IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23700-2013

Union of India & others

... Petitioners

Versus

Abhijit Ray & others

... Respondents

CWP-10920-2017

Sushil Kumar Jain & others

... Petitioners

Versus

Union of India & others

... Respondents

Decided on : 10.11.2022

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Anil Chawla, Advocate for the petitioners
in CWP-23700-2013 and
for the respondents in CWP-10290-2017.

Mr. Lokesh Sinhal, Advocate for the petitioners
in CWP-10920-2017.

Mr. Balwinder Singh, Advocate for
Mr. Rohit Sharma, Advocate for respondent Nos.1 to 5
in CWP-23700-2013.

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G.S. Sandhawalia, J. (Oral)

The present order shall dispose off two writ petitions i.e. CWP-23700-2013 & CWP-10920-2017.

2. In CWP-23700-2013 challenge by the Union of India is to the order dated 21.03.2013 passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') in OA No.229 HR/2012

(Annexure P-1). The Tribunal held the employees are entitled for the grant of 3rd Financial Upgradation and directed that the disbursement of relevant monetary benefits to the applicants be made within a period of one month from the date of impugned order and the Union of India is challenging the same.

3. In CWP-10920-2017, 33 petitioners who are employees of the Central Ground Water Board seek quashing of the order dated 30.09.2016, 17.02.2017 and 26.08.2015 (Annexure P-1 colly.), wherein their claim for the benefit of the 3rd Financial Upgradation under the MACP Scheme dated 19.05.2009 (Annexure P-2) w.e.f. 01.09.2008 was rejected primarily on account of pendency of the first case i.e. CWP-23700-2013. Challenge is also raised to the order dated 17.02.2017, whereby the matter being *sub judice*, the claim of the petitioners was closed by the Union of India.

4. The Tribunal vide the impugned order dated 21.03.2013 came to the conclusion that the MACP Scheme was implemented w.e.f. 01.09.2008 and stand of the Union of India to deny the benefit on the ground that the applicants had been promoted on 09.01.2009 and 10.02.2010 was without any basis, as they were eligible for the grant of 3rd Financial Upgradation. The subsequent promotion in the year 2009-2010 would be irrelevant for determining the entitlement, which had to be examined as on 01.09.2008. The promotions thereafter would not impede the grant of favourable consideration to them for the purposes of financial upgradation. The stand of the respondents that the applicability of the scheme was from 10.09.2010 was also repelled.

5. While admitting the writ petition on 22.11.2013, the Coordinate Bench had directed that the order be implemented subject to

the undertaking to be given by each of the contesting respondents that in case writ petition succeeds, the arrears paid to them would be deducted out of their pension or retiral benefits. It is not disputed that the amount already stands paid to the applicants in pursuance of the said order.

6. The matter in our considered opinion is now squarely covered against the Union of India in view of the judgment of the Apex Court passed in **Union of India and others Vs. Ex.HC/GD Virender Singh, 2022 (4) SCT 66.** It is also to be noticed that the claim of the employees was specifically on account of the fact that they had completed 30 years of continuous regular service on 01.09.2008 before approaching the Tribunal. They had been promoted as Regional Director after they had completed 30 years and, thus, they had claimed benefit of the 3rd Financial Upgradation. Specific averments regarding their 30 years of service and having been appointed in the year 1978 initially were made in paragraph No.4 (vi & vii).

7. In the reply filed by the Union of India, the said fact was not denied and there is an admission to the extent that the promotions as such were made on 09.01.2009 and 10.02.2010, but the stand as such was that the MACP was to be considered from 10.09.2010. Therefore, the denial as such was on account of the fact that the cut-off-date itself was being brought into play and to show that they had earned their promotions, was set into motion to deny consideration.

8. The issue of the applicability now stands settled by the Apex Court in the judgment passed in **Ex.HC/GD Virender Singh (supra),** wherein the following issue was framed as to the applicability and implementation of the said MACP Scheme, which reads as under:-

> "(a) Whether the MACP Scheme is applicable and to be implemented with effect from 1st January 2006, the date from which the Central Civil Service (Revised Pay) Rules, 2008 were enforced, or in terms of O.M. dated 19th May 2009 with effect from 1st September 2009?"

9. While answering the said question, the Apex Court held that the scheme is applicable w.e.f. 01.09.2008 and the entitlement to the financial upgradation is to be granted. Relevant portion of the said judgment reads as under:-

> "12. In view of the aforesaid discussion, the appeals filed by the Union of India are partly allowed and impugned judgments, to the extent they hold that the MACP Scheme applies with effect from 1.1.2006 and that under the MACP Scheme the employees are entitled to financial upgradation equivalent to the next promotional post, are set aside. MACP Scheme is applicable with effect from 1.9.2008 and as per the MACP Scheme, the entitlement is to financial upgradation equivalent to the immediate next grade pay in the hierarchy of the pay bands as stated in Section 1, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008. The third issue, which relates to the fulfilment of pre-promotional norms for grant of financial upgradation, is decided against the appellant-Union of India to the extent that this would not be insisted in the case of the Central Armed Forces personnel where, for administrative or other reasons, they could not be sent or undergo the pre-promotional course."

10. Thus, the stand of the Union of India that the applicability of the scheme was from 10.09.2010 is without any basis, in view of the above observations of the Apex Court. The argument as such that they had got promotions and, therefore, now entitled also would not carry much weight, in view of the promotions made after the entitlement became due after completion of 30 years of service, as per the terms of the scheme. Therefore, it does not lie in the mouth of the Union of India to submit that

whether on account of the promotions they would not be entitled for the 3rd Financial Upgradation under the Scheme.

11. Resultantly, the order of the Tribunal is well justified and does not suffer from any infirmity and CWP-23700-2013 filed by the Union of India is dismissed. The amount already stands paid to the respondents by virtue of the admission order dated 22.11.2013 and, therefore, no adjustment is liable to be done by the Union of India in their cases.

12. In **CWP-10920-2017 'Sushil Kumar Jain and others Vs. Union of India and others'** considering the fact that denial was only on account of the fact that the matter was pending in CWP-23700-2013, the respondents shall take a decision upon the claim of the 33 petitioners, keeping in view the law laid down by the Apex Court in **Ex.HC/GD Virender Singh (supra).**

13. Necessary exercise be carried out within a period of two months from the receipt of the certified copy of this order. In case, the petitioners are held entitled for the said benefit, the amount be disbursed to them within a period of one month, thereafter. CWP-10920-2017 stands disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

10.11.2022
Naveen

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No