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Court : Delhi

Decided On : Aug-04-2004

Reported in : 113(2004)DLT232

Judge : Mukundakam Sharma and; Gita Mittal, JJ.

Appeal No. : W.P. (C) 5046/2002

Appellant : Munna Ram and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Gaurav Sharma, Proxy Counsel for ; Kailash Gambhir, Adv. in W.P. (C) 5046/2002, ;

Advocate for Pet/Ap. : S.N. Pandey, Adv

Judgement :

Mukundakam Sharma, J.

1. CM No.5022/2004 (for restoration of W.P.(C) 5046/2002

2. Heard the learned counsel appearing for the parties.

3. CWP 5046/2002 was dismissed for non-prosecution as the counsel for the petitioner was not present on 21st April, 2004. Now, an application is filed praying for restoration of the writ petition by recalling the order dated 21st April, 2004. For

the reasons stated in the application, the application stands allowed. The order dated 21st April, 2004 is recalled and the writ petition is restored to its original number. Application stands disposed of in terms of the aforesaid order.

4. Interim order stands revived.

5. W.P.(C) Nos. 5046/2002, 1190/2002,4424/2002 & 4652/2002:

All these writ petitions involve similar question of fact and law and, therefore, all these writ petitions are being disposed of by this common judgment and order.

6. These writ petitions are filed challenging the legality and validity of the impugned office order dated 27th December, 2001 passed by the respondents. By the aforesaid order, the respondents sought to withdraw the benefit that was being given to the petitioners in respect of their pay and allowances as also their designation. It was also proposed in the said order that excess payments made to the petitioners are required to be recovered from their pay and allowances in suitable Installments. The aforesaid order is being challenged in this writ petition on various grounds including the ground that the impugned order was passed by the respondents in violation of the principle of natural justice. We have considered all the issues that are raised in these writ petitions.

7. The petitioners were being given the pay-scale of Rs.4000-Rs.6000 and designation of Assistant Sub-Inspectors (A.S.Is.), which carries the pay scale of Rs.4000-Rs.6000. However, subsequently the respondents decided that the aforesaid pay-scale cannot be granted to the petitioners and they should be absorbed in the pay-scale of Rs.3200-Rs.4900 with retrospective effect as no such post of Assistant Sub-Inspector carrying the pay-scale of Rs.4000-Rs.6000 exists with the respondents. We are of the considered opinion that re-designation of the petitioners and adjusting them in the pay-scale of Rs.4000-Rs.6000 after re-designating them as Assistant Sub-Inspectors, created vested right in favor of the petitioners and if such vested right is sought to be taken away from the petitioners, the same can be done after following the rules of principles of natural justice. The petitioners were entitled to a show cause notice whereupon the petitioners could have represented and shown to the respondents that the adjustment of the

petitioners in the pay-scale of Rs.4000-Rs.6000 and re-designating them as Assistant Sub-Inspectors, was legal and valid. They have admittedly been deprived of such right without giving them an opportunity of hearing. Their vested rights are being sought to be taken away vide the impugned order dated 27th December, 2001.

8. A similar question came up for consideration before the Madhya Pradesh High Court, Jabalpur Bench at Gwalior in the case of JAGDISH SINGH VS. UNION OF INDIA & OTHERS in W.P.No.2102/2001 disposed of on 14th November, 2002. As in the said case, the respondents had issued an order dated 3.12.2001 against the petitioner, directing redesignation of post and recovery of pay ordered, after considering the rival contentions the Madhya Pradesh High Court held that the action of the respondents in pursuance of the order dated 3rd December, 2001 ordering for reduction of the pay-scales of the petitioners and directing for recovery thereof cannot be sustained and that the said order was in violation of the principles of natural justice.

9. In our considered opinion, the ratio of the aforesaid decision is squarely applicable to the facts of the present case. In our considered opinion, taking a unilateral decision on a subject as the present one whereby the vested right of the petitioners is being affected is not permissible without following the principles of natural justice and without affording an opportunity to represent and being heard to the petitioners. The said action cannot be sustained. We are not going into the other contentions raised by the parties, for the present. Liberty is given to the parties to urge the same and seek adjudication of those pleas in the future in any appropriate proceeding, if the need arises. The impugned order dated 27th December, 2001 is set aside and quashed for the aforesaid reasons. The order passed by the respondents in the case of the petitioners directing reduction of their pay-scales and recovery from their salary, is set aside and the petitioners shall be permitted to work as Assistant Sub-Inspectors till an order is passed by the respondents in accordance with law. Such order, when passed can also be challenged by the petitioners on all available grounds, if so advised, in accordance with law.

10. The respondents are granted liberty to take action in the matter in accordance with law after giving due opportunity to the petitioners of making a representation and showing cause by the petitioners. It shall be open to the respondents to consider such representations and pass appropriate orders in accordance with law. Parties are left to bear their own costs.

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