

# SUPREME COURT OF INDIA

Director General, E.S.I. Corpn.

Vs.

Bikram Kishore Parida

(V Khare and D Raju JJ.)

15.03.2000

## ORDER

1. Employees State Insurance Corporation (in short the Corporation) is constituted and established under the Employees State Insurance Act (hereinafter referred to as the Act). The Corporation has been assigned many functions. For that purpose, it has power to appoint its staff and employees. The case of the appellants is that the employees of the Corporation for their own welfare have formed a managing committee, which runs departmental canteen in its regional office at Cuttack. The Regional Director is the Chairman of the said managing committee. The canteen so set up is a non-statutory in character as the same is not required to be set up either under Section 46 of the Factories Act or any other provisions of the Act. The managing committee has power to appoint the staff of the canteen. Under that scheme respondent No. 1 was appointed by the managing committee as manager of the canteen in its regional office at Cuttack. On 30-11-90, respondent No. 1 was suspended and immediately thereafter on termination of his services, he ceased to be in the employment of the departmental canteen.

2. Under these circumstances, respondent No. 1 filed an Original Application before the Central Administrative Tribunal challenging the alleged termination of his services and further praying therein, that he should be paid arrears of salary with yearly increment w.e.f. 27-11-90, with further direction to the appellants to fix his pay in the revised pay scale, as per recommendation of the Fourth Pay Commission which came into effect from 1-1-86. It is not disputed that the Central Government had accepted the recommendations of the Fourth Pay Commission w.e.f. 1-1-1986. On 4-5-95, the tribunal allowed the application filed by respondent No. 1 holding that termination of services of the respondent was illegal and void. The tribunal further directed the appellants to fix the salary of respondent No. 1 in the revised pay scale w.e.f. 1-1-86. The review petition filed by the appellant was dismissed by the tribunal. It is against the aforesaid decision the appellant is in appeal before us.

3. Learned Counsel for the appellant raised two arguments. The first argument is that the Central Government memorandum dated 24-1-92 enforcing the recommendations of the Fourth Pay Commission w.e.f. 1-1-86 cannot be applied to the employees working in the non-statutory canteen at regional offices of the appellants, and, in fact, the pay scale of such employees is to be governed by the memorandum dated 10-6-92 issued by the Corporation enforcing the recommendations of the

Fourth Pay Commission w.e.f. 1-10-91. It is no doubt true that the Central Government, by its memorandum dated 24-1-92, directed to all its departments to treat the employees of non-statutory departmental canteens as employee of the Central Government and further they would be entitled to all benefits to which a Central Government employee is normally entitled to. However, by a subsequent memorandum dated 29-1-92, the Central Government took a decision that consequent upon the judgment of Hon'ble Supreme Court the employees of non-statutory departmental/co-operative canteens/tiffin rooms located in Central Government offices shall be treated as government servants w.e.f. 1-10-91 and such employees may be accorded all benefits as are available to other Central Government employees of comparable status w.e.f. 1-10-91. Acting upon the memorandum dated 29-1-92, the Corporation by memorandum dated 10-6-92, issued directions that the employees working in non-statutory departmental canteens in the Corporation's regional offices be given the pay scale as per the recommendations of the Fourth Pay Commission w.e.f. 1-10-91. This is not disputed by learned Counsel for the respondent. Even if it is assumed that the respondent being an employee of a non-statutory canteen runs by the managing committee formed by the employees of the appellant at their regional office had acquired the status of an employee of the Corporation, he is to be governed by the rules and regulation issued by the Corporation and not by the memorandum issued by the Central Government. In the present case, admittedly, the Corporation by memorandum dated 10-6-92, has approved the revision of pay scale of canteen employees w.e.f. 1-10-91 as per the recommendations of the Fourth Pay Commission, the question of application of memorandum dated 24-1-92 issued by the Central Government does not arise. Even the Central Government subsequently by memorandum dated 29-1-92, directed that consequent upon the judgment of the Hon'ble Supreme Court, it has been decided that the employees of the non- statutory departmental/cooperative canteens/tiffin rooms located in the Central Government offices should be treated as government servants w.e.f. 1-10-91 and such employees may, therefore, be extended the benefits as are available to other Central Government employees of comparable status from 1-10-91. In view of the memorandum dated 10-6-92 issued by the appellant and the memorandum dated 29-1-92 issued by the Central Government, the tribunal fell in error in directing that the revised pay scale of respondent No. 1, be fixed as per recommendations of the Fourth Pay Commission w.e.f. 1-1-86.

4. Learned Counsel also urged that the employees of a non-statutory canteen are not entitled to the status of an employee of the Corporation and, therefore, the respondent was not entitled to revised pay scale, as per recommendations of the Fourth Pay Commission w.e.f. 1-1-86 and in support of his arguments he relied upon a decision of this Court in *Union of India v. J.V. Subhaiah*. In this regard, it is relevant to refer the memorandum issued by the Corporation dated 21-3-95. By this memorandum all the monthly rated employees who were working in the departmental canteen of the Corporation have been held to be employees of the Corporation and they are to be treated as in regular service w.e.f. 1-10-91. In view of the aforesaid memorandum, we are not inclined to go into the arguments raised by learned Counsel for the appellants.

5. For the aforesaid reasons, the order of the Central Administrative Tribunal to the extent it directed to re-fix the pay scale of the respondent in terms of recommendations of the Fourth Pay Commission w.e.f. 1-1-86 is set aside. The appeals are allowed to the extent indicated above. There shall be no order as to costs.