(2014) 11 MAD CK 0413

In the Madras High Court

Case No : Writ Petition No. 7163 of 2012 and M.P. No. 1 of 2012

Union of India APPELLANT

Vs

M. Bhagyalakshmi RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Citation : (2014) 11 MAD CK 0413

Hon'ble Judges : Satish K. Agnihotri, J;K.K. Sasidharan, J

Bench : Division Bench

Judgement

1. Challenge in this writ petition is to the order dated 06-07-2011 passed by the Central Administrative Tribunal, Madras Bench in O.A.No. 1089 of 2010.

2. The indisputable facts are that the first respondent, who was the applicant before the Tribunal was working as Lower Selection Grade (''LSG'' in short) official and was given financial upgradation under Biennial Cadre Review (''BCR'' in short) Scheme. While she was working as the Assistant Sub-Post Master in High Court Building SO in Chennai, she was directed to look after the duties of Higher Selection Grade- I (''HSG-I'' in short), Sub Postmaster, Sowcarpet Mail Delivery Sub Post Office, during the spells, 01-03-2004 to 24-06-2005, 29-06-2005 to 23-11-2005, 28-11-2005 to 03-04-2006, 19-04-2006 to 31-05-2006 by the fourth petitioner herein. The first respondent retired on attaining the age of superannuation on 31-5-2006, while looking after the duties of HSG-I. The first respondent thereafter, preferred an application before the Tribunal, seeking a direction to the writ petitioners herein to revise her pensionary benefits on the basis of pay and allowance fixed on the post of HSG-I, during the period 01-08-2005 to 31-05-2006 in the light of the Office Memorandum dated 11-12-2008. The first respondent also asked for setting aside the communication dated 19-11-2009 sent by the General Manager (Postal Accounts and Finance) Chennai intimating her that pensionary benefits will be settled on BCR Scheme on receipt of reply from the Directorate, New Delhi. The Tribunal having considered all the aspects of the matter and relying on Office

Memorandum dated 11-12-2008 held that the first respondent was entitled to pension on the last pay drawn as on 31-05-2006. It was further directed to issue the necessary pension order within a period of eight weeks from the date of receipt of a copy of the order. Being aggrieved, the present writ petition was preferred by the respondents therein.

3. This Court granted ex-parte stay of the operation of the impugned order on 05-08-2014. The indisputable facts are that the first respondent was working as LSG Official and due to non-availability of eligible qualifying person in HSG II Cadre, she was asked to look after the office of the HSG-I cadre, Sub Postmaster, Sowcarpet Mail Delivery Sub Post Office. Needless to state that under Rules for promotion to the post of HSG-I, the requisite qualification is working as HSG-II or Assistant Superintendent of Post Offices in the ratio of 50:50; In case of promotion from HSG-II, the official must have completed three years of regular service in the grade. There is no dispute that the first respondent was not qualified to be appointed as HSG-I.

4. The learned counsel appearing for the petitioners would submit that the first respondent was working as LSG and was given financial upgradation under BCR Scheme and was asked to look after the office of HSG-I; since she was not qualified to be appointed as HSG-I, the first respondent was entitled to officiating allowances, but not the pay-scale as well as pensionary benefits on that basis. It was brought to our notice that the order dated 27-04-2009 clearly states that the officiating arrangements were made purely on temporary basis and not confer any right on the officials for their continuance in HSG I cadre for regular promotion and as such, the first respondent was not entitled to pensionary benefits on the basis of the Office Memorandum dated 11-12-2008. It is the next contention of the learned counsel for the petitioners that the said Office Memorandum is contrary to the service rules and as such, the same is not binding on the authorities.

5. On the other hand, the learned counsel appearing for the first respondent would submit that the criteria as per Office Memorandum dated 11-12-2008 is that the pensionary benefits of the employee has to be calculated at 50% of the emoluments last drawn or 50% of the average emoluments received during the last 10 months, which is more beneficial to the retiring employee. The first respondent was getting her pay-scale fixed for the post of HSG-I with other emoluments for the last 10 months and as such, her pension should be settled at 50% of the total emoluments last drawn by her, at the time of superannuation.

6. We have heard the learned counsel appearing for the parties and perused the records and pleadings thereon.

7. It is not in dispute that the Post & Telegraphs (Selection Grade Posts) Recruitment Rules, 1976 regulates the service conditions of the postal employees. As per Schedule, method of recruitment to the post of HSG-I in Post-Offices are as under:

Name of Post

Method of recruitment whether by direct recruitment or by promotion or by deputation/trans. And the vacancies to be filled by various methods In case of rectt. By promotional deputation, transfer, grade from promo-deputation % of transfer to be made.

Higher Selection Grade-I in Post Offices 50% by promotion & 50% by transfer Promotion from higher selection grade-II, general line & transfer from Asst.Supdt. Of PO in the ratio of 50:50- odd post going to general line. In the case of promotion, the higher selection Grade-II officials must have completed 3 years regular service in the grade.

8. It is also not the case of the first respondent that she had completed three years of service as HSG II. The next promotion to the post of LSG on which she was working was HSG-II. There is no dispute that the petitioner was asked to officiate HSG-I during different periods as aforestated.

9. Now the question for consideration before us is whether the first respondent who had worked as HSG-I at the time of retirement is entitled to 50% of the pay and allowances last drawn on the basis of her working as HSG-I or on the basis of her substantive salary as LSG.

10. The Government of India issued a Official Memorandum on 02-09-2008 dealing with the pension of employees. The relevant Clause 5.2 reads as under:

?Linkage of full pension with 33 years of qualifying service shall be dispensed with. Once a Government servant has rendered the minimum qualifying service of twenty years, a pension shall be paid at 50% of the emolument or average emoluments received during the last 10 months, whichever is more beneficial to him.

Thereafter, a clarification was issued vide Official Memorandum dated 11-12-2008 which reads as under:

A number of references are being received in this Department in this respect. The matter has been reviewed in consultation with the Ministry of Finance (Department of Expenditure). It has now been decided that the provision for payment of pension at 50% of the emoluments (pay last drawn) or 50% of average emoluments received during the last 10 months, whichever is more beneficial to the retiring employee, shall be applicable to all Government servants retiring on or after 1.1.2006. However, only those Government servants, who retired during 1.1.2006 to 1.9.2008 after completion of 33 years of qualifying service, will be eligible for full pension and the pension of those Government servants, who retired during 1.1.2006 to 1.9.2006 with qualifying service of less than 33 years, will continue to be proportionate to the full pension based on their actual qualifying service.

11. The subsequent memorandum prompted the first respondent to make a

representation for re-fixation of her pension on the basis of last drawn wages.

12. The contention of the petitioners that under the Circular dated 27.4.2009, the first respondent was not entitled to any right for continuance in HSG I cadre for regular promotion does not negate the mandate of the Official Memorandum dated 11.12.2008 and also the subsequent contention that the said memorandum is violative of rules, which provides for promotion to HSG I, is also not sustainable in law. The 1976 Rules provides for method of appointment by way of promotion or transfer, wherein the requirement is for HSG-II is three years experience and LSG is not the feeder category for promotion to the post of HSG-I. However, the said rules do not provide for computation of pension. The relevant Office Memorandum dated 2.9.2008 and the clarificatory Office Memorandum dated 11.12.2008 clearly provide that pension of the employee shall be calculated on the basis of the last pay and allowances drawn or average of the emoluments received during the last 10 months whichever is more beneficial.

13. As a sequel, the first respondent was entitled to the benefit of aforestated Official Memorandums. It is not the case of the petitioners that the pay and emoluments of the first respondent was erroneously fixed during the period the first respondent was discharging the duty of HSG-I.

14. In Union of India (UOI) and Others Vs. Shri Bhanwar Lal Mundan, , cited by the learned counsel for the petitioners, the pay scale drawn by the employee concerned therein was erroneous and the authorities exercising their power, refixed the pay scale and pension was computed thereon. Thus, the same is not applicable to the facts of the case on hand.

15. Further reliance of the learned counsel on the decision dated 13.08.2014 of this court in R.Kuppuswamy Vs The Registrar, Central Administrative Tribunal, Chennai Bench and others (W.P.No. 15512 of 2013) is also not applicable to the facts of this case as in the said case, the petitioner therein sought for a direction to pay fixation as well as pension thereon. The facts of the case on hand is distinguishable.

16. In view of the foregoing, the impugned order passed by the Tribunal cannot be flawed and as such, no interference is warranted.

17. As a result, the writ petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

