

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).24375/2007

(From the judgement and order dated 11/09/2007 in WPC No. 27022/2007 of
The HIGH COURT OF KERALA AT ERNAKULAM)

SEC., INDIAN COUNCIL OF AGRIC. RES. & ORS.

Petitioner(s)

VERSUS

ASARI T.V.

Respondent(s)

(With prayer for interim relief and office report)
(FOR FINAL DISPOSAL)
WITH SLP(C) NO. 3270 of 2008
(With prayer for interim relief and office report)
(FOR FINAL DISPOSAL)

Date: 24/03/2009 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s) Dr. I.B Gaur, Adv.
Mr. S.S. Nehra, Adv.
Mr. Neeraj Dutt Gaur, Adv.

Mr. A.V. Palli, Adv.
Mrs. Rekha Palli, Adv.
Mr. Atul Sharma, Adv.

For Respondent(s) Respondent-In-Person
Mr. M.K.S. Menon, Adv.
Ms. Usha Nandini, Adv.
Mr. Biju Raman, Adv.
Mr. Jogy Scaria, Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.

Appeals are allowed in terms of the signed order. Impugned
orders in the High Court and of the Tribunal are set aside. Original
applications of the respective respondents stand dismissed.

(Ravi P. Verma) (Anand Singh)
Court Master Assistant Registrar
[Signed reportable order is placed on the file]

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1819 of 2009
(Arising out of SLP © No.24375 of 2007)

THE SECRETARY, INDIAN COUNCIL OF
..... APPELLANTS
AGRICULTURAL RESEARCH & ORS.

Vs.

ASARI T.V.

.....RESPONDENT

WITH

CA No. 1820 OF 2009[@ SLP(C) NO. 3270 OF 2008]

The Deputy Chief Accounts Officer,
ESI Corporation & Others

... Appellants

Vs.

M.A. George and Others

... Respondents

ORDER

R.V. Raveendran, J.

Leave granted. Heard.

Appeal arising from SLP(C) NO.24375 OF 2008

2. The respondent is a retired employee of Indian Council of Agricultural Research. He attained the age of superannuation on 4.3.2004, and retired on the afternoon of the last day of the month, that is, on 31.3.2004. The Government of India issued an Official Memorandum dated 1.3.2004 deciding to merge, with effect from 1.4.2004, in the case of Central Government employees, dearness allowance equal to 50% of the existing basic pay with the basic pay and shown distinctly as Dearness Pay which would be counted for purposes of payment of allowances, transfer grant, retirement benefits, GPF contribution etc. It further provided that in the case of existing pensioners dearness relief equal to 50% of present pension will, with effect from 1.4.2004, be merged with pension and shown distinctly as dearness pension. Para 3 of the said memorandum provided as follows :

"To ensure that the pensioners retiring between 1.4.2004 to 31.1.2005 do not face any loss in fixation of pension, as a special dispensation in their case, DA equal to 50% of the basic pay would be treated as basic pay for the purpose of computation of pension in respect of basic pay received by them prior to 1.4.2004. Consequently element of dearness pension will exist only for pensioners retired/retiring from Government of India upto 31.3.2004."

3. According to the appellant, though he retired with effect from 31.3.2004 (afternoon) he became a pensioner only with effect from 1.4.2004. He therefore made a representation for calculating his pension by merging dearness allowance equal to 50% of the basic pay with basic pay. As his request was not accepted, he approached the Central Administrative Tribunal seeking a declaration that he is entitled to get his terminal benefits calculated and disbursed in terms of the memorandum dated 1.3.2004 by duly merging dearness allowance equal to 50% of the existing basic pay with basic pay which he received at the time of retirement and to revise and refix his pensionary benefits accordingly.

4. The Tribunal allowed the application holding that a person retiring on 31.3.2004 became a pensioner only on 1.4.2004 and therefore he was entitled to the relief sought. The employer's writ petition challenging the order of the Tribunal was dismissed by the Kerala High Court by order dated 11.9.1997 by following its earlier decision in Union of India v. George [2003 (3) KLT 387] wherein the court observed that a person retiring on 31st of a month would continue in service till the midnight of 31st and would acquire the status of a pensioner only from the first of next month and consequently, his claim to pension had to be determined as on 1st of next month. The said order is challenged in this appeal. The question that arises for consideration in this appeal is whether an employee who retires on the afternoon of 31.3.1994 can be said to fall under the category of persons 'retiring between 1.4.2004 to 31.1.2005', in short whether he retired on 1.4.2004.

5. Fundamental Rule 56(a) relied on by parties reads thus:

"FR 56(a). Except as otherwise provided in this Rule every government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years.

Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 60 years."

Having regard to FR 56(a), an employee attaining the age of superannuation on any day between 2nd and 31st of March, would retire on the afternoon of the 31st March; and an employee whose date of birth is 1st April would also retire on the afternoon of 31st March. A person who is retiring in March cannot obviously be considered as retiring in April. The fact that pension of an employee is to be computed with effect from 1st April, does not mean that he retired on 1st of April. What is relevant for the purpose of claiming the benefit under the said official memorandum is not the date from which the employee becomes eligible for pension, but the date on which he retires. In the case of all employees whose date of birth is 2nd to 31st March and 1st April, that date is the last day of March. Therefore, the retirement of appellant was on the afternoon of 31st March, 2004. It cannot be said that he retired on 1.4.2004.

6. When the terms of the official memorandum are clear and unambiguous, there is no scope for Courts or Tribunals to innovate or take upon themselves the task of extending or altering the provisions. When the intention is gathered from the clear language used, what is said and what is not said should alone be considered, and a construction which requires addition, deletion or substitution should be avoided. Applying of any interpretative process, would arise only when the language used is ambiguous, inconsistent or leads to absurd results.

Appeal arising from SLP (C) No.3270/2008

7. The respondents are retired employees of ESI Corporation. They retired from service on 31.3.1995. They sought the benefit of Official Memorandum dated 14.7.1995 issued by Government of India notifying its decision that the specified percentage of dearness allowance linked to AICPI-1201.66 (as indicated in the O.M.) shall be treated as dearness pay for reckoning emoluments for the purpose of retirement/death gratuity under the Central Civil Services (Pension) Rules, 1972 in the case of central government employees who retire (or die) on or after 1.4.1995. The respondents submitted representations to the employer to extend the said benefit by treating them as having retired on 1.4.1995. When the

said representations were rejected, they approached the Tribunal seeking relief. The Tribunal allowed their applications holding that an employee who retires on 31st March of a year and relinquishes charge of office in the afternoon of that day, should be deemed to have effectively retired from service only with effect from the next day, that is, first April. The Tribunal reasoned that when a government servant retires on the afternoon of 31st March, 1995, he draws full salary for the month of March, that is upto the end of the day on the 31 st March, 1995; that he does not draw pension or other retrial benefits as on 31st March, 1995; that his right to draw pension takes effect only from 1st April, 1995 and not on 31st March, 1995; and that therefore the effective date of retirement would be 1st April, 1995, and not 31st March, 1995. The said decision of the Tribunal was affirmed by the Kerala High Court, holding that a government servant retiring on 31st March, 1995, becomes a retiree only after the midnight of 31st March, 1995, that is from the beginning of the next day - 1st April, 1995. The said decision of the High Court dated 5.9.2007 is challenged by the employer in this appeal by special leave.

8. The question that therefore arises for our consideration is similar to the question in the first case - whether an employee retiring on the afternoon of 31st March, 1995 will fall within the category of employees 'retiring on or after the 1st April, 1995'.

9. The official memorandum dated 14.7.1995, states that it applies to employees who retire on or after 1st April, 1995. A person, who retires in the afternoon of 31st March, 1995, cannot be said to retire on 1st April, 1995. For the reasons stated in para (6) while dealing with the first case, it has to be held that the respondents retired on 31.3.1995 and not on 1.4.1995.

10. The respondents referred to Section 5(3) of the General Clauses Act, 1897 and contended that the principle underlying the said provision would support their contention. Sub-section (3) of section 5 provides that unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the

day preceding its commencement. The effect of it would be that if a Central Act or Regulation is stated to commence on 1 st April, 1995, it would mean that it comes into operation on the mid night between 31 st March and 1st April, 1995, that is the beginning of the day immediately after the expiry of 31st March, 1995. The principle underlying section 5(3) has no relevance to decide whether the appellant is entitled to the benefit under Official Memorandum dated 14.7.1995.

Conclusion

11. These appeals are, therefore, allowed. Impugned orders in the High Court and of the Tribunal are set aside. Original applications of the respective respondents stand dismissed.

.....J
[R. V. Raveendran]

.....J
[Markandey Katju]

New Delhi.
March 24, 2009.