

Director General, ESI Corporation, New Delhi and Another

Vs

M. P. John and Others

Civil Appeals Nos. 6872-6875 of 1994 with Nos. 7622-7623 of 1994 and 6890 of 1994

(Sujata V. Manohar, G. B. Pattanaik JJ)

01.12.1998

ORDER

1. Learned counsel for the appellants states that in view of the decision of this Court in Union of India v. G. Vasudevan Pillay ((1995) 2 SCC 32 : 1995 SCC (L&S) 396 : (1995) 29 ATC 180 : JT (1995) 1 SC 417) they are not pressing these appeals. The appeals are dismissed as not pressed.

Civil Appeal No. 6890 of 1994

2. Respondent 1 who was an ex-serviceman was re-employed by the appellant-Corporation as a Lower Division Clerk. His pay was fixed at the minimum of the pay scale and he was also entitled to his full pension as an ex-serviceman. The government order of 8-2-1983, inter alia, provides that in the case of ex-servicemen who retire before attaining the age of 55 years and are re-employed (in the case of personnel below the rank of a commissioned officer) the entire pension may be ignored in fixing the pay on re-employment. This government order was in operation at the material time along with the office memorandum of 25-11-1958.

3. Under the office memorandum of 25-11-1958, re-employed pensioners were allowed only the prescribed scales of pay. The initial pay, on re-employment, was required to be fixed at the minimum of the scale of pay prescribed for the post in which the ex-serviceman was re-employed. However, it was provided that where the fixation of initial pay of a re-employed person, at the minimum of the prescribed scale of pay, would cause hardship, the pay may be fixed at a higher stage in the scale by allowing one increment for each year of service which the officer had rendered before retirement in a post not lower than that in which he was re-employed. Under the clarification which was issued pertaining to this office memorandum, "hardship" was defined as follows :

"There would be a case of hardship if on re-employment, the total amount received by the ex-serviceman, namely, the minimum of the pay scale plus pension and pension equivalent of gratuity, whether ignorable or not, is less than the last pay drawn at the time of the retirement."

4. On 19-9-1985, another office memorandum was issued pertaining to the fixation of pay of re-employed pensioners (ex-servicemen). Under clause I, the pay of ex-servicemen up to the rank of non-commissioned officers re-employed on 25-1-1983 or thereafter, may be fixed at the minimum of the pay scale under the Government of India order dated 25-11-1958 and they will be entitled to draw full pension from Military Authorities subject to the fulfilment of other conditions as laid down in the order.

5. The respondent, in the present case, was re-employed on 29-1-1985 and his pay fixation on re-employment was done in accordance with the GO of 8-2-1983 and office memorandum of 25-11-1958. It is the contention of the respondent that under the GO of 8-2-1983, his pension has to be ignored in fixing his pay on re-employment. Hence his pension cannot be taken into account for the purpose of determining hardship under office memorandum of 25-11-1958. This contention does not appear to have any substance. The pension is required to be ignored for the purpose of pay fixation under the GO of 8-2-1983. The ex-serviceman who is so re-employed will get the minimum of the pay scale and in addition, he will also get his full pension as ex-serviceman from the Military Authorities. This is what is meant by stating that the pension will be ignored while fixing the pay on re-employment.

6. Office memorandum of 25-11-1958 is for a very different purpose. The GO of 25-11-1958 enables the employer to give certain increments in the prescribed pay scale to a re-employed ex-serviceman at the time of his joining in a case of hardship. This hardship is defined as arising if his pay on re-employment together with his pension falls short of his last-drawn pay while in military service. The office memorandum quite clearly refers to pension "whether ignorable or not". Therefore, pension which is ignored for the purpose of determining the pay, may be considered under the GO of 25-11-1958 for the purpose of deciding if there is any financial hardship to the ex-serviceman. This cannot be considered as in any way in conflict with the GO of 8-2-1983 prescribing the grant of pay at the minimum of the scale on re-employment. The latter governs the pay which an ex-serviceman will draw in the ordinary course on re-employment. It also prescribes that in addition, he will get pension which has to be ignored for pay fixation. A departure from this norm of granting minimum in the pay scale is permissible only in the case of hardship and that too, to the extent permitted. There is no hardship as contemplated under the GO of 25-11-1958, in the case of the respondent. Hence his pay fixation under the GO of 8-2-1983 is proper.

7. The Tribunal was, therefore, not right in coming to the conclusion that the respondent's initial pay should be fixed by giving him one increment for each completed year of military service, ignoring his pension. The impugned order of the Tribunal is, therefore, set aside and the appeal is allowed. There will, however, be no order as to costs.