent office order issued by the appellant herein could only supplement the Assured Career Promotion

Scheme (In short, ACP Scheme) but could not supplant the same.

2. Being aggrieved by the aforesaid observations and the findings recorded by the Tribunal, the present petition is filed on which we have heard the learned counsel appearing for the parties.

3. The Assured Career Scheme (for short the 'ACP') was introduced by the appellant pursuant to which the respondent herein would receive certain benefits. Subsequently, however, the appellant issued an administrative circular stating inter alia that the contents thereof are by way of clarification to the provisions of the Scheme. It was also stated while issuing the said clarificatory memorandum that it is the provisions of the memorandum which would prevail. therefore, the intention in issuing the aforesaid clarificatory circular was not for supplementing the Scheme, but supplant the provisions of the Scheme. It is needless to say that the scheme itself could be amended or superseded by introducing a new Scheme and power for doing the same is vested on the appellant. However, instead of resorting to the said power by superseding or amending the circular, the respondent proceeded to issue a circular by way of clarification but having the effect of supplanting the Scheme. The same is held to be not permissible by the ratio of the decision of the Supreme Court in the case of Director General of Posts and Ors. v. B. Ravindran and Anr. reported in : (1997)1SCC641 . In para 16 of the said judgment, it was held that the subsequent orders issued in 1978 and 1983 were supplementary in nature and did have a binding force. It was held that under those circumstances, the Government could not have, under the guise of a clarificatory order, taken away the right which had accrued to such re-employed pensioners with retrospective effect.

4. We propose to extract the said relevant observations of the Supreme Court for ready reference :-

'The subsequent orders issued in 1978 and 1983 were supplementary in nature and did have a binding force. Under these circumstances, the Government could not have, under the guise of a clarificatory order, taken away the right which had accrued to such re-employed pensioners with retrospective effect by declaring that while considering hardship the last pay drawn at the time of retirement was to be

compared with the initial pay plus pension whether ignorable or not. The 1985 clarificatory instructions were not only inconsistent with the relevant provisions of the Civil Services Regulations and the 1978 and 1983 orders but its effect was to supersede the said provision and the orders. The Tribunal was, therefore, right in holding the said instructions insofar as they directed to take into consideration the ignorable part of the pension also while considering hardship invalid and without any authority of law.....'

5. The position of the present case is similar to the one which was decided in the said case by the Supreme Court. We, therefore, are of the considered view that the aforesaid circular which was subsequently issued by the appellant by way of clarification could have only supplement the provisions of the Scheme and could not have supplant the provisions of the Scheme. Since the said circular was intended to supplant, then supplement, the view taken by the learned Tribunal is legal and valid. The aforesaid view that we had taken was also the view which was taken by another Division Bench of this Court in the case of Union of India through Director General v. Shri Bhagwati prasad in Writ Petition (Civil) NO. 297/2005. While disposing of the writ petition, the Division Bench held in the following manner:-

'We have perused the order passed by the Central Administrative Tribunal. Learned counsel for the petitioner has contended that in view of the subsequent office order, the Assured Career Scheme could not have been implemented. We are in agreement with the findings of the C.A.T. That when the Assured Career Scheme is clear and unambiguous, any clarification of office order cannot supplant the same. If the petitioner does not want to implement the Assured Career Scheme in letter and spirit, then remedy with them lies in amending the Scheme and not whittling down the Scheme on the ground of exigency of administrative difficulties. We find no merit in the petition Dismissed.'

6. In view of the aforesaid position, we find no infirmity in the judgment and order passed by the learned Tribunal. We find no merit in this petition. The petition is dismissed.

