

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **16.09.2016**

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.P.No.5418 of 2013
and M.P.No.1 of 2013

The Union of India
Rep. by the General Manager,
Cordite Factory,
Aruvankadu, The Nilgiris,
Pin - 643 202.

.... Petitioner

Vs.

1. P.Viswanathan

2. The Registrar

The Central Administrative Tribunal
Madras Bench, Chennai - 600 104.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking an order to issue a writ of certiorari or any other writ or order or direction in the nature of writ, calling for the records in respect of the impugned order passed by the second respondent Tribunal, dated 26.11.2010 made in O.A.No.705 of 2009 and quash the same.

For Petitioners : Mr.G.Rajagopalan, Addl Solicitor
General
assisted by Mr.K.Gunasekar, SPCCG

For Respondents : No appearance for R1

R2- Tribunal

ORDER

(Order of the Court was made by **P.KALAIYARASAN, J**)

This writ petition has been filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records in respect of the order of the Central Administrative Tribunal (Madras Bench), dated 26.11.2010 made in O.A.No.705 of 2009 and quash the same.

2. The brief facts of the case are as follows :

(i) The first respondent is the applicant before the Central Administrative Tribunal. The first respondent was appointed as Labourer "B" (unskilled) on 02.02.1972 at the petitioner factory. Selection Grade was given to the first respondent w.e.f 16.08.1983. He was given regular promotion as Labourer Semi skilled from 23.11.1991. As per V Pay Commission recommendation, the Government brought a Scheme called Assured Career Progression (ACP) Scheme for the Central Government civilian employees from 09.08.1999.

(ii) According to the said scheme, two financial

upgradations would be given for those who were in acute stagnation without promotion for 24 years. One financial upgradation to the employee who does not get promotion within 12 years of continuous service and second upgradation on completion of 24 years of service. The first respondent / applicant retired on 31.07.2005 and the benefits under the Scheme was not extended to him. Therefore, he made representation and the same was rejected by the authority in its order, dated 27.01.2009. Therefore, the first respondent / applicant moved the Central Administrative Tribunal and the Tribunal after considering the divergent contentions of both sides allowed the claim of the first respondent / applicant. Aggrieved against the order of the Tribunal, the present writ petition has been filed.

3. The learned Additional Solicitor General appearing for the writ petitioners contends that the first respondent / applicant totally got two promotions and two financial upgradations, even though he is entitled for only one financial upgradation and if the order of the Tribunal is compelled to be implemented or given effect, it would have problem not only in the petitioner factory but it would have an all India ramification in all the 42 factories run by the Defence Ministry of Government of India, which would be a

great task and financial constraints to the Department.

4. There is no representation for the first respondent.

5. The second contention of the petitioner that implementation would have all India ramifications is not sustainable in law. Admittedly, the first respondent originally appointed as Labourer "B" on 02.02.1972 was moved to Selection Grade on 16.08.1983 and was given regular promotion as Labour semi-skilled from 23.11.1991, but with the same scale of pay as fixed for the selection grade. Further, DOP & T and also Ministry of Defence clarified that movement from unskilled to skilled post should not be treated as promotion.

6. As already pointed out, the promotional semi-skilled posts and feeder category carry the same scale of pay. Therefore, it cannot be a promotion for the purpose of ACP Scheme and the Tribunal has rightly held that the first respondent / applicant is entitled for the first financial upgradation on completion of 12 years of regular service.

7. The Ordinance Factory Board, Ministry of Defence, Govt. of India in Letter No.800/Genl/A/I, dated 12.09.1990, clarified that the labour selection grade posts are part of labour unskilled grade and should not be counted as labour semi-skilled.

The above letter reads thus :

"In this connection, one clarification is also given regarding Labour Selection Grade. There is confusion in some factories that Labour (Selection Grade) posts are same as labour semi-skilled. This is not correct. The Labour Selection Grade posts are part of labour unskilled grade and should not be counted as Labour semi-skilled. The Labour Selection Grades are eligible for promotion to labour semi-skilled with FR.22(c) benefits. However, when a labour semi-skilled grade moves to another semi-skilled grade of a trade then he would not be eligible for FR.22(c) benefits and his movement will be taken as horizontal."

8. Thus in any angle, the contention of the petitioners regarding promotions of the first respondent is not acceptable and as per the clarifications issued by the Govt. of India, the movement from Labour Selection Grade to Labour semi-skilled cannot be treated as promotion and the first respondent is entitled for the first financial upgradation on completion of 12 years of regular service and second financial upgradation on completion of 24 years of service.

9. The Central Administrative Tribunal has rightly allowed

the claim of the first respondent and it does not warrant any interference by this Court and accordingly, the writ petition is liable to be dismissed.

In fine, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. The petitioner is directed to extend the benefits to the first respondent under the ACP Scheme within a period of three months from the date of receipt of a copy of this order.

J.)

(A.S., J.) (P.K.,

16.09.2016

Index : Yes / No

tsvn

To

The Registrar
The Central Administrative Tribunal
Madras Bench, Chennai.

**A.SELVAM, J.
AND
P.KALAIYARASAN, J.**

tsvn

**Order in
W.P.No. 5418 of 2013**

16-09-2016