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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 9481/2018 & C.M. Nos. 36881-882/2018
UNION OF INDIA AND ORS. Petitioners
Through: Mr. Satpal Singh, Advocate.

versus

PRAVEEN SWAMI Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER
% **11.09.2018**

1. The petitioners are aggrieved by the judgment dated 16.11.2017, passed by the Central Administrative Tribunal allowing O.A. No. 3743/2013, filed by the respondent whereunder, they have been directed to consider the past service rendered by him under 'Rashtriya Mahila Kosh' for granting him financial benefits under the MACP Scheme and thereafter pass consequential orders within sixty days from the date of the receipt of the said order.
2. At the outset, it may be noted that it has taken more than nine months for the petitioner No.2/EPFO to challenge the impugned judgment and that too after a notice of contempt has been served on them by the respondent.
3. The matter has a chequered history. In October, 2013, the respondent had filed an Original Application before the Tribunal praying *inter alia* for directions to the petitioners to treat the period of service rendered by him in

the 'Rashtriya Mahila Kosh', Ministry of Women and Child Development, Govt of India, New Delhi, towards qualifying period for granting the benefit of the MACP Scheme, in terms of the clarifications dated 01.11.2010, issued by the petitioner No.3/DoPT. On completion of the pleadings in the said original application, arguments were addressed and vide order dated 14.10.2014, the O.A. was dismissed by the Tribunal after observing that the respondent had joined the petitioner No.2/EPFO on a unilateral transfer to a lower post, which transfer was not covered under para 24 of the O.M. dated 19.5.2009.

4. Aggrieved by the said decision, the respondent had filed a review petition before the Tribunal stating *inter alia* that he was actually covered under the O.M. dated 01.11.2010, whereunder clarifications in respect of para 24 of OM dated 19.5.2009 had been issued by the petitioner No.3. As a result, vide order dated 16.02.2016, the Tribunal had recalled its order dated 14.10.2014 and restored the O.A. for a fresh hearing.

5. After a fresh hearing by the Tribunal, the impugned order has been passed whereunder, the relief prayed for by the respondent has been granted by directing the petitioners to consider the past service rendered by him in the 'Rashtriya Mahila Kosh' for grant of financial benefits under the MACP Scheme.

6. The records reveal that the respondent was initially appointed as a Stenographer (Hindi) on 14.4.1997, in the 'Rashtriya Mahila Kosh'. Thereafter, he was appointed to the post of Stenographer (Hindi) on transfer to the petitioner No.2/EPFO on 03.1.2007 and ever since, then he has been working under the petitioner No.2/EPFO. The Memorandum dated 29.12.2006, issued for appointing the respondent in the petitioner

No.2/EPFO is of material significance and the relevant extract thereof is as follows:-

“MEMORANDUM

Subject: Appointment to the post of Stenographer on transfer from Rashtriya Mahila Kosh, Ministry of Women and Child Development, Govt. of India, New Delhi to Employees' Provident Fund Organisation, Corporate Headquarters in respect of Shri Parveen Swami, Stenographer (Hindi) – Regarding.

Chairman, CBT, EPF is pleased to appoint Shri Parveen Swami, Stenographer (Hindi) of Rashtriya Mahila Kosh (an Autonomous Organisation under the Department of Women & Child Development, Govt. of India), New Delhi on transfer as Stenographer (Hindi) in the Scale of pay of Rs. 4000-6000/- in Employees' Provident Fund Organisation, Corporation Headquarters, New Delhi.

2. His appointment is subject to the following terms & conditions:

- (i) the transfer is being allowed at his own request, he will not be entitled to any TA/DA and joining time;*
- (ii) his pay in the post of Stenographer will be fixed as per rules;*
- (iii) he will be on probation for two years from the date of assumption of charge to the post of Stenographer;*
- (iv) any request for inter-regional transfer will not be considered for a period of three years;*
- (v) he will not be entitled to any past service benefits for determining seniority and leave account of service rendered by him in Rashtriya Mahila Kosh, New Delhi. However, subject to the conditions prescribed in CCS (Pensions) Rules, 1972 and instructions issued thereunder the service in Rashtriya Mahila Kosh will be considered for calculation of the pensionary benefits;*
- (vi) his seniority in the cadre of Stenographer (Hindi) in EPFO will be reckoned with effect from the date of his joining the place of posting.*

3. His appointment will be subject to verification of

character and antecedents and Medical Examination if not done in his previous department, at the time of initial appointment.

Appointment is subject to the following terms and conditions:-

The transfer is being allowed at his own request he will not entitled to any TA/DA and joining time;

XXX

XXX

XXX ”

7. After introduction of the MACP Scheme, the respondent while serving with the petitioner No.2/EPFO had submitted a representation for taking into consideration the past service rendered by him in the ‘Rashtriya Mahila Kosh’ from 14.4.1997 to 02.1.2007, for granting him financial benefit under the MACP Scheme, but his request was rejected by the petitioners vide order dated 08.5.2013, stating *inter alia* that his past service could not be counted for grant of financial upgradation under the MACP Scheme. Aggrieved thereby, the respondent had approached the Tribunal, which has allowed the O.A. filed by him by referring to para 2 of the O.M. dated 01.11.2010, issued by the petitioner No.3/DoPT whereunder, a clarification with regard to application of the MACP Scheme had been issued. Para 2 of the said O.M. is reproduced herein below:-

“2. During the joint committee meeting it was pointed out by the Staff Side that the word 'new organization' of the last line of para 24 of Annexure-1 of MACPS dated 19.05.2009 was not in consonance with the spirit of the Scheme. The issue has been examined and it is clarified that in case of transfer 'including unilateral transfer on request, regular service' rendered in previous organisation/office shall be counted alongwith the regular service in the new organisation/office for the purposes of getting financial upgradations under the MACPS. However, financial upgradation under the MACPS shall be allowed in the immediate next higher grade pay in the

hierarchy of revised pay bands as given in CCS (Revised Pay) Rules, 2008. Para 24 of MACPS stands amended to this extent.”

Aggrieved by the aforesaid decision, the petitioners have filed the present petition.

8. Learned counsel for the petitioners submits that the Tribunal has misinterpreted the O.M. dated 01.11.2010, which was issued by the Govt. of India in respect of para 24 of the MACP Scheme dated 19.5.2009 and contends that the said O.M. had only clarified that in case of transfer including unilateral transfer on request, regular service rendered by an employee in the previous organisation, shall be counted along with regular service in the new organisation for the purposes of granting financial upgradation under the MACP Scheme but it would not apply to the instant case as the respondent herein was appointed afresh by the petitioners and therefore his appointment in the petitioner No.2/EPFO cannot be treated as a transfer.

9. The aforesaid submission made by learned counsel for the petitioners runs contrary to the tone and tenor of the language used in the letter dated 29.12.2006 issued by the petitioner No.2/EPFO at the time of appointing the respondent to the post of Stenographer (Hindi). At several places in the said Memorandum, the words used for describing the appointment of the respondent is ‘on transfer’. The said Memorandum states that the petitioner No.2/EPFO has appointed the respondent ‘on transfer’ as Stenographer (Hindi) in the scale of pay of Rs.4000- Rs.6000; that the ‘transfer’ was being allowed at the request of the respondent; that he would not be entitled to any past service benefits for determining seniority and leave account of

service rendered by him in previous organisation but subject to the conditions prescribed in CCS (Pension) Rules, 1972; that his appointment would be subject to verification of character and antecedents and medical examination, if not already done in his previous department at the time of his initial appointment. All the aforesaid clauses in the Memorandum dated 29.12.2006 when read collectively, fly in the face of the arguments addressed by learned counsel for the petitioners before us to the effect that the Tribunal has erred in rejecting the plea taken by the petitioners that for all effects and purposes, the respondent was appointed afresh and it was not a case of transfer.

10. The petitioners cannot be permitted to argue against their own Memorandum dated 29.12.2006 which evidences that the appointment of the respondent in the petitioner No.2/EPFO was not by way of a fresh appointment, but was by way of a transfer. This is the only plea taken on behalf of the petitioners to assail the impugned order, which in our opinion is wholly untenable in view of the captioned Memorandum dated 29.12.2006.

11. Given the above facts and circumstances, we are of the opinion that the impugned judgment does not warrant any interference and the same is upheld. The present petition is dismissed in *limine* being devoid of merits along with the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

SEPTEMBER 11, 2018

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