

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.1871 of 2015

Dr.K.Ganapathy

.. Petitioner

Vs.

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai 600 104
2. Union of India
Rep. by the Secretary,
Ministry of Health & Family Welfare,
New Delhi - 110 108
3. The Welfare & Cess Commissioner,
Ministry of Labour & Employment,
Labour Welfare Organization,
Kendriya Sadhan,
Sultan Bazaar,
Koti, Hyderabad - 95.

.. Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the concerned records relating to the Order dated 16.09.2014 given in O.A.No.646 of 2012 passed by the first respondent and quash the same.

For the petitioner : Mr.S.Ramaswamy Rajarajan

For the Respondents -2 & 3 : Mr.Venkataswamy Babu
Senior Panel Counsel -
Government of India

For Respondent 1 : Tribunal

ORDER

(Order of the court was delivered by Justice V.PARTHIBAN)

The writ petition is filed against the order passed by the first respondent/Tribunal dismissing the O.A.No.646 of 2012 on 16.09.2014. The petitioner approached the learned

Tribunal in the above Original Application seeking for the following relief.

In view of the facts and grounds mentioned above the applicant prays that this Hon'ble Tribunal may pleased to call for the connected records from the First Respondent and on perusal to direct him / her to regularize the services of the applicant with effect from 03.03.1983 for the purpose of financial upgradation under DACP scheme and to give him the same from the date of introduction of the said scheme and to give him all consequential benefits and to pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case with costs.

2. A detailed reply statement was filed resisting the prayer of the petitioner. The learned Tribunal by detailed order dated 16.09.2014 dismissed the application holding that the relief prayed for cannot be granted to the petitioner. The learned Tribunal referred to several decisions in support of the conclusion and finally held that the regularization of service cannot be ante dated as prayed for and consequently the earlier service which was rendered by the petitioner prior to the actual date of regularization dated 27.09.1994 cannot be counted for the purpose of DACP benefits. As against the order of the learned Tribunal, dismissing the application, the present writ petition is filed.

3. Mr.S.Ramaswamy Rajarajan, learned counsel appearing for the petitioner drew the attention of this Court to the clarification dated 09.09.2010 to MACP scheme in which under point No.4, it was clarified as under:

Sl.N o	Point of doubt	Clarification
4.	Whether the benefits of MACPS would be granted from the date of entry grade or from the date of their regular service/approved service counted under various service rules.	The benefits under MACPS would be available from the date of actual joining of the post in the entry grade.

According to him, the petitioner having entered the service on 03.03.1983 he was entitled to count his services for financial upgradation under the scheme and clarification did not make any distinction between the regular service or adhoc service.

4. We have given our anxious consideration to the submissions made by the learned counsel for the petitioner.

We have also seen that the specific case of the petitioner has not been properly addressed either in the reply statement on behalf of the department before the learned Tribunal or by the learned Tribunal itself in its order dated 16.09.2014. The prayer in the Original application is limited to the extent that the regularization of service was only sought for the purpose of DACP benefits and not for any other service benefits like promotion seniority etc., Such being the case, it appears that the Tribunal has not dealt with the limited aspect of the prayer in proper perspective.

5. However, from the clarification issued on 09.09.2010, it is not known whether the date of actual joining of the post in the entry grade would mean regular service or any service be it regular or adhoc. However, from a bare reading of the clarification it appears that the issue raised by the petitioner has to be addressed in proper perspective only on the limited aspect whether the service of the petitioner can be regularised from the date of initial entry into service only for the purpose of granting DACP benefits. From the materials available on record, and the orders passed by the learned Tribunal, we are unable to give any conclusion as to the entitlement of the petitioner in respect of prayer asked for in the original application and before this Court. Therefore, in the fitness of things, we are of the view that a direction be issued to the second respondent hereunder to consider the claim of the petitioner with reference to clarification order dated 09.09.2010 and decision to be taken thereon.

6. In view of the above, this Court directs the second respondent herein, viz., Secretary, Ministry of Health & Family Welfare to consider the claim of the petitioner, in the light of the observation stated supra and pass detailed orders as to entitlement of the petitioner for counting the service rendered by him, adhoc for the purpose of financial upgradation under the ACP scheme within a period of three months from the date of receipt of a copy of the order.

7. In view of the direction above, the order passed by the Tribunal dated 16.09.2014 is set aside to the limited extent. Writ Petition is disposed of.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

adl

To

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai 600 104
2. The Secretary,
Union of India
Ministry of Health & Family Welfare,
New Delhi - 110 108
3. The Welfare & Cess Commissioner,
Ministry of Labour & Employment,
Labour Welfare Organisation,
Kendriya Sadhan,
Sultan Bazaar,
Koti, Hyderabad - 95.

+1cc to M/s.S.Ramaswamy Rajarajan, Advocate sr.73739

W.P.No.1871 of 2015

mp(co)
ss(24/01/2017)



WEB COPY