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(2019) 11 CAT CK 0032

In the Central Administrative Tribunal

Case No : Original Application No. 2372 Of 2018

Vijay Kumar And Ors APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 20-11-2019

Acts Referred:

Citation : (2019) 11 CAT CK 0032

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : M.K. Bhardwaj, S.M. Arif

Final Decision : Dismissed

Judgement

1. The applicants, who are five in number joined the services of the respondents-All India Radio on various dates in 1984 as ad hoc Clerk, Grade II. They appeared for the Staff Selection Commission exam and cleared the exam, the result of which was declared on 06.01.1986. Subsequently, it came to light that applicants did not have one year ad hoc service on the relevant date, which was essential for taking the said exam. Their services were terminated and after various rounds of litigations, the Hon"ble Apex Court passed an order on 21.03.1988 by which the applicants were to be reinstated but were not entitled to any back wages. Their continuity in service and seniority were to be maintained. It was also held that they have passed the SSC exam and the services of the applicants should be regularised and they should be absorbed in the service. In compliance of the said order the services of the applicants were restored. Order pertaining to applicant No. 1 Sh. Vijay Kumar is on the record at Annexure R-3 by which he was appointed from 08.01.1986 till 31.08.1986 as ad hoc Clerk Grade II, whose services can be terminated any time without any notice. Orders pertaining to other applicants are not on record.

2. Subsequently, in compliance with the orders of the Hon"ble Apex Court and consequent to the selection for appointment on the basis of special qualifying

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exam-1985, the competent authority also appointed the applicant no. 1 on regular basis with effect from 06.01.1986 vide order No. A-17/14/V.K./86-Admn.I (Vol.III) 253/88 dated 14.12.1988. Admittedly, that this order was not challenged by the applicants. The applicants were granted 2nd and 3rd financial upgradation counting the services from 1984. Subsequently, during the scrutiny of the cases in the meeting of DPC for granting benefit under 3rd MACP Scheme, the Members of the committee observed that regular services of the applicants had not been counted correctly and were to be re-checked. Thereafter, the impugned order dated 16.05.2018 was passed in the case of applicant no. 1 wherein his salary was re-fixed taking the date of regularisation in 2006 as the base for grant of MACP. Counsel for applicants has stated that orders have not yet been passed in the case of other applicants. But, it is their contention that their matter is exactly similar.

3. The applicants claim that they should be given MACP treating their appointment from 1994 when they were appointed on ad hoc basis for the first time. They have also stated that this issue should not be raked up after a long period of 30 years. They have claimed that identically placed persons were given financial up gradation ACP/MACP in the year 2008 and given grade pay of Rs.4200/- but they have not substantiated their claim in detail nor given any names of similarly placed persons having got additional benefits. They have claimed relief citing the Hon"ble Apex Court"s decision in the case of State of Punjab & Ors. Vs. Rafiq Masih (White Washer) in Civil Appeal No. 11527/2014 decided on 18.12.2014, wherein no recovery can be made from Group ?C" and ? D" employees as well as who are retiring within a year, when such an employee is not responsible for the excess payment. The applicants sought for quashing and setting aside the order dated 20.04.2018 which states that only regular service which counts for the purpose of regular promotion in terms of relevant recruitment / services rules shall count for the purpose of upgradation under ACP and by which the date of 2nd MACP of applicant no. 1 is stated to be 01.09.2008 and 3rd MACP with effect from 06.01.2016 on completion of 30 years of service from the date of regular appointment. They have also sought setting aside of order dated 16.05.2018 by which the pay etc., of applicant no.1 has been re-fixed. They have claimed the following specific reliefs :-

"(a) To quash and set aside the impugned order dated 20.04.2018 and 16.05.2018 with further directions to accord all consequential benefits to the applicants.

(b) To declare the action of the respondents in reviewing their own orders of granting 2nd and 3rd Financial Upgradation to the applicants by counting their service rendered from 1984 to 1986, as illegal and arbitrary and declare the grant of Financial Upgradations to the applicants on the basis of their service rendered from 1984 onwards as legal and justified.

(c) To direct the respondents to accord all service benefits to the applicants as granted by Hon"ble Supreme Court of India vide order dated 21.03.1988 and

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consequential letters by SSC for treating the applicants service from 1984 as regular service."

4. Respondents have denied the claims of the applicants.They have stated that they have strictly complied with the orders of the Hon"ble Apex Court dated 21.03.1988 by which they have reinstated the applicants and regularised their services from the date of passing SSC Exam which made them eligible for regular appointment. They have reiterated that re-appointment was strictly on ad hoc basis and they were regularised after the orders of the Hon"ble Apex Court with effect from 06.01.1986. They have further stated that as per the guidelines of DoP&T and subsequent clarification issued vide O.M. No. 35034/1/97-Estt.(D) (Vol. IV) dated 10.02.2000, the benefit of ACP/MACP will be counted only from the date of regular appointment of the employee. They have also contended that the pay fixation order contains the condition that "the pay fixation is subject to post audit and in the light of audit observation the over payment made, if any, either in the form of arrears or otherwise shall be recovered from the amount due to the person concerned subsequently without notice" and the applicant has never represented against the condition laid down in the order. Therefore, as per their claim the applicants have no case. They have cited the case of High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh in Civil Appeal No. 3500/2006, decided on 29.07.2016 in which it was held that if an undertaking has been furnished by an employee any payment found to be in excess, would be required to be refunded. The operative part of the said order reads as under :-

5. Heard Mr. M. K. Bhardwaj, learned counsel for applicant and Mr. S. M. Arif, learned counsel for respondents.

6. Two issues need to be considered here. The first is regarding the date of regular service and the second is regarding the impact of relevant date for the purpose of ACP/MACP.

7. As far as the date of regular service is concerned, it clearly emerges that the eligibility for appointment to be regularised arose only after clearing the SSC exam. In fact even though the applicants had not completed the requisite ad hoc service for appearing in the exam, because they had cleared the said exam, termination of their services was taken back and they were appointed once again. The order clearly states that applicant no. 1 was appointed on regular basis with effect from 06.01.1986 vide order No. A-17/14/V.K./86-Admn.I(Vol.III)253/88 dated 14.12.1988. This order has not been challenged by the applicants till date. Therefore, it is clear that the date of regularisation in case of applicant no. 1 is 06.01.1986.

8. On the second issue of relevant date for the purposes of grant of ACP/MACP, it is clear from the scheme and DoP&Ts clarification issued vide O.M. No. 35034/1/97-Estt. (D) (vol. IV) dated 10th February, 2000, wherein it is stated that "only regular service which counts for the purpose of regular promotion in terms of relevant Recruitment/Service Rules shall count for the purpose of

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upgradation under ACPs. Therefore, eligibility for ACP/MACP arises only from the date of regular service which in the case of applicant no. 1 is 06.01.1986.

9. The applicants have claimed relief from recovery as per the Hon"ble Apex Court judgment in Rafiq Masih. This has been controverted by the respondents who have cited the judgment of Jagdev Singh stating that the applicants furnished an undertaking while opting for revised pay scale that if any payment is found to have been made in excess, it would be required to be refunded. In similar circumstances, the Hon"ble Apex Court in the case of Jagdev Singh (supra) observed the following:-

"11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment if High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years."

10. The applicants have not specifically denied having furnished the undertaking. It thus emerges that the applicants" matter is covered by the ruling in the case of Jagdev Singh (supra) rather than the case of Rafiq Masih.

11. In light of the facts in the case of applicant no. 1, Sh. Vijay Kumar and the contention of the other applicants that their cases are similar, this O.A is dismissed. No order as to costs.

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