THE SECRETARY, DEPARTMENT OF ATOMIC ENERGY & OTHERS. A

v.

M.K. BAWANE

(Civil Appeal No. 6389 of 2013)

AUGUST 7, 2013 B

[ANIL R. DAVE AND A.K. SIKRI, JJ.]

Service Law - Incentive increment - To re-employed persons - For undergoing sterilization operation - Respondent re-employed as a Male Nurse - Entitlement of respondent - Held: Not entitled - Policy of the Government was to the effect that a re-employed person was not entitled to such incentive increment, if he or his spouse had undergone sterilization operation prior to his re-employment - Tribunal justified in rejecting the claim of respondent in view of such policy, since sterilization operation was undertaken by wife of respondent, prior to his re-employment - Policy decision taken by the Government was quite reasonable and had nexus with the purpose to be achieved - High Court ought not to have become lenient by allowing the writ petition of respondent and awarding incentive increment to him in violation of the Government policy - G.I., Department of Posts letter No.6-2/1999 (Mis.)-PAP, dated 18.9.2002. C D E

Government Policy - Interference with - Scope - Held: Normally the courts should not interfere with the just policies framed by the Government. F

Government Policy - Implementation - Duty of the Court - Held: Courts not to take lenient approach in the matter of implementation of Government policies. G

Precedent - Mistake committed in one case cannot be treated as a precedent.

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A The respondent-employee was re-employed as a Male Nurse at Nuclear Fuel Complex, Hyderabad. According to the case of the respondent-employee, prior to his re-employment, a sterilization operation was undertaken by his wife and therefore, as per the policy B of the appellant-organization, he was entitled to one incentive increment for promoting small family norms. The respondent was, however, not given the increment and therefore, he approached the Central Administrative Tribunal. The Tribunal rejected his application relying C upon the policy of the Government to the effect that a re-employed person, if he or his spouse had undergone sterilization operation prior to his re-employment, was not entitled to an increment by way of incentive. The respondent-employee filed Writ Petition challenging the validity of the order of the Tribunal. The petition was D allowed and the High Court directed the appellants to give special incentive increment to the respondent-employee. The High Court observed in its judgment that in some other cases, benefit of incentive increment was given even after re-employment and therefore, the case E of respondent-employee ought to have been considered favorably by the employer. For some special reason in an order passed by the Tribunal in the case of one 'V', though re-employed, incentive increment was granted and therefore, the High Court directed to give the same F benefit to the respondent-employee in terms of parity. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. On perusal of the order passed by the G Tribunal in the case of 'V, it is found that there was some special reason for which 'V' was granted the benefit of incentive increment, though the Tribunal has not given the special reason for which that benefit was given to the said retired employee. It is not known whether in the said

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case, which was decided on 20.12.2004, 'V' had undergone sterilization before or after 18.9.2002, the date on which the policy decision was taken. Be that as it may, a mistake, if committed in one case cannot be treated as a precedent. [Para 12] [160-E-F] A

2. The Tribunal while rejecting the application of the respondent-employee had clearly referred to the policy decision taken on 18.9.2002. The said decision is contained in G.I., Department of Posts letter No.6-2/1999 (Mis.)-PAP, dated 18.9.2002. The Tribunal was absolutely justified in rejecting the application of the respondent-employee in view of the aforestated policy of the Government. [Paras 13, 14] [160-G-H; 161-G] B C

3. A small effort made by the Government to control the size of the family members of its employees would also go in vain if courts would take such lenient approach in the matter of implementation of the Government policies. Normally the courts should not interfere with the just policies framed by the Government. The policy decision taken by the Government dated 18.9.2002, is quite reasonable and it has nexus with the purpose which is to be achieved. In the circumstances, the High Court ought not to have become lenient by allowing the petition and by awarding incentive increment to the respondent-employee in violation of the Government policy. The High Court committed an error while allowing the petition and giving direction with regard to giving incentive increment to the respondent-employee and therefore, the said direction is quashed and set aside. [Paras 15, 16] [161-H; 162-A-D] D E F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6389 of 2013. G

From the Judgment and Order dated 07.09.2010 of the High Court of Andhra Pradesh at Hyderabad in Writ Petition No. 24132 of 2009. H

A Dr. Sarbjit Sharma, Arpita, Shreekant N. Terdal for the Appellants.

Rakesh Kumar Khanna, ASG, Surya Kant for the Respondents.

B The Judgment of the Court was delivered by

ANIL R. DAVE, J. 1. Delay condoned.

2. Leave granted.

C 3. Though served and sufficient opportunities granted, none has appeared for the respondent-employee and therefore, the appeal is taken up for hearing.

4. The facts giving rise to the appeal, in a nutshell, are as D under:

The respondent-employee was re-employed as a Male Nurse at Nuclear Fuel Complex, Hyderabad. According to the case of the respondent-employee, prior to his re-employment, a sterilization operation was undertaken by his wife and E therefore, as per the policy of the appellant-organization, he was entitled to one incentive increment for promoting small family norms. In spite of his repeated requests he was not given the increment and therefore, he had approached the Central Administrative Tribunal, Hyderabad by filing O.A.No.254 of F 2009. The Tribunal rejected his application relying upon the policy of the Government to the effect that a re-employed person, if he or his spouse had undergone sterilization operation prior to his re-employment, was not entitled to an increment by way of incentive.

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5. The Tribunal did not grant the application in view of the policy decision of the Government to the effect that the special incentive increment was not to be given to a person who/whose spouse had undergone the sterilization operation before his re-H employment. The appellant-organization had recorded the

reason and conveyed the same to the respondent-employee under letter dated 20.1.2007 for which the respondent-employee was not given the incentive. The said reason, as recorded by the Tribunal, is reproduced hereinbelow:

> "Incentive increment is not admissible to re-employed pensioners who or whose spouse had undergone sterilization operation before the date of re-employment. Re-employment is a fresh employment wherein incentive increment for earlier employment cannot be continued."

6. Not being satisfied with the rejection of the application, the respondent-employee had filed Writ Petition No.24132 of 2009 in the High Court of Andhra Pradesh challenging the validity of the order of the Tribunal. The petition was allowed and the High Court has directed the appellants to give special incentive increment to the respondent-employee.

7. Being aggrieved by the aforestated judgment delivered by the High Court, this appeal has been filed.

8. Before dealing with the facts of the case, let us see the circumstances in which the Government had framed a policy with regard to giving special incentive increment to its employees for undergoing sterilization operation.

9. It is a known fact that our country is having a severe problem with regard to explosion of population and so as to curb the population, the Government had framed certain policies. The Government had made an effort to give incentive to those who had tried to control the size of their families and as per one of the policies, with which we are concerned at present, an employee or his/her spouse undergoing sterilization operation, was to be given one incentive increment. It was, however, clarified under policy dated 18.9.2002 that the re-employed persons were not entitled to incentive, if the sterilization operation was undergone prior to the re-employment.

A 10. Assailing the impugned judgment of the High Court, the learned Additional Solicitor General had submitted that the High Court committed a mistake by giving a direction to the appellant-organization for giving incentive increment to the respondent-employee in spite of the fact that the aforestated B policy had been duly considered by the Tribunal while rejecting the application of the respondent-employee.

11. The High Court, while allowing the petition has observed in its judgment that in some other cases benefit of incentive increment was given even after re-employment and C therefore, the case of the respondent-employee ought to have been considered favorably by the employer. It appears that for some special reason in an order passed by the Tribunal in O.A.No.142 of 2004, in the case of Sri Vijay Kumar, though re-employed, incentive increment was granted and therefore, the D High Court directed to give the same benefit to the respondent-employee in terms of parity.

12. Upon perusal of the order passed by the Tribunal, we find that there was some special reason for which the above E named Sri Vijay Kumar was granted the benefit under Order dated 20th December, 2004, though the Tribunal has not given the special reason for which that benefit was given to the said retired employee. We do not know whether in the said case, which was decided on 20.12.2004, Sri Vijay Kumar had F undergone sterilization before or after 18.9.2002, the date on which the policy decision was taken. Be that as it may, a mistake, if committed in one case cannot be treated as a precedent.

13. The Tribunal while rejecting the application of the G respondent-employee had clearly referred to the policy decision taken on 18.9.2002. The said decision contained in G.I., Department of Posts letter No.6-2/1999 (Mis.)-PAP, dated 18.9.2002 as recorded by the Tribunal is reproduced below:

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"incentive not admissible to the re-employed person who had sterilization operation prior to re-employment.

1. This is regarding grant of special increment for promoting small family norms to ex-servicemen who are re-employed in Government.

2. The matter was taken up with Nodal Ministry, i.e., Ministry of Finance, Department of Expenditure, based on a reference received from Karnataka Postal Circle.

3. It has been clarified by Ministry of Finance vide I.P. No.587/E-III (A)/2002, dated 2.9.2002 that incentive for adopting small family norms is admissible during service life of eligible Government servants. Once an employee demits office/retire from/ceases to be in the Government service on whatsoever consideration, his/her service life ends, and the incentive for adoption of small family norms also comes to an end. In the case of re-employment which is in the nature of fresh employment/ appointment, the incentive admissible in the past service before re-employment cannot automatically be continued. Consequently, re-employed persons are not entitled to incentive, if the sterilization operation on this account was undergone prior to re-employment.

4. Any such cases pending in your circle may be disposed of based on this clarification given by Ministry of Finance."

14. In our opinion, the Tribunal was absolutely justified in rejecting the application of the respondent-employee in view of the aforestated policy of the Government.

15. No harsh steps are taken by the Government to control the population which is increasing by leaps and bound. A small

A effort made by the Government to control the size of the family members of its employees would also go in vain if courts would take such lenient approach in the matter of implementation of the Government policies. We are of the view that normally the courts should not interfere with the just policies framed by the B Government. In our opinion, the policy decision taken by the Government which is reproduced hereinabove dated 18.9.2002, is quite reasonable and it has nexus with the purpose which is to be achieved. In the circumstances, the High Court ought not to have become lenient by allowing the petition C and by awarding incentive increment to the respondent-employee in violation of the Government policy.

16. For the reasons recorded hereinabove, we are of the view that the High Court committed an error while allowing the petition and giving direction with regard to giving incentive D increment to the respondent-employee and therefore, we quash and set aside the said direction. The appeal is allowed with no order as to costs.

B.B.B. Appeal allowed.