

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

LPASW No.27/2002

Date of order: 24.03.2014

Union of India

v.

Prem Singh and others.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

Appearing counsel:

For the appellant(s) : Mrs. Deepika Mahajan, Advocate.

For the respondent(s) : Mr. A.K.Sharma, Advocate.

i/	Whether to be reported in Press/Media	:	Yes
ii/	Whether to be reported in Digest/Journal	:	Yes

M.M.Kumar,CJ

1. The Union of India has preferred this appeal against judgment and order dated 17.11.2000 rendered by the learned Single Judge of this Court while allowing writ petition No.183 of 2000. The Writ Court has accepted the prayer made by the writ petitioner-respondents for quashing orders dated 02.04.1998, 06.10.1999 and 13.01.2000 seeking to effect recovery from the writ petitioner-respondents in respect of Night Duty Allowance paid to them.

2. Brief facts of the case are that the writ petitioner-respondents filed OA No.775/JK/1995 before the Central Administrative Tribunal, Chandigarh Bench (Circuit Bench at Jammu) (for brevity 'the Tribunal'). The prayer made by them was to release the 'night duty allowance' from May 1992 onwards along with overtime allowance. The aforesaid prayer

made by the writ petitioner-respondents was allowed as is patent from perusal of paras 6 and 7 of the order passed by the Tribunal, which are set out below *in extenso*:-

“6. We have examined the contentions of both the parties. We find that the chowkidars as a category has been allowed to draw the NDA, as per the Ministry of defence order and the duties of the Chowkidars cannot be said to be having inseparable characteristic of night duty. Chowkidar as the nomenclature itself suggests can be employed during day or night and no duties, job contents of element of their duties have been prescribed by the respondents and brought to our notice and thus, we find that there is no reason as to why this category cannot be given the benefit of Night Duty Allowance. Just because the Engineer-in-Chief's office do not find it possible to include them in the category of persons eligible for grant of NDA, is no argument. This proposition is totally untenable as the authority which had earlier granted them NDA was Ministry of Defence and any subordinate office to that Ministry cannot stop the same.

7. In view of above, we find that the claim of the applicants is totally acceptable and the payment of NDA cannot be denied to them now. Accordingly, the O.A. succeeds. The applicants, 10 in No. in this O.A., are entitled to the payment of NDA from the date it was withdrawn from them. They shall be paid all the arrears with interest @12% per annum on the withheld amount. This order shall be complied with within three months from the date of receipt of copy of the same, by the respondents. No costs.”

3. Despite the aforesaid order, the appellant issued recovery notice on 02.04.1998 followed by subsequent letters dated 06.10.1999 and 03.01.2000. The aforesaid recovery notices and withdrawal of 'night duty allowance' were challenged by the writ petitioner-respondents in writ petition No.183 of 2000 on the ground that once the judgment rendered by the Tribunal has attained finality then the subsequent view taken by Hon'ble the Supreme Court in any other case would not deprive them of the benefit given by the judgment of the Tribunal. The view of

the learned Writ Court is discernible from the following paras of the judgment:-

“Sole question that needs consideration in this case whether on the basis of judgment passed by the Central Administrative Tribunal, Chandigarh in favour of the petitioners which has admittedly become final inter-parties, respondents can take any advantage of the Undertakings obtained from the petitioners as extracted hereinabove. And at the same time despite such finality respondents can be permitted to say that since judgment of the Bangalore bench of Central Administrative Tribunal, has been upset by the Supreme Court of India, they are well advised to either stop and or effect recovery of the Night Duty Allowance as already paid.

In this behalf it may be appropriate to observe that so far judgment passed by the Supreme Court of India is concerned it is law of land and thus binds every one. There can be no dispute about this legal proposition. Still in the background of this case what remains to be seen is that whether the respondents can be permitted to say that they will not obey the judgment of the Central Administrative Tribunal, Chandigarh Bench in OA No.775/JK/1995 dated 13.11.1996. They could have overcome this judgment by filing SLP before the Supreme Court. Admittedly it is not their case.

Thus in my considered view the respondents are precluded from saying that on the basis of judgment of the Supreme Court referred to above that they will stop the payment of Night Duty Allowance and will also effect recovery of such allowance already paid. This is one reason to reject the stand of the respondents.

Another reason to take this view is that Undertakings relied upon by respondents do not authorize them to effect recovery also does not infact advance their plea. Reason being that it is clearly speaks of if CAT Bench, Chandigarh in OA No.775/JK/95 revised by CAT/High Court of J&K State in consequence of review petition filed by MES Department based on CAT Bench, Gauhati Judgment in OA No.117/94.

Admittedly this is not the case. There is nothing on record and also it is not the case set up in their counter that judgment of Cat Bench, Chandigarh in OA No.775/JK/1995 has been upset either by this court or by the Supreme Court of India. Besides this, only way for respondents to overcome this judgment was to have got the judgment of the Central Administrative Tribunal in the aforesaid OA No.775/JK/95 set aside in accordance with law. Till and so long it holds the field, no benefit can be derived even from the Undertakings in question. This is an additional factor to negative the claim of the respondents.”

4. We have heard Mrs. Deepika Mahajan and Mr. A.K.Sharma, learned counsel for the parties and have perused the paper book with their able assistance.

5. The appellant placed on record Undertaking extracted from the writ petitioner-respondents when the judgment was implemented. It reads as under:-

“UNDERTAKING

I, Army/MES No.13722676 Name Prem Singh, Designation, Chowkidar(CVB), hereby undertake to reutn/pay a sum of Rs.18,557/- paid to me by GE, Satwari on account of arrears of NDA as per the Govt. sanction dated 25th March, 1997, if the CAT Bench, Chandigarh judgment on CA No.775/JK/95 is revised by CAT/High Court J&K state in consequence of a review petition filed by the MES Deptt. based on CAT Bench, Gauhati judgment on OA No.117/94.”

The aforesaid undertaking does not advance the case of the appellant because the judgment of the Tribunal dated 13.11.1996 has not been upset and merely because judgment of other Bench of the Tribunal is set aside by Hon’ble the Supreme Court would not lead to the conclusion that the judgment and order passed by the Chandigarh Bench of the Tribunal on 13.11.1996 is effaced to have binding effect looses and looses its binding nature between the parties.

6. The short issue which arises for determination of this Court is ‘whether the subsequent contrary view taken by Hon’ble the Supreme Court in another judgment, namely, **Union of India and others v. T. Rangawsamy and others** [(SLP(Civil)

No.25134/96 decided on 01.08.1997] would result into defeating the judgment delivered by the Central Administrative Tribunal, Chandigarh Bench in OA no. 775/JK/95'. The aforesaid issue is no longer *res integra* and came up for consideration of a constitution Bench of Hon'ble the Supreme Court in the State of Punjab v. Joginder Singh, AIR 1963 SC 913. The controversy has been put at rest by the following observations made by their lordships, which reads as under:-

"In our opinion, the true position arising, if the present appeal by the State Government should succeed, would be that the finality of the orders passed in the other three writ petitions by the Punjab High Court would not be disturbed and that those three successful petitioners would be entitled to retain the advantages which they had secured by the decision in their favour not being challenged by an appeal being filed. That however would not help the present respondent who would be bound by our judgment in this appeal and besides, so far as the general law is concerned as applicable to everyone other than the three writ petitioners (who would be entitled to the benefit of decisions in their favours having attained finality), the law will be as laid down by this Court. We therefore overrule the preliminary objection."

It is thus evident that if in a bunch of petitions appeals have been preferred only against few petitioners then it would mean that some successful petitioners have been left out. The judgment in favour of successful petitioner would continue to bind the parties if the appeals preferred before the appellate Court or Hon'ble the Supreme Court has taken a contrary view. The aforesaid proposition has been followed and applied by Hon'ble the Supreme Court in the case of **State of West Bengal and others etc. v. Debdas Kumar and others etc., 1991 SCC Supl(1) 138.**

7. It has further come on record that direction issued by the Tribunal in the judgment and order dated 13.11.1996 was implemented and the night duty allowance was released to the writ petitioner-respondents. Therefore, for this added reason no recovery could be permitted to be effected despite some undertaking.

8. It is true that the judgment passed by Hon'ble the Supreme Court is law of the land and is binding on everyone but at the same time it is equally true that judgment and decree passed by a Court of competent jurisdiction cannot be defeated merely because in another case Hon'ble the Supreme Court has taken a contrary view. What is binding on the Court is the *ratio decidendi* lying down the principles of law and not the determination of issue of facts. The appellant could have overcome it only by filing appropriate petition in the High Court or Special Leave Petition before Hon'ble the Supreme Court.

9. As a sequel to the above discussion, this appeal fails and same is dismissed

(Muzaffar Hussain Attar)
Judge

(M. M. Kumar)
Chief Justice

Jammu,
24.03.2014
Vinod.