

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5353 OF 2008

Union of India and another ..Appellants

versus

E.M. Desai and others ..Respondents

WITH

CIVIL APPEAL NO. 5355 OF 2008

O R D E R

The respondents, some of whom had retired from the posts of Laboratory Assistants Grade-I and Grade-II while others were holding those posts in Central Water and Power Research Station, filed O.A. Nos. 166 and 222 of 2004 before the Central Administrative Tribunal, Bombay Bench (for short, 'the Tribunal') for quashing order dated 22.10.2002 (in some documents the date of order has been mentioned as 22.1.2002) and for issue of a direction to the appellants herein to grant them second financial upgradation in the scale of Rs.6500-10500 with effect from 9.8.1999 or the date on which they completed 24 years' service, whichever was earlier. The Tribunal adverted to the factual matrix of the case, the orders passed by the Principal and other Benches of the Tribunal in similar matters and quashed order dated 22.10.2002 with a direction to the appellants to grant the benefit of second financial upgradation to the respondents from the date of completion of 24 years' service. The operative portion of order dated 5.7.2005 passed by the Tribunal reads thus:

"In view of the foregoing discussion, we are of the considered view that the applicants are entitled for second financial upgradation on their completion of 24 years of service. Accordingly, the order dated 22.10.2002 passed by the Respondent No.1 is hereby quashed and set aside and the respondents are directed to grant the applicants second financial upgradation in the scale of Rs.6500-10500/- w.e.f. the date on which they completed 24 years of service with arrears. However, no interest shall be paid on the arrears. The above exercise shall be completed within a period of 3 months from the date of receipt of a copy of this order. Accordingly, both the OAs are allowed. No order as to costs."

The appellants challenged the order of the Tribunal in Writ Petition Nos. 7834 and 7835 of 2005.

When the writ petitions were taken up for hearing, learned counsel appearing for the appellants argued that the Assured Career

Progress Scheme for Central Government employees had become effective from the date of issue of O.M. dated 9.8.1999 and the Tribunal committed an error by ordaining the grant of the benefit of the scheme from the date of completion of 24 years' service. Learned counsel appearing for the respondents agreed to the submission made on behalf of the appellants.

In view of the statements made by learned counsel for the parties, the High Court disposed of the writ petitions in the following terms:

"(a) Respondent No.1 to 30 shall be entitled to the grant of second financial upgradation in the scale of Rs.6500-10,500 with effect from 9th August, 1999 subject to screening and in accord with the said scheme as set out in the office memorandum dated 9th August, 1999.

(b) The process of screening as per the office memorandum dated 9th August, 1999 shall be completed by the petitioners within three months from today and as per the said screening, the benefit of second financial upgradation shall be given with effect from 9th August, 1999."

Even though the aforesaid order is virtually a consent order, the appellants have questioned the same by arguing that the Tribunal committed an error by directing grant of the benefit of second financial upgradation to the respondents.

No one has appeared for the appellants and even for the respondents in Civil Appeal No.5353 of 2008.

We have heard Shri Pragyan Sharma, learned counsel for the respondents in Civil Appeal No. 5355 of 2008 and carefully perused the record.

In our view, the appeals are liable to be dismissed because the impugned orders were passed by the High Court on the basis of the statements made by counsel appearing for the parties. If the learned counsel for the appellants had not restricted his submission to the date of grant of the benefit of second financial upgradation, the High Court would have dealt with and decided the issues raised in the writ petitions on merits. Having prevented the High Court from undertaking that exercise, it is not open to the appellants to question the impugned order.

The appeals are accordingly dismissed.

The appellants are directed to pay the amount due to the respondents within a period of three months from the date of receipt/production of a copy of this order.

.....J.
[G.S. SINGHVI]

NEW DELHI;J.
NOVEMBER 13, 2013. [V, GOPALA GOWDA]

ITEM NO.109 COURT NO.2 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5353 OF 2008

UNION OF INDIA & ANR. Appellant (s)

VERSUS

E.M. DESAI & ORS. Respondent(s)

WITH
Civil Appeal NO. 5355 of 2008(With office report)

Date: 13/11/2013 These Appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Appellant(s) None

For Respondent(s) Mr. Pragyan Sharma, Adv.
IN CA NO.5355/2008 Mr. Hesu Kayina, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

(Parveen Kr.Chawla)	(Phoolan Wati Arora)	
Court Master	Court Master	

[signed order is placed on the file]