

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2018

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

AND

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.26394 of 2017

1. The Union of India
Rep. by The Director General
Directorate General of Training
Shram Shakti Bhavan
Ministry of Skill Development &
Entrepreneurship
New Delhi - 1.
 - 2 The Principal & Head of the Department
Ministry of Skill Development &
Entrepreneurship
Central Training Institute for Instructors
Directorate General of Training
Guindy, Chennai - 32. ... Petitioners
- Vs.
- 1 The Central Administrative Tribunal
Chennai Bench
Rep. by its Registrar
High Court Building
City Civil Court Complex
Chennai.
 - 2 N. Vivekanandan .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari to call for the records in O.A.No.140 of 2015, dated 12.01.2017 on the file of the 1st respondent Central Administrative Tribunal, Chennai Bench in so far as it is against the petitioners and quash the same.

For Petitioners

: Mr.V.Balasubramanian
Senior Panel Counsel

For Respondents

: Mr.R.Ramesh
for 2nd respondent

ORDER
(Made by M.M.Sundresh, J.)

The second respondent filed the Original Application challenging the order dated 9.1.2008, by which his pay was re-fixed by reducing the pay already drawn by him on the ground that he was already awarded Selection Grade.

2. The second respondent, while he was working as Junior Technical Assistant/Vocational Instructor, was granted Selection Grade on 13.7.1985. A second financial upgradation under ACP scheme was opted by the second respondent to draw pay from the date of his annual increment on 1.11.2007. However, it appears that the Selection Grade awarded was withdrawn and resultantly, the second respondent was put back into the ordinary grade. Thereafter, he was made as a Training Officer. The impugned order dated 9.1.2008 was passed on the footing that the second respondent, having opted for second financial upgradation under the ACP Scheme and having already been awarded Selection Grade, cannot enjoy both the benefits. The Tribunal rightly held that the fact remains that Selection Grade awarded was withdrawn subsequently and thereafter the petitioners themselves have made the second respondent as Training Officer and awarded second ACP. The Tribunal rightly took into consideration the earlier orders passed while granting the relief to the second respondent.

3. Though the learned counsel appearing for the petitioners would submit that it is not open to the second respondent to have the benefit of ACP Scheme as well as Selection Grade, it is factually not correct.

4. Considering the very same objection, this Court in W.P. No.24887 of 2009, by order dated 5.2.2010 (S.T.Mani v. The Director of Apprenticeship and Training and others) was pleased to hold as under:

"10. Apart from that, another contention put forth by the Department was that both the selection grade and the ACP scheme should run concurrently cannot also be accepted. From the perusal of the ACP scheme, paragraph 13 reads as follows:-

' ... Existing time-bound promotion schemes, including in situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department - not the employees - shall have the option in the matter to choose between the two schemes, i.e., existing time-bound promotion scheme of the

ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz., for promotion, redistribution of posts, upgradation involving higher functional duties, etc.) made under the former (existing) scheme would cease to be operative. The ACP scheme shall have to be adopted in its totality.'

11. From the very reading, it would be quite clear that both the scheme shall not run concurrently. Under such circumstances, the contention put forth by the department cannot be countenanced. Thus, it is quite clear that the petitioner has got one promotion in the year 1992 and the second promotion in the ACP scheme, which was fixed in his favour from the year 1999, was perfectly correct and the Department was not justified in making withdrawal from the said pay scale as if it was a mistake committed or excess payment. Under such circumstances, the writ petition stands allowed, setting aside the order passed by the Administrative Tribunal."

5. The issue involved in this writ petition is similar to the one referred above. The judgment of the Division Bench has become final against the petitioners. Therefore, we do not find any merits in the writ petition.

In the result, the writ petition is dismissed. No costs. Consequently, W.M.P.Nos.28053 and 28054 of 2017 are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sasi

To:
The Registrar
Central Administrative Tribunal
Chennai Bench, High Court Building
City Civil Court Complex, Chennai.

+2ccs to Mr.V.Balasubramanian, Advocate, S.R.No.78232

W.P.No.26394 of 2017

VGI (CO)
rrs 07/12/2018