

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3071 of 2016

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1. The Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
 2. The Unders Secretary, (AFT/AG-1), Ministry of Defence, (AG), B-Wing, Sena Bhawan, New Delhi.
 3. The Director General, NCC, HQ, DGN CC/ Pers (C), West Block- IV, R.K. Puram, New Delhi.
 4. The Dy. Director General , NCC Directorate, Bihar & Jharkhand, Ministry of Defence, Rajendra Path, Patna.
 5. The C.D.A. Eastern Command, Patna Bihar.

.... Petitioner/s

Versus

Sumitra Nandan Prasad, Son of Late R.K. Sahu, Resident of Mohalla- Ramji Chak, Bata, P.S.- Digha, District- Patna (Bihar).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.D. Sanjay, A.S.G.

Mr. Satyavrat Verma, C.G.C.

For the Respondent/s : Mr. Jayram Sharma, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 08-08-2016

The challenge in the present writ application is to an order passed by the Central Administrative Tribunal, Patna Bench, Patna (for short “the Tribunal”) on 22nd of January, 2015 in O.A. No.

289 of 2012, whereby an Original Application filed by the respondent (hereinafter referred to as “the applicant”) was allowed and the petitioners herein were directed to grant 3rd Modified Assured Career Progression (hereinafter referred to as “MACP”) benefit after counting his entire service including the service rendered in lieu of combatant on *ad hoc* basis.

2. The applicant was working as Lower Division Clerk in the office of NCC Directorate, Bihar & Jharkhand. He was initially appointed on *ad hoc* basis in lieu of combatant post where he worked from 22nd of January, 1981 to 21st of January, 1983. It was thereafter, he was adjusted against regular vacancy.

3. The applicant claims the benefit of Assure Career Progression Scheme (hereinafter referred to as “ACP”) introduced by the Government of India vide Memorandum dated 9th of August, 1999, which permits financial upgradation to the civil employees on completion of 12 and 24 years of service, if they do not get regular promotion within the said period. The grievance of the applicant was that the period of service rendered by the applicant on *ad hoc* basis in lieu of combatant i.e. with effect from 22nd of January, 1981 to 21st of January, 1983 has not been considered for the purpose of granting ACP benefits. The applicant relied upon an order dated 05.04.2007 passed by the Madras Bench of the Tribunal in O.A. 85/2006

(Skariah Thomas Vs. Union of India and Anr.) which order was affirmed by the Madras High Court on 10.09.2008 in Writ Petition No. 5876 of 2008 (The Union of India and Anr. Vs. Skariah Thomas) and Special Leave Petition against the said judgment was dismissed.

4. In the counter affidavit, the stand of the petitioners is that the service rendered by the applicant from 22nd of January, 1981 to 21st of January, 1983 is an *ad hoc* service, therefore, relying on the Office Memorandum dated 19th of May, 2009, it is argued that such financial upgradation is contemplated only if “regular” service is rendered, which commences from the date of joining of a post in direct entry grade on a regular basis either by way of direct recruitment basis or on absorption/re-employment basis.

5. The Tribunal allowed the Original Application finding that the claim of the applicant is covered by its earlier order dated 20.05.2014 passed in O.A. No. 615 of 2011(Pramod Kumar Sinha Vs. The Union of India & Ors.).

6. Learned counsel for the applicant relied upon a Supreme Court judgment reported as Union of India and others Vs. M. Mathivanan, (2006) 6 Supreme Court Cases 57 wherein the Supreme Court has granted the benefit of financial upgradation on completion of service including the *ad hoc* service. Therefore, learned counsel for the applicant argues that in view of the said judgment, the

order of the Tribunal cannot be said to be suffering from any illegality.

7. On the other hand, Mr. S.D. Sanjay, learned Additional Solicitor General of India argued that the Time Bound Promotion scheme dated 30th of November, 1983 which was under consideration in M. Mathivanan's case did not contemplate that the financial upgradation shall be granted only if an employee has worked against the regular post. For such argument, reference is made to Paragraph 1 of the Scheme, which reads as under:-

“(1) The Scheme will come into effect from 30-11-1983. All officials belonging to basic grades in Group ‘C’ and Group ‘D’ to which there is direct recruitment either from outside and/or by means of limited competitive examination from lower cadres, and who have completed 16 years of service in that grade, will be placed in the next higher grade. Officials belonging to operative cadres listed in Annexure A-1 to the agreement will be covered under the Scheme.”

8. Considering the said paragraph, the Supreme Court found that said paragraph nowhere uses the connotation “regular” service but contemplates 16 years of service in a grade. Therefore, the regular service is not a condition for grant of financial upgradation. The relevant finding of the Supreme Court reads as under:-

“13. Reading of the above two paragraphs makes it abundantly clear that so far as placing of an officer in the “next higher grade” is concerned, what is relevant and material is that such official belonging to basic grades in Groups ‘C’ and ‘D’



must have completed “sixteen years of service in that grade”. The said paragraph nowhere uses the connotation “regular” service. Para 2 which provides for the Departmental Promotion Committee and consideration of cases of officials for “promotion”, provides for sixteen years of “regular” service. The Tribunal, therefore, rightly considered para 1 as relevant and held that basic eligibility condition for being placed in the next higher grade is that the officer must have completed sixteen years of service in the basic grade in Group ‘C’ and Group ‘D’. Though in other paragraphs, the service was qualified by the adjective “regular”, the said qualification was not necessary for the purpose of para 1. Since the employee wanted the benefit of placement in “next higher grade”, what was required to be established by him was that he had completed sixteen years of service in the grade and the said requirement had been complied with in view of the fact that with effect from 30-9-1983 he was appointed as Warrant Officer. He was, therefore, entitled to the benefit of “next higher grade” under para 1 from 1999. The authorities were, therefore, not justified in rejecting the claim and accordingly the petition was allowed. The High Court rightly upheld the direction of CAT.”

9. The petitioners have referred to MACP Scheme circulated on 19th of May, 2009. It is the said Scheme which is said to be applicable to the applicant. The relevant terms of the Scheme reads as under:-

“2.The Government has considered the recommendations of the Sixth Central Pay Commission for introduction of a MACPS and has accepted the same with further modification to grant three financial upgradations under the MACPS at intervals of 10, 20 and 30 years of continuous regular service.”



3. The Scheme would be known as “MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES. This Scheme is in supersession of previous ACP Scheme and clarifications issued there under and shall be applicable to all regularly appointed Group “A”, “B” and “C” Central Government Civilian Employees except officers of the Organised Group “A” Service. The status of Group “D” employees would cease on their completion of prescribed training, as recommended by the Sixth Central Pay Commission and would be treated as Group “C” employees. Casual employees, including those granted ‘temporary status’ and employees appointed in the Government only on adhoc or contract basis shall not qualify for benefits under the aforesaid Scheme. The details of the MACP Scheme and conditions for grant of the financial upgradation under the Scheme are given in Annexure-1.”

(Emphasis supplied)

10. Paragraph 9 and 11 of the Modified Assured Career Progression Scheme (MACPS) reads as under:-

“9. ‘Regular service’ for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered

till the satisfactory completion of the probation period in the new post.

11. 'Regular service' shall include all periods spent on deputation/foreign service, study leave and all other kind of leave, duly sanctioned by the competent authority."

11. On the basis of the terms of the MACP Scheme, it is contended that the financial upgradation is permissible only after "continuous regular service". (see Para 2). It is also mentioned that the employees appointed only on *ad hoc* or contract basis shall not qualify for benefit under the MACP Scheme (see Para 3). Para 9 of Annexure-1 defines "regular service" to mean that regular service for the purpose of MACP shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. It excludes the *ad hoc* service. Therefore, the applicant will not be entitled the financial upgradation by taking into consideration the *ad hoc* service, as such period has been specifically excluded for the purpose of financial upgradation.

12. The judgment in M. Mathivanan's case (supra) relates to different scheme and has a different language. The financial upgradations can be granted only in terms of the policy framed by the Government. Since the policy contemplates financial upgradation only after regular service, it cannot be said that such regular service

will include *ad hoc* service as well.

13. A three judge Bench of the Hon'ble Supreme Court in the case reported as **State of Haryana vs Haryana Veterinary & AHTS Association and another, (2000) 8 SCC 4** has examined the grant of financial upgradation, when the circular contemplated the grant of such benefit after "regular service". The Court held to the following effect:-

"7. Coming to the circular dated 2-6-1989, issued by the Financial Commissioner and Secretary to the Government of Haryana, Finance Department, it appears that the aforesaid circular had been issued for removal of anomalies in the pay scale of Doctors, Deputy Superintendents and Engineers, and so far as Engineers are concerned, which are in Class I and Class II, it was unequivocally indicated that the revised pay scale of Rs 3000 to Rs 4500 can be given after completion of 5 years of regular service and Rs 4100 to Rs 5300 after completion of 12 years of regular service. The said Financial Commissioner had issued yet another circular dated 16-5-1990, in view of certain demands made by officers of different departments. The aforesaid circular was issued after reconsideration by the Government modifying to some extent the earlier circular of 2-6-1989, and even in this circular it was categorically indicated that so far as Engineers are concerned, they would get Rs 3000 to 4500 after 5 years of regular and satisfactory service and selection grade in the scale of pay of Rs 4100 to Rs 5300, which is limited to the extent of 20% of the cadre post should be given after 12 years of regular and satisfactory service. The aforesaid two circulars are unambiguous and unequivocally indicate that a government servant would be entitled to the higher scale indicated therein only on completion of 5 years or 12 years of regular service and further the number of persons to be entitled to



get the selection grade is limited to 20% of the cadre post. This being the position, we fail to understand how services rendered by Rakesh Kumar from 1980 to 1982, which was purely on ad hoc basis, and was not in accordance with the statutory rules can be taken into account for computation of the period of 12 years indicated in the circular. The majority judgment of the High Court committed serious error by equating expression “regular service” with “continuous service”. In our considered opinion under the terms and conditions of the circulars dated 2-6-1989 and 16-5-1990, the respondent Rakesh Kumar would be entitled for being considered to have the selection grade on completion of 12 years from 29-1-1982 on which date he was duly appointed against a temporary post of Assistant Engineer on being selected by the Public Service Commission and not from any earlier point of time. The conclusion of the majority judgment in favour of Rakesh Kumar, therefore, cannot be sustained.”

14. The order of the Madras Bench of the Tribunal is said to have been affirmed by the Madras High Court. The Special Leave Petition has been dismissed *in limine*. The judgment of Madras High Court was not produced by the learned counsel for the applicant but assuming that the said judgment follows the judgment in M. Mathivanan’s case, the same is distinguishable for the same reasons as is there in M. Mathivanan’s case. Thus, the said judgment is not helpful to the argument raised by the learned counsel for the applicant.

15. In view of the aforesaid judgment in Haryana Veterinary & A.H.T.S. (supra) and the fact that language of the

Scheme under consideration in M. Mathivanan's case and the present case is different, we find that the order of the Tribunal cannot be sustained and is, therefore, set aside.

16. The writ application is, thus, allowed and the Original Application stands dismissed.

(Hemant Gupta, J)

Ahsanuddin Amanullah, J I agree.

(Ahsanuddin Amanullah, J)

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