

SUPREME COURT OF INDIA

K.C.Bajaj

Vs.

Union of India

(G.S.Singhvi and Kurian Joseph JJ.)

02.07.2013

ORDER

G.S.SINGHVI, J.

1. Arguments in these cases were heard on various dates in 2012 and 2013 and the judgment was reserved on 7.5.2013.

2. In compliance of order dated 4.5.2012, the respondents filed an affidavit of Shri Manoj Kumar, Under Secretary/E(O)II, Railway Board, Ministry of Railways. After considering the affidavit and hearing further arguments, the Court passed order dated 1.11.2012 and directed the learned Additional Solicitor General to produce the file before the Court on the basis of which clarification dated 29.10.1999 was issued.

3. On 13.12.2012, learned counsel for the petitioners handed over xerox copy of the approval accorded by the Prime Minister under Rule 12 of the Government of India (Transaction of Business) Rules, 1961 for withdrawal of the Office Memorandum issued by the Department of Pension and Pensioners' Welfare on 29.10.1999. After perusing the same, the Court asked the learned Additional Solicitor General to ensure production of the file in which the decision of the Prime Minister was recorded.

4. On 11.4.2013, the Court passed the following order:

“Further arguments heard, which remained inconclusive.

The file produced by the learned Additional Solicitor General contains different opinions recorded by the learned Attorney General. In the last

opinion recorded in 2007, the learned Attorney General noted that the files produced before him do not contain formal notification for withdrawal of O.M. dated 29.10.1999.

However, from the judgment of this Court in Col. B.J. Akkara (Retired) v. Government of India and others (2006) 11 SCC 709 which was decided on 10.10.2006, it is borne out that an affidavit was filed on behalf of the respondents on 1.8.2006 stating therein that Circular dated 29.10.1999 had been withdrawn in regard to the Civilian Medical Officers who were petitioners in the writ petition filed by Dr. K.C. Garg and others. It is also borne out from paragraph 23 of the judgment that the Court deciding the matter had been informed that the order passed by the Delhi High Court in C.W.P. Nos. 7322, 7826 and 7878 of 2001 Dr. K.C. Garg and others v. Union of India and others had not been challenged by the Union of India and the directions contained in the High Court's order had been implemented.

All this, prima facie, shows that the parties appearing before the Court had not placed the facts in a correct perspective and apparently misleading statement was made in the affidavit filed on behalf of the respondents that O.M. dated 29.10.1999 had been withdrawn in respect of the petitioners in K.C. Garg's case.

The learned Additional Solicitor General should instruct his assisting counsel to ensure that an affidavit of a senior officer of the rank of Joint Secretary to the Government is filed clarifying the stand of the Government. In the affidavit it should also be indicated as to what steps were taken for compliance of the direction given by the Prime Minister under Rule 12 of the Government of India (Transaction of Business) Rules, 1961. The required affidavit be filed within two weeks.

For further hearing, the cases be listed on 01.05.2013.”

5. Thereafter, the learned Additional Solicitor General filed an affidavit dated 25.4.2013 of Ms. Vandana Sharma, Joint Secretary, Ministry of Personnel, Public Grievances and Pensions.

6. On 2.5.2013, learned counsel for the petitioner referred to the affidavit of Ms. Vandana Sharma and pointed out that the statements contained in paragraphs 23 and 24 of the judgment of this Court in Col. B.J. Akkara v. Union of India (2006) 11 SCC 709 are factually incorrect. Thereupon, the learned Additional Solicitor

General sought adjournment to assist the Court in the context of the discrepancies appearing in the judgment.

7. On 7.5.2013, the Court heard the remaining arguments and reserved the judgment. While doing so, the Court gave liberty to the parties to file written submissions within two weeks.

8. Learned counsel for the petitioners filed written submissions on 16.5.2013 and learned counsel for the respondents filed written submissions on 23.5.2013. A perusal of the written submissions reveal that both the parties have relied upon additional facts which either do not find reference in the pleadings of the special leave petitions or which were not highlighted during the course of hearing.

9. At page 2 of the written submissions filed on behalf of the petitioner a reference has been made to the Central Civil Services (Revised Pay) Rules, 1997 and it has been stated that the petitioners had opted for the revised pay-scale and their pay was, accordingly, revised with effect from 1.1.1996. If correct, this statement would change the complexion of the case.

10. Similarly, in paragraph 23 of the written submissions filed on behalf of the respondent reference has been made to Transfer Petition (Civil) Nos. 833, 857-863, 865 and 869/2002 – Government of India and others v. P.V. Ramanaiah and others and it has been averred that the factum of withdrawal of special leave petitions filed in the case of Dr. K.C. Garg and others was brought to the notice of the Court. This fact does not find mention in the pleadings of the respondents or the affidavit of Ms. Vandana Sharma.

11. In view of the above, we feel that it would be necessary to hear further arguments in the context of the written submissions filed by the parties.

12. Let the cases be listed on 19.7.2013 for further arguments.