

(2015) 10 J&K CK 0021

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2196 of 2015

Union of India

APPELLANT

Vs

Fayaz Ahmad Mir

RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 103

Citation : (2016) 2 JKJ 457

Hon'ble Judges : Mr. N. Paul Vasanthakumar, CJ. and Mr. Hasnain Massodi, J.

Bench : Division Bench

Advocate : Mr. S.A. Makroo, ASGI, for the Appellant/Petitioners; None, for the Respondents

Final Decision : Dismissed

Judgement

Mr. N. Paul Vasanthakumar, C J. - This writ petition is filed by Union of India and its officers challenging the order made in OA

No.I338/JK/2013 dated 01.08.2014 passed by the Central Administrative Tribunal (Chandigarh Bench) in allowing Original Application filed by

the respondents.

2. The respondents herein filed the said Original Application challenging the Circular bearing No. 41002/ACP/NC/E1 DPC (PP and Sub) dated

03.07.2013 which modified/changed the date of grant of 2nd financial up-gradation under ACP scheme, contending that said Circular is against the

policy dated 19.05.2009 issued by Government of India, Ministry of Personnel Public Grievances and Pensioners, which declares that no past

case will be reopened regarding up-gradation under ACPS and MACPS and it will not be considered as anomaly and no benefit can be

withdrawn which has been granted for no misrepresentation.

3. The contention of the respondents before the Central Administrative Tribunal was that they were appointed as Switch Board Attendants on

11.07.1979 and the posts of the respondents were re-designated as Lower Division Clerks (LDC) on 23.05.1984 and on completion of 12 years

the 1st Assured Career Progression (ACP) was allowed to the respondents and on completion of 24 years the 2nd ACP was given but on the

contrary the clarification Circular issued not to re-open the grant of ACP/MACP benefits already granted, the Circular was issued on 03.07.2013

and the same was challenged. The Central Administrative Tribunal, following an earlier order made in-OA No. 207/JK/2012 dated 18.07.2014,

wherein it was held that period of service rendered in the industrial cadre had to be counted for ACP/MACP benefits already gained, allowed the

Original Application.

4. Aggrieved by the same this writ petition has been filed by the petitioners by contending that the basis on which ACP/MACP benefits are

conferred is to give financial up-gradation to the persons who are not getting promotion i.e. to avoid stagnation. The respondents herein were

granted ACP status from the post of Switch Board Attendants and the period of service giving ACP can be counted only from the date of giving

the post of LDC and not from the date of their appointment as Switch Board Attendants.

5. This Court put a pointed question to the learned counsel appearing for the petitioners, as to whether the post of LDC is a promotional post with

higher salary than the post of Switch Board Attendant. The learned counsel fairly submitted that it was only a re-designation and not a promotional

post and there is no difference in salary or pay also i.e. the post of LDC and Switch Board Attendant carries equal pay scale. In the said

circumstances the ACP/MACP Scheme has to be looked into to ascertain as to whether the respondents are entitled to count their service as

Switch Board Attendants along with the service of LDC post.

6. The learned counsel for the petitioners produced the office memorandum No. 35034/3/2008-Estt.(D) dated 19.05.2009 wherein it is stated

that the Sixth Pay Commission in Para. 6.1.15 of its report has recommended Modified Assured Career Progression Scheme (MACPS). As per

the recommendations the financial up-gradation will be available to the next

higher grade pay whenever an employee has completed 12 years'

continuous service in the same grade. The word, "'same grade'" is more relevant for determination of the issue raised in this writ petition.

7. It is an admitted fact that Switch Board Attendant and LDC posts are in the same grade/cadre with same pay scale. The scale of pay is same

for both the posts and the respondents having been placed in the cadre of LDC's from the post of Switch Board Attendants on re- designation of

the post and they having been paid the same grade pay, the Central Administrative Tribunal was fully justified in ordering that respondents are

entitled to get the ACP on completion of 12 years and 24 years of service of their first appointment as Switch Board Attendants. It is also not

shown before this Court that earlier decision passed in OA No. 207/JK/2012 dated 18.07.2014 had been challenged. Hence the said order is still

in force. Hon'ble the Supreme Court in the decision reported in (2015) 1 SCC 347, State of Uttar Pradesh and others v. Arvind Kumar

Srivastava and others has held that similarly placed persons are to be extended the benefit of the judgment. In paragraph no. 22.1 it is held thus:

22.1 The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated

alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This

principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates

that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated

persons did not approach the Court earlier, they are not to be treated differently.

8. Hon'ble the Supreme Court in the decision reported in (1999) 2 SCC 119 (Dwijen Chandra Sarkar and anr v. Union of India and ors) and

(2003) 8 SCC 714 Union of India and Anr. v. V. N. Bhat held that for granting financial up gradation under the ACP scheme even the

adhoc/temporary service shall also be counted.

9. In the light of the above un-disputed facts and the fact that as per the scheme if a person is stagnated in a post on the same pay he is entitled to

get the 1st ACP on completion of 12 years and 2nd ACP on completion of 24 years, the Central Administrative Tribunal was fully justified in

allowing the Original Application filed by the respondents. There is no merit in the writ petition and the same is dismissed in limine. No costs.