

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2017

CORAM

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE R.MAHADEVAN

Review Application No.240 of 2015
in
W.P.No.20469 of 2010

- 1.Union of India,
rep.by the Director (MPP),
Department of Telecom,
Sanchar Bhavan,
New Delhi-110 001.
 - 2.The General Manager,
Department of Telecom (BSNL),
Dharmapuri-636 701.
 - 3.The Divisional Engineer (Admn.),
O/o.the General Manager Telecom (BSNL),
Dharmapuri-637 701.
 - 4.The Secretary,
Ministry of Personnel, Pension,
Public Grievances and Public Admn.(PPG and P),
New Delhi-110 002.
- ... Petitioners

-vs-

- 1.The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai-600 104.
- 2.Paapu .. Respondents

Petition filed under Order 47 Rule 1 r/w Section 114 of the Civil Procedure Code, to review the order passed by this Court in W.P.No.20469 of 2010 dated 26.11.2013.

For Petitioners :: Mr.M.S.Velusamy for P1 to P3

For Respondents :: Mr.S.Ramasamy Rajarajan for R2

ORDER

(Order of the Court was made by
R.MAHADEVAN, J.)

This Review Application has been filed to review the order passed by this Court in W.P.No.20469 of 2010 dated 26.11.2013.

2.The facts, as stated by the second respondent herein in the affidavit filed in W.P.No.20469 of 2010, are as follows:

(a)The second respondent joined the Telecom Department as Telephone Operator on 22.03.1977. She belongs to Scheduled Tribe Community. As per the One Time Bound Promotion (OTBP) Scheme, she got promotion and pay benefits with effect from 07.11.1989, ie., on completion of 12 years of service and before completion of 16 years of service. She also got Biennial Cadre Review (BCR) promotion, on completion of 17 years of service, under shortfall vacancy, ie., on 01.07.1994, before completion of 26 years of service. Subsequently, vide the Letter in No.1-38/MPP-98 20.04.1999 read with the

clarification dated 27.10.1999, it was decided by the Department that the higher pay scales for restructured cadre are admissible on completion of total service of 16/26 years including the service that has been rendered in the pre-structured cadre. Since the second respondent was not having the length of service in the pre-structured cadre, ie., 16/26 years, she is eligible only for the pay scale of Rs.5000-150-8000, but due to mistake she was paid the salary as per the pay scale of Rs.5500-175-9000. Pursuant to the clarification issued by the Telecom Department dated 16.03.2000, the said mistake was corrected and the second respondent's scale of pay was fixed at Rs.5000-150-8000 with effect from 01.04.2001 and recovery was effected.

(b) Aggrieved by the same, the second respondent filed a writ petition before this Court and the same was transferred to the Central Administrative Tribunal in T.A.No.15/2009. The Tribunal upheld the claim of the second respondent.

(c) Challenging the same, the Department filed a writ petition before this Court in W.P.No.20469 of 2010. The Division Bench of this Court dismissed the writ petition on 26.11.2013 observing that the second respondent has retired from service on 31.03.2003 and that the cancellation order was passed without issuing notice of opportunity

of hearing to the second respondent, particularly when the restructuring of pay attaches civil consequence.

3.The said order is under review in this review application.

4.The learned counsel for the Telecom Department has submitted that this Court has decided the writ petition on an impression that no notice was given before recovery, whereas the office memorandums and circulars would clearly show that due notice was given and recovery was made in accordance with the policy after getting the individual option. Thus it is submitted that the order passed by this Court is liable to be reviewed in view of the fact that there is error apparent on the face of the record. It is also submitted that the employee had consciously exercised her option to draw salary under Pre-Restructured scale of pay under the scheme she had opted for and therefore, she cannot turn around and seek for the benefit of a different scheme without fulfilling the eligibility conditions. Stating so, the learned counsel for the petitioners prayed for reviewing the order passed by this Court in the writ petition.

5.A reply affidavit has been filed by the second respondent, in which amongst many grounds, it has been mainly contended that the Government cannot take away the right which had accrued to some

employees already, by issuing clarificatory orders. The said act only indicates colourable exercise of powers creating discrimination in the policy and also resorting to victimisation of the eligible officers belonging to the reserved category. As per Articles 14 and 16 of the Constitution of India, there should not be any parity in the payment of revised pay scales in the case of employees similarly situated and moreover, it would amount to deprivation of fundamental rights. It is further stated that the second respondent had been given BCR promotion and appropriate pay scale based on Letter No.1-62/85-NCG (Vol II) dated 10.02.1992 issued the Department and also the order dated 21.07.1995, in which it is stated that if sufficient number of SC/ST officials with 16 years and 26 years of service are not available to fill up the vacancies reserved for them in TOA Grade II and TOA Grade III, the shortfall may be made up by considering SC/ST officials upto the minimum service of 10 years and 17 years for the two grades and only based on the same, the second respondent was given promotion. Reiterating the submissions made in the reply affidavit, the learned counsel for the second respondent prayed for dismissal of this review application.

6. Heard the learned counsel on either side and perused the materials available on record.

7.The second respondent, who belongs to Scheduled Tribe Community, got promotion and pay benefits with effect from 07.11.1989, ie., on completion of 12 years of service, under the OTBP Scheme. She also got Biennial Cadre Review (BCR) promotion, on completion of 17 years of service, under shortfall vacancy, in the year 1994. Subsequently, it was decided that the higher pay scales for restructured cadre are admissible on completion of total service of 16/26 years including the service that has been rendered in the pre-structured cadre. In other words, the officials who were promoted to OTBP/BCR of pre-structured cadre under shortfall vacancies are not eligible for these higher pay scales as prescribed in the order dated 20.04.1999, unless they complete a total service of 16/26 years. Alleging that the second respondent was not having the length of service in the pre-structured cadre, ie., 16/26 years, pursuant to the clarification issued by the Telecom Department dated 16.03.2000, the second respondent's scale of pay was fixed at Rs.5000-150-8000 with effect from 01.04.2001 and recovery was effected. Aggrieved by the same, the second respondent filed a writ petition before this Court and the same was transferred to the Central Administrative Tribunal in T.A.No.15/2009. The Tribunal upheld the claim of the second respondent, against which a writ petition was filed before this Court in W.P.No.20469 of 2010 and the same was dismissed on 26.11.2013 on the ground that cancellation order was passed without issuing notice of

opportunity of hearing to the second respondent, particularly when the restructuring of pay attaches civil consequence.

8.As claimed by the petitioners, the scales of pay differ from one individual to another and the terms and conditions also would differ. In restructured cadre, one must compulsorily work for 16/26 years for promotion. In this regard, option was given to the individual employees to choose between restructured cadre of OTBP/BCR scheme or restructured cadre and it was also stated that the option exercised would be final and it cannot be altered. It is also seen that if a person opts for restructured cadre from OTBP/BCR scheme, he shall complete 16/26 years of services to get higher pay scale. It is claimed that this aspect was clarified by the Department by way of memorandums. If that being so, it cannot be said that due notice was not given and the recovery made is unsustainable. This fact must be gone into properly after verifying the records. But the Division Bench has not gone into the said aspect in the order dated 26.11.2013. Thus, we find that there is error apparent on the face of the record in the order made in W.P.No.20469 of 2010 dated 26.11.2013.

9.In view of the foregoing discussion, the order passed in the writ petition in W.P.No.20469 of 2010 dated 26.11.2013 is recalled. Registry is directed to post the writ petition before the concerned Court as per the roster.

10.The Review Application is ordered accordingly. No costs.
Consequently, the connected miscellaneous petition is closed.

(K.K.S.,J.) (R.M.D.,J.)

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Index : Yes/No

Internet : Yes/No

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R.MAHADEVAN,J.**

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