
(2022) 06 CAT CK 0032

In the Central Administrative Tribunal

Case No : Original Application No. 637 Of 2020

Ghulam Hassan Mir & Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 13-06-2022

Acts Referred:

Constitution Of India, 1949 — Article 136

Citation : (2022) 06 CAT CK 0032

Hon'ble Judges : Anand Mathur, Member A; D.S. Mahra, Member (J)

Bench : Division Bench

Advocate : Barjesh Mittal, Saima, Satinder Singh

Final Decision : Dismissed

Judgement

Anand Mathur, Member (A)

1. Mr. Brijesh Mittal, learned counsel for the applicant and Ms. Saima vice Mr. Satender Singh, learned counsel for the respondents were present.

2. Learned counsel for the applicants stated that the applicants are aggrieved of order No. 3/Pers/A-1/PN-5665, 5802, 5840, 5838, 5638/688 dated 26.09.2017 and order No. 3/Pers/A-1/PN -5646-570 dated 18.08.2017, by which it was intimated that the representation submitted by the applicants with regard to regularization of their daily rated service for the financial upgradation granted to various employees in view of various orders in O.A.s, cannot be extended in their case, as of now, there is no direction in the CAT orders to extend the benefit of ACP/MACP to other employees. It is also stated that non-counting of daily rated service rendered by the applicants as daily rated casual Mazdoor/LDC followed by regularization as Group D as well as LDC, for the purpose of service benefits including grant of financial upgradation under the ACP and MACP scheme, etc, whereas the case of the applicants is squarely covered by the judgments passed by the Punjab and Haryana High Court in CWP No.22139/2015 dated 23.05.2016 (UOI and others Vs. CAT, Chandigarh Bench and Others, CWP No.23485/2015

dated 25.07.2016 (UOI & Others Vs. CAT, Chandigarh Bench and Others)) and CWP No. 21485/2014 dated 30.01.2017 (UOI Vs. CAT, Chandigarh Bench). It is stated that in the above cases, colleagues of the present applicants were working under the same respondents praying for grant of similar relief of counting of their daily rated service followed by regular service for the purpose of service benefits including grant of financial upgradation under the ACP and MACP schemes. The controversy involved in the present case is also similar. Similar and identical matter was also allowed on 24.09.1999 by the Hon'ble CAT Ernakulam Bench in O.A. No.58/1997 titled B. Sasikumar & Others Vs. Union of India & Others. The judgement of the Hon'ble Ernakulam Bench was challenged by the respondents before the Hon'ble High Court of Kerala in WP No.32410/1999 which was dismissed vide order dated 04.08.2003. The above orders of the Hon'ble Kerala High Court was challenged by the respondents herein before the Hon'ble Supreme Court in C.A. No. 5121/2005 titled Union of India & Others Vs. B. Sasikumar & Others, which was dismissed vide order dated 31.03.2010.

3. It is further submitted that the matter has been finalized upto the Hon'ble Supreme Court and the relevant payment has been made to the applicants. Hence, applicants of the present O.A. also pray for similar relief.

4. In view of the above, the applicants have sought the following relief(s):-

"(i) That the present joint original application and accompanying Misc. Application for allowing to file joint original application qua all the 20 applicants be allowed in the interest of justice.

(ii) Respondents be directed to produce the complete record of case of the applicants.

(iii) That impugned order dated 18.08.2017/26.09.2017 Annexure A-1 (Collectively) issued by Respondents No.2 by quashed/set-aside.

(iv) That direction in the nature of mandamus be issued to the respondents directing Respondent No.2 to count the service rendered by the applicants as daily rated Mazdoor/LDC's from their initial date of engagement prior to their regularization and add the same with their regular service as Mazdoor/LDC for the purpose of grant of benefit of financial upgradation under ACP and MACP Scheme in terms of judgments Annexures A-1 to A-6 and further grant them the benefit of financial upgradation alongwith all other consequential benefits and arrears thereof as admissible to the applicants along with interest @ 10% p.a. Within the time frame to be fixed by this Hon'ble Tribunal in the interest of justice.

(v) That this Hon'ble Tribunal may also pass any other order for the grant of relief(s) to the applicant which it may deem fit in the peculiar facts and circumstances of the case.

(vi) That cost of this application be also awarded in favour of the applicants for forcing them to approach this Hon'ble Court for seeking similar relief as already

granted to their colleagues in various judicial pronouncements in the interest of justice.”

5. Learned counsel for the respondents, on the other hand, submitted that the Tribunal as well as Punjab and Haryana High court while disposing of various OAs and Writ Petitions filed by the employees of respondents department have only relied on the order of Hon’ble CAT, Mumbai Bench. They have conveniently ignored the ruling of Hon’ble Supreme Court by dismissing the SLP No.5121 of 2005 vide its order dated 31.03.2001 in which it has been clearly stated that their impugned judgement dated 31.03.2010 shall not operate as precedent in future. The Hon’ble Supreme Court in the order in SLP No.5121 of 2005 only stated that “we are not inclined to exercise our discretion under Article 136 of the Constitution of India. The Civil Appeal is dismissed accordingly”. The Hon’ble Supreme Court has not decided the case on merits hence, it cannot be considered as similarly placed. Had the Hon’ble Supreme Court exercised the discretion under Article 136 of the Constitution of India the appeal would not have been dismissed by the Supreme Court.

6. The learned counsel for the respondents also submits that Hon’ble Supreme Court in the judgement dated 07.07.2013 in Civil Appeal No.100 of 2013 arising out of SLP (C) No.29987 of 2010 (Haryana Power General Corporation Ltd and others vs. Harkesh Chand and others) made it clear that ACP Scheme excluded certain categories of employees namely those appointed on adhoc basis, work charged basis, part time paid out of contingencies and daily wagers from getting the benefit of the scheme.

7. All the applicants in the instant case were working on Daily Rated basis. It was clearly stated to them that the services rendered by them as daily rated will not be counted for any purpose such as seniority/promotion/pension and other benefits. This condition has already been accepted by the applicants with the motive of getting a secured job and subsequently moved the court seeking all benefits counting the services rendered by them on the Daily Rated basis.

8. As per Recruitment Rules the selection to the post of lower Division Clerk is through Staff Selection Commission which is a Constitutional Body. However, the daily rated employees have joined CSD not by qualifying the examination conducted by Staff Selection Commission. There was no embargo for these individuals in appearing for the examination conducted by SSC for LDCs. Either they had not appeared in the examination or not qualified the examination. Yet as a very special case and on humanitarian grounds the Department had obtained special dispensation from the Govt. to conduct separate examinations at Departmental level to regularize the service of qualified persons. As such, directing the department to regularize the services of the individuals before they qualify the examination is not in consonance of the Govt. Policy.

9. SLP No.2401/2018 (U.O.I. vs. Rakesh Kumar & Others) was also dismissed on grounds of delay and not on merits. Another SLP No.41326 of 2017 which has

been clubbed together being identical matter of Shri Ravi Kumar Saraf & others and Smt. Basanti Bhatt and others was listed on 28.09.2018.

10. It is further submitted that none of the above matters have been disposed of on merits by the Hon'ble Supreme Court but on grounds of delay. In the matter of Shri B Sasi Kumar in SLP No.5121 of 2005 the Hon'ble Supreme Court had categorically spelt out in order dated 31.03.2010 that it shall not operate, as precedent in future and the Hon'ble Apex Court was not inclined to exercise discretion as per Article 136 of Constitution of India. The counsel for the respondents submits that the OA is devoid of merit and liable to be dismissed on this ground alone.

11. We have heard the arguments put forth by learned counsel for both the parties. The learned counsel for the applicants is quoting various applications/petitions wherein the benefit of counting the service rendered as Daily Rated Workers has been given for the purpose of calculating the eligibility for giving in situ promotions under the ACP/MACP Schemes. On the other hand, learned counsel for the respondents opposes the same by bringing out that the benefit extended to certain individuals in the aforementioned cases is personal to them and the Hon'ble Apex Court has made it clear that such cases cannot be quoted as precedents in other cases. This stand taken by the learned counsel for the respondents is corroborated by the following:

In Civil Appeal No.5121 of 2005 (Union of India & Ors v.B. Sasikumar & Others), the Hon'ble Apex Court has passed the following orders:

"Heard learned counsel for the parties.

On the facts of the case, we are not inclined to exercise our discretion under Article 136 of the Constitution of India.

The Civil Appeal is dismissed accordingly. No costs.

However, we direct that the impugned judgement shall not operate as a precedent in future. "

12. Keeping in view the above discussions, we find that the contention of the applicants regarding extending the benefit of service rendered as Daily Rated Workers for the purpose of ACP/MACP Schemes is based on petitions filed by similarly placed individuals in the cases mentioned above. However, the common thread in all these cases is the clear directive of the Hon'ble Apex Court mentioned at Para-10 above that decision in those cases would be personal to the petitioners and shall not be quoted as a precedent. Therefore, the claim of the applicants is not tenable and their application is liable to be dismissed on this count alone. The OA is accordingly dismissed.

13. No order as to costs.