

(2016) 07 P&H CK 0214
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 23485 of 2015.

Union of India and another - Petitioners @HASH Central Administrative Tribunal, Chandigarh Bench, Chandigarh and Others

Date of Decision : 25-07-2016

Acts Referred:

Citation : (2017) 1 SCT 252

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Vishal Garg, Advocate, for the Petitioners; Barjesh Mittal, Advocate, for the Respondents No. 2 to 10

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J. - The petitioners through the instant petition filed under Articles 226/227 of the Constitution of India, have prayed for issuance of a writ in the nature of certiorari for quashing the order dated 27.8.2014 (Annexure P-1) passed by respondent No.1-Central Administrative Tribunal (in short "the Tribunal") whereby the Original Application (OA) filed by respondents No.2 to 10 had been allowed directing the petitioners to count their daily rated LDC service from the initial date of their engagement and to add the same with their regular service for the purposes of all benefits of financial up gradation under ACP Schemes.

2. A few facts necessary for adjudication of the present petition as narrated therein may be noticed. Respondents No.2 to 10, are employees of the petitioners, who were engaged on daily wages on different dates and all the benefits due towards them were duly paid. Their services are governed by the Rules of Union of India and they were not entitled to any benefits of ACP and MACP or promotion etc. on the basis of service rendered by them on daily wages. The services of respondents No.2 to 10 were regularised from time to time at different points of time. They were rendering their regular service in the department and all the due benefits were given to them as per their service conditions. Respondents No.2 to 10 filed OA before the Tribunal for consideration

of their service of daily wages for pensionary and other monetary benefits. They relied upon a judgment given by the Tribunal, Ernakulam Bench which was upheld by the Supreme Court. The petitioners filed reply before the Tribunal pleading that respondents No.2 to 10 were not entitled to any relief in view of their service condition. The Tribunal vide order dated 27.8.2014 (Annexure P-1) disposed of the said OA with a direction to the petitioners to review the cases of respondents No.2 to 10 regarding date from which ACP/MACP benefits were to be allowed. Hence, the present writ petition.

3. We have heard learned counsel for the parties and have perused the record.

4. It was not disputed that the claim of the respondents is covered by the order dated 12.9.2011 (Annexure A-3) passed by the Mumbai Bench of Tribunal in OA Nos.193/2011 to 263/2011 etc. (Karan Anant Puro and Others v. Union of India). The Tribunal had observed as follows:-

"We have given our thoughtful consideration to the matter. The issue is no longer res-integra as the Coordinate Bench of CAT Mumbai had disposed of 74 OAs allowing the claim of persons similarly situated to the applicants to count the service rendered by them from the initial date of their engagement for ACP benefits and the Bombay High Court had dismissed the judicial review filed in this regard by the respondents through General Manager, CSD Mumbai who is respondent No.2 in the present OA also. The Courts have held time and again that similarly situated employees have to be allowed the benefit of judicial pronouncements and individual claimants should not have to approach the Tribunal/Courts seeking the same relief over and over again. It is also observed that a similar matter had been decided through order dated 2.8.2013 in OA No.1439/PB/2012 (Annexure A-1), but it appears that the respondents are bent upon opposing the claims of similarly situated employees seeking identical relief. This attitude of the respondent department is to be deprecated in no uncertain terms."

5. It is further an admitted fact that the decision of the Mumbai Bench of the Tribunal was duly upheld by the Bombay High Court vide order dated 24.07.2013 (Annexure A-2) which is as under:-

"In the light of the aforesaid judgments of the Supreme Court, we are of the opinion that the view taken by the CAT, Mumbai Bench does not call for any interference, particularly since limited relief of counting the service from initial date of engagement for the purpose of financial up gradation under ACPS has been granted to the respondent employees by taking into consideration the peculiar facts and circumstances of the case."

6. Union of India filed Special Leave Petition against the decision of Bombay High Court which was dismissed by the Supreme Court vide order dated 16.07.2015 on the ground of delay. Resultantly, the order passed by Mumbai Bench of the Tribunal and the Bombay High Court have attained finality.

7. Similar issue had also been adjudicated by this Court in CWP No. 22139 of 2015 (Union of India and others v. CAT Chandigarh and others) decided on 23.5.2016 where this Court while dismissing the writ petition filed by Union of India had noticed as under:-

"6. It appears to us that since the claim of similarly placed employees, which was accepted by the Tribunal's co-ordinate Bench at Mumbai, has attained finality and they have got the financial up gradation under ACP/MACP by taking into account their service from the date(s) of initial engagement, any different view by this Court would unwittingly lead to discrimination amongst the similarly placed employees.

7. Besides that, the Tribunal has rightly on consideration of the facts held that the initial engagement of respondent was on being sponsored by Employment Exchange and their services were subsequently regularised by the respondents. Since it was not a case of back-door entry as they were appointed through competitive process, such appointment cannot be termed irregular.

8. The Bombay High Court relied upon the decision of the Hon'ble Supreme Court in State of Maharashtra & Ors. v. Uttam Vishnu Pawar, (2008) 2 SCC 646, taking note of its previous decisions in the case of Dwijen Chandra Sarkar & Anr. v. Union of India & Ors., (1999) 2 SCC 119, Union of India v. V.N. Bhat, (2003) 8 SCC 714, APSEB v. R.Parthasarathi, (1998) 9 SCC 425, Scientific Advisor to Raksha Mantri v. VM Joseph, (1998) 5 SCC 305 and Renu Mullick v. Union of India, (1994) 1 SCC 373 to hold that the very purpose of ACP/MACP is to relieve frustration on account of stagnation and the scheme does not involve the actual grant of promotional post to the employees but merely monetary benefits in the form of next higher grade subject to fulfilment of qualifications and eligibility criteria. Thus, the benefit of service rendered by the respondents before their regular absorption, if counted, neither it affects the seniority of directly recruited other members of the cadre nor it affects them in terms of the promotional aspirations. The respondents rather would continue to retain the same status except monetary benefits admissible in the higher grade."

8. In view of the above, the present writ petition is dismissed.