

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29-08-2016

PRONOUNCED ON: 19-09-2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Petition Nos.21822 AND 21823 of 2013
and M.P.Nos.1 and 1 of 2013

1. Union of India
Represented by Secretary to Government of India
Ministry of Commerce, Supply Department
Nirman Bhavan, New Delhi- 110 011
2. Union of India
Represented by the Director General
of Supplies & Disposals
Department of Commerce (Supply Division)
Jeevan Tara Building
5, Parliament Street
New Delhi - 110 001
3. The Director Supplies & Disposals
Shastri Bhavan, 26, Haddows Road
Chennai - 600 006 .. Petitioners

Vs.

1. C. Arumugam
2. The Registrar
Central Administrative Tribunal
Madras Bench, High Court Buildings
Chennai - 600 104 .. Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records relating to the Orders of the Central Administrative Tribunal, Madras Bench passed in R.A.No.44 of 2012 in O.A.No.107 of 2011, dated 17-12-2012 and O.A.No.107 of 2011, dated 26-07-2012 and quash the same and pass further orders.

For petitioners : Mr. V. Sundareswaran
Senior Panel Counsel

For Respondents : Mr. M. Ravi for R1
R2 - Tribunal

ORDER

(Order of the Court was delivered by A.SELVAM, J.)

These writ petitions have been filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records relating to the Order of the Central Administrative Tribunal, Madras Bench passed in O.A.No.107 of 2011 dated 26-07-2012 and R.A.No.44 of 2012 in O.A.No.107 of 2011 dated 17-12-2012 and quash the same.

2. The first respondent herein as applicant has filed O.A.No.107 of 2011 on the file of the Central Administrative Tribunal, Madras Bench wherein the present petitioners have been shown as respondents.

3. In the Original Application, it is prayed to call for records from the file of the second respondent relating to order in No.C.18011/5/2010-A1 dated 25-11-2010 and quash the same and also to issue necessary direction to the respondents to regularise the adhoc services of the applicant in the promoted post of Assistant Director of Supplies Grade I, with effect from 18-12-1997 and second financial upgradation from 01-02-2002 under the Assured Career Progression Scheme and to disburse consequential monetary benefits including the increased pensionary benefits with 18% interest per annum.

4. The Central Administrative Tribunal, Madras Bench after considering the rival contentions raised on either side has directed the respondents to take steps to conduct DPC/Review DPC as the case may be and pass appropriate orders with regard to the claim of the applicant for regularisation within a period of three months from the date of receipt of a copy of this order. The impugned order dated 25-11-2010 is set aside. Against the order passed by the Central Administrative Tribunal, the respondents therein, as petitioners have filed Review Application No.44 of 2012.

5. The Central Administrative Tribunal after considering the divergent contentions raised on either side has dismissed the Review Application No.44 of 2012 by holding that there is no error apparent on the face of the record in the order passed in

O.A.No.107 of 2011. Against the order passed in R.A.No.44 of 2012, W.P.No.21822 of 2013 and against the order passed in O.A.No.107 of 2011, W.P.No.21823 of 2013 have been filed on the file of this Court.

6. Since common questions of law and facts are involved, common order is passed.

7. The learned Senior Panel Counsel appearing for the petitioners has sparingly contended that the first respondent/applicant has claimed to regularise his adhoc service in the promoted post of Assistant Director of Supplies (Grade I) from 18-12-1997 and also financial upgradation from 01-02-2002 under the Assured Career Progression Scheme and the same cannot be granted. But the Central Administrative Tribunal without considering the stand taken on the side of the petitioners/respondents has erroneously given some directions in O.A.No.107 of 2011 and in order to review the same, R.A.No.44 of 2012 has been filed. But the Central Administrative Tribunal has also erroneously dismissed the same and therefore, the order passed in O.A.No.107 of 2011 as well as R.A.No.44 of 2012 are liable to be quashed.

8. The learned counsel appearing for the first respondent/applicant has befittingly contended that as per instructions issued by Department of Pen.& PW, OM.F. No.45/10/98-P&PW(A), dated 17-12-1998, the first respondent/applicant is entitled to get the benefits sought in O.A.No.107 of 2011 and the Central Administrative Tribunal after considering the contentions put forth on either side has rightly given such kind of direction and further, the Central Administrative Tribunal has rightly found in the Review Application that the order passed in O.A.No.107 of 2011 does not suffer from any error apparent on the face of the record and therefore, the orders passed in O.A.No.107 of 2011 as well as R.A.No.44 of 2012 are not liable to be quashed.

9. It is an admitted fact that the first respondent/applicant has been permitted to retire on 30-06-2005. It is also equally an admitted fact that on 17-12-1998, an instruction has been given wherein it is stated like thus:

"The undersigned is directed to say that in the wake of a large number of representations received by the Government from the Pensioners' Associations as well as individuals, the Government has reconsidered its decision on the recommendations of the Fifth Central Pay Commission regarding revision of pension/family pension as contained in Paras, 137.14 and 134.30 of the report. The President is now pleased

to decide that with effect from 1.1.1996, pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1.1.1996 of the post last held by the pensioner/deceased Government servant. Accordingly, so far as persons governed by CCS (Pension) Rules, 1972 are concerned, order contained in the following Office Memoranda of this Department as amended from time to time shall be treated as modified as indicated below."

10. From a mere reading of the said instruction, it is made clear that from 01-01-1996, the pension of the Pensioners irrespective of their date of retirement shall not be less than 50% of minimum pay in the revised scale of pay, introduced with effect from 01-01-1996, of the post last held by the pensioner.

11. In the instant case, the first respondent/applicant has held the post of Assistant Director of Supplies Grade (I) on the date of his retirement on 30-06-2005. Therefore, as per the above instructions, he is eligible for getting the benefits mentioned therein. The Central Administrative Tribunal after considering the rival contentions raised on either side has rightly given such kind of directions mentioned in the order passed in O.A.No.107 of 2011. The learned counsel appearing for the petitioners/respondents has drawn the attention of the Court to the decision reported in Secretary, State of Karnataka Vs. Umadevi ((2006) 4 SCC 1).

"35. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the

situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality."

12. From a close reading of the observation made by the Honourable Supreme Court, it is made clear that if any appointment has been procured by way of opting back door methods or without due process of selection on adhoc basis, the concerned service cannot be regularised.

13. In the instant case, such a situation has not arisen. As stated earlier, the first respondent/applicant has put in long years of service and also he has been permitted to retire on 30-06-2005. As per the instruction noted down earlier, he is also entitled to get the benefits mentioned therein.

14. It is an admitted fact that the order passed in O.A.No.107 of 2011 has been challenged by way of filing Review Application No.44 of 2012. The Central Administrative Tribunal has dismissed the same by way of holding that there is no error apparent on the face of record in the impugned order. Since the Central Administrative Tribunal has given a specific and acceptable finding in the order passed in Review Application No.44 of 2012, the same does not suffer from any infirmity.

15. Under such circumstances, viewing from any angle, the contentions put forth on the side of the petitioners/respondents cannot be accepted and altogether, these writ petitions are liable to be dismissed.

In fine, these writ petitions are dismissed without costs. The orders passed in O.A.No.107 of 2011 and R.A.No.44 of 2012 by

the Central Administrative Tribunal, Madras Bench are hereby confirmed. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

glp

To

1. The Secretary to Government of India
Ministry of Commerce, Supply Department
Nirman Bhavan, New Delhi- 110 011
2. The Director General
of Supplies & Disposals
Department of Commerce (Supply Division)
Union of India
Jeevan Tara Building
5, Parliament Street
New Delhi - 110 001
3. The Director Supplies & Disposals
Shastri Bhavan, 26, Haddows Road
Chennai - 600 006
4. The Registrar
Central Administrative Tribunal
Chennai - 600 104

2 ccs to M/s.M.Ravi, Advocate, sr.53121, 53122

Writ Petition No.21822
AND 21823 of 2013

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