

A SUB-INSPECTOR SADHAN KUMAR GOSWAMI AND ORS.

v.

THE UNION OF INDIA AND ORS.

OCTOBER 25, 1996

B [K. RAMASWAMY AND S.P. KURDUKAR, JJ.]

*Service Law.*

C *Special Duty Allowance—Entitlement—Negatived by Supreme Court—Whether party to the earlier judgment or not, whether belongs to Officers in Group A,B,C or D—None is entitled to it—The judgments binds all—constitution of India, Article 141.*

*Union of India & Ors. v. S. Vijay Kumar & Ors., [1994] Suppl. 3 SCR 716-719, relied on.*

D *Constitution of India, Article 32 :*

*Writ petition—Filing of—Advocate-on-Record to file a statement and certificate that the party was advised that the matter was covered by Supreme Court judgment and yet the party insisted to file the same—Only then the Court would deal with such writ petitions.*

CIVIL ORIGINAL JURISDICTION : Writ Petition No. 794 of 1996.

(Under Article 32 of the Constitution of India.)

F Sankar Ghosh and Amlan Ghosh for the Petitioners.

The following Order of the Court was delivered :

G This writ petition under Article 32 is one of the series of cases we have come across to reopen the judgment/orders of this Court rendered under Article 136 of the Constitution of India after their becoming final.

The admitted facts are that the petitioners who joined service under the Special Security Bureau (SSB) in North Eastern Region of India, claimed special duty allowances as per order of the Central Government. The question was considered by this Court in *Union of India v. S. Vijay Kumar* CA No. 3251 of 93 decided on September 20, 1994; therein this

Court had held thus :

"We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Shri Tulsi for two reasons. The first is that a close perusal of the two aforesaid memoranda, along with what was stated in the memorandum dated 29.10.1986 which has been quoted in the memorandum of 20.4.1987, clearly shows that allowance in question was meant to attract persons outside the North Eastern Region to work in that Region because of inaccessibility and difficult terrain. We have said so because even the 1983 memorandum starts by saying that the need for the allowance was felt for "attracting and retaining" the service of the competent officers for service in the North-Eastern Region. Mention about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining thereby taking leave and, therefore: the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1986 memorandum makes this position clear by stating that Central Government civilian employees who have All India Transfer Liability would be granted the allowance "on posting to any station to the North-Eastern Region". This aspect is made clear beyond doubt by the 1987 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the office memoranda of 1983 the subject was mentioned as quoted above is not be enough to concede to the submission of Dr. Ghosh.

The submission of Dr. Ghosh that the denial of the allowance to the residents would violate the equal pay *doctrine* is adequately met by what was held in *Reserve Bank of India v. Reserve Bank of India Staff officers Association & Ors.*, [1991] 4 SCC 132; to which an attention has been invited by the Learned Additional Solicitor General, in which grant of special compensatory allowance or remote locality allowance only to the

A officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit, was not regarded as violative of Article 14 of the Constitution."

B In view of the above, this Court allowed the appeals of the State and held that the respondents were not entitled to the allowances but whatever amount was paid upto the date of the judgment, was directed not to be recovered from them. The petitioners are relying upon the Office Memorandum dated July 11, 1996 which provided that "it is not applicable from one station to another station within the region of Group A and B staff will further continue to get the facilities". They have filed this writ

C petition contending that while the Group C and D employees have been denied the benefit of the above judgment, special duty allowance benefit is being granted to Group A and B; it tantamounts to violation of Article 14 and, therefore, the writ petition should be allowed so as to give them the same benefit. Admittedly, the petitioners are Group C and D

D employees and are bound by the above declaration of law made by this Court. Merely because they were not parties to the judgment, they cannot file writ petition under Article 32. The contention that they are entitled to get the benefit at par with Group A and B officers under the above. Memorandum dated July 11, 1996 is not correct. Apart from the fact that

E Group A and B employees are entitled to special duty allowance contrary to the law declared by this Court in the above judgment, they too are bound by it; whether or not they are entitled to the above benefit due to this Court's judgment, the petitioners are not entitled to the benefits of the allowances as claimed by them. The judgment of this Court would indicate that it did not make any distinction between Group C and D and Group

F A and B Officers. All are governed by the law under Article 141. The petitioners are not entitled to the payment of the special duty allowance irrespective of whether or not they were parties to the judgment rendered in *Vijay Kumar's* case (supra); they cannot be permitted to raise new grounds, though not raised or argued in earlier case, to canvas the correctness of the judgment by filing the writ petition under Article 32.

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H Of late, we have been coming across this type of writ petitions filed by several parties. We are constrained to take the view that the learned counsel who are advising them to move this court under Article 32 should certify to the court that though they advised the petitioners that the judgment of this Court binds them and cannot canvass its correctness and

still, in spite of such advice, the party insisted upon filing the writ petition. It would then be for this Court to consider and deal with the case appropriately. Hereinafter, it would be necessary that the Advocate-on-Record should file, as part of the Paper book of the writ petition filed under Article 32, a statement and certificate that the party concerned was advised that the matter is covered by the judgment of this Court and yet the writ petitioner insisted to file the same. Should such certification form part of the record of the petition, then only the Court would deal with the writ petition. In view of the fact that Class C and D employees are not entitled to special duty allowance as per the law already declared by this Court, the petitioners are not entitled to the benefit.

It is next contended that the Government is recovering as per Memorandum dated January 12, 1996 the amounts paid which is contrary to the direction issued by this Court in the above judgment. The petitioners are not right in their contentions. It is seen that the Government have limited the payments already made after the date of the judgment of this Court; payments made prior to that date are not being recovered.

Under those circumstances, we do not think that there will be any justification to direct the respondents not to recover the amount from the petitioner after the date of the judgment of this Court.

The writ petition is accordingly dismissed.

G.N.

Petition dismissed.