

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT SRINAGAR**

**Reserved on : 30.04.2024
Pronounced on: 20.05.2024**

**WP(C) No.2155/2022
CM No.5436/2022**

Ghulam Hassan Mir & others **.....Petitioner(s)**

versus

Union of India & others **.....Respondent(s)**

Through: Mr. Mir Majid Bashir, Advocate
Mr. Tawfeeq H. Khawaja, Advocate

Through: Ms Sahila Nissar, Advocate, vice Mr.
T.M. Shamsi, DSGI

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE M.A. CHOWDHARY, JUDGE**

JUDGMENT

(Tashi Rabstan – J)

1. This petition is directed against the order dated 13.06.2022 passed by the Central Administrative Tribunal, Srinagar Bench in Original Application No.637/2020, whereby the learned Tribunal while dismissing the OA, held that the contention of applicants-petitioners herein regarding extending the benefit of services rendered as Daily Rated Workers for the purpose of ACP/MACP Schemes is not tenable.

2. The facts-in-brief, as gathered from the file, are that the petitioners were initially engaged as daily rated/casual workers. Thereafter, their services were regularized vide different orders. The petitioners after regularization of their

services represented to the department that the effect of regularization of their services be given from the date of their initial appointment as daily rated workers for the purpose of service benefits including grant of financial upgradation under the ACP and MACP Schemes. However, the respondents vide orders dated 18.08.2017 and 26.09.2017 issued by the Government of India, Ministry of Defence, Canteen Stores Department declined the claim of petitioners herein. Feeling aggrieved, the petitioner filed O.A. No.637/2020 before the learned Tribunal and the learned Tribunal vide order dated 13.06.2022 dismissed the same. Hence, the present petition.

3. Learned counsel appearing for petitioners argued that the services of similarly situated persons working under the same respondents came to be regularized from the date of their initial engagement as daily rated/casual workers after the Apex Court vide order dated 31.03.2010 dismissed C.A. No.5121/2005 in case, titled as, Union of India & others vs B. Sasikumar & others, filed by the respondents.

4. However, learned counsel appearing for respondents argued that the petitioners were granted the financial upgradation under ACP/MACP by treating the date of regularization of their services as the base year. He further argued that before regularizing the services of petitioners herein, they were clearly informed that the services rendered by them as daily rated/casual workers will not be counted for any purposes such as seniority, promotion, pension etc.

5. Heard learned counsel appearing for the respective parties, considered their rival contentions and also perused the file.

6. Admittedly, the petitioners herein did not qualify the examination conducted by the Staff Selection Commission. Their services were regularized as a special case and on humanitarian grounds because they were already performing their duties as daily rated/casual workers. Further, from the date of joining their services as daily rated/casual workers till the date the services of petitioners came to be regularized, if in between some of the persons have already been regularly appointed as Mazdoor/LDC after following the due procedure and qualifying the examination conducted by the Staff Selection Commission, then such persons will admittedly become junior to the petitioners herein without any fault of them if the services of petitioners are regularized from the date of their initial appointment as daily rated/casual workers, when admittedly the services of petitioners herein came to be regularized without their having participated in the examination of Staff Selection Commission. Therefore, if the casual/*ad hoc* service is regularized from the back date in this manner, it will disturb the seniority of regularly appointed employees in the cadre. Ordinarily the regularization must take effect prospectively and not retrospectively. Care must be taken to see that such employees do not upset the seniorities of regular appointees who are certainly not before the Court. Also, it is the admitted stand of respondents that the petitioners were granted the financial upgradation under ACP/MACP by treating the date of regularization of their services as the base year.

7. Further, we are in agreement with the learned CAT that in Civil Appeal No.5121/2005, Union of India & others vs B. Sasikumar & others (*supra*), there was a clear directive of the Apex Court that the decision in the said case shall not operate as a precedent in future.

8. Viewed thus, we do not find any error in the order passed by the learned Tribunal which may warrant interference in the present petition. Therefore, the petition is dismissed. Connected CM, accordingly, stands disposed of.

Srinagar
20.05.2024
(Anil Sanhotra)

(M.A. Chowdhary)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No

