



W.P.No.24539 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:04.08.2023	Delivered on: 15.09.2023
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CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.24539 of 2019

&

W.M.P.No.24225 of 2019

1.Union of India, rep by its
Flag Officer,
Commanding-in-Chief
Headquarters, Eastern Naval Command,
Naval Base, Visakhapatnam.

2.The Commanding Officer,
INS, Kattabomman, Naval Base,
Vijayanarayanam, Tirunelveli.

... Petitioners

Vs.

1.The Registrar
Central Administrative Tribunal
Madras Bench
Chennai.

2.I.Tamil Rajan
3.D.Johnson
4.P.Rathna Pandi
5.N.Chelladurai



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6.N.Mohana Jeevanth

7.P.S.Mariappan

8.A.Sangiliyandi

9.N.Paramasivan

10.V.Jeyapandi

11.M.Madasamy

12.R.Chitra Puthra Nainar

13.K.Seenipandi

14.P.Maharajan

15.P.Kumar

16.P.Kalimuthu

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the 1st respondent in O.A.No.1191 of 2014 dated 18.08.2016, quash the same.

For Petitioners : Mr. V. Chandrasekaran

For Respondents : Mr. V. Vijayashankar
(for R2 to R12, R14 to R16)

R1 – Tribunal

R13 - Died

ORDER

(Judgment of the Court was made by P.B.BALAJI,J.)

The Union of India, represented by its Flag Officer, being unsuccessful before the Tribunal in O.A. No.310/01191 of 2014 order dated 18.08.2016 is the Writ Petitioner.



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2. The respondents 2 to 16 who were working as Chokidhars, under the Writ Petitions moved the Tribunal seeking to count their service rendered prior to obtaining Government sanction as qualifying service for the purpose of ACP/MACP Scheme.

3. The grievance of the petitioners is that the Tribunal did not consider the Official Memorandum issued by DOPT dated 09.08.1999 whereby it is clear that for grant of ACP Scheme, services rendered in regular appointment alone can be counted and any casual service rendered prior to regularisation against any Government sanctioned post cannot be counted for the purposes of promotions/ACP/MACPS.

4. We have heard Mr. V. Chandrasekaran, counsel for the petitioners and Mr. V. Vijayashankar, counsel for respondents No.2 to 12 and No.14 to 16 and we have also perused the records as well as the order of the Tribunal which is under challenge.

5. The only contention of the petitioners is that the contesting respondents have been regularized with effect from 01.07.1991 and that



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they have already been granted all the benefits of both the ACP as well as MACP schemes, reckoning their respective services on regular basis against the Government sanctioned posts and therefore they cannot be entitled to further benefits by counting their casual services viz., from the date of their initial appointment. The Tribunal held that when services of the contesting respondents had been regularized by a later order dated 21.08.1995, however giving retrospective effect from 01.07.1991, then such regularisation had to be counted for all purposes, including grant of benefits under the ACP and MACP Schemes.

6. We have also perused the order of regularisation of the contesting respondents and it is clear that such regularisation has been given retrospective effect. We have also perused the MACP scheme (Modified Assured Career Progression Scheme). Regular service has been defined for the purpose of the scheme and it reads as follows:

'9. 'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular



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appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.'

7. Thus it can be seen from the above that under the scheme it has been made clear that services rendered on adhoc/contract basis before regular appointment shall not be taken into consideration for conferring the benefits of the MACP scheme. However, in the instant case, the petitioners themselves have given retrospective effect of regularisation of services to the contesting respondents. That being the position, we are called upon to decide as to whether when such retrospective regularisation is given to the contesting respondents, if such period prior to the regularisation when they have rendered casual services from the initial date of appointment should also be taken into account for the purposes of



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awarding financial benefits under the MACP scheme. The Official Memorandum dated 09.08.1999, makes it clear that only regular service can be counted for the purpose of the ACP scheme.

8. It is an admitted position that all the respondents initially entered into service only on temporary basis. Much later, on 21.08.1995, their services were regularised giving retrospective effect from the irinitial dates of appointment. However, when it came to grant of benefits of ACP/MACP, the petitioners have adopted a different yardstick and held that the services rendered initially would not be taken into account. According to the petitioners, the respondents cannot be entitled to count such service rendered on temporary basis, as in terms of the various schemes, regular services can only mean the eligible service that can be counted for regular promotion as provided in the relevant recruitment rules. It is also the case of petitioners that all the respondents have been granted the benefits of both ACP/MACP schemes as per prevailing orders and instructions. Therefore, the petitioners prayed that the writ petition is to be allowed, since the benefits of the ACP/MACP scheme cannot be extended to the respondents counting their casual services with effect from the date of the initial appointment.



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9. From the records and also submissions advanced by the counsel on either side, we find that the respondents have all been regularised with retrospective effect. In such a case, once the services are regularised with effect from a retrospective date, then the same should be reckoned for all purposes. In fact the respondents have also been given ACP/MACP schemes taking into account their date of regularisation with effect from 01.07.1991 only. That being the position, the respondents cannot be deprived of consequential benefits according to them from the said date of regularization taking effect from 01.07.1991.

10. It is also to be noted that if it was a case of not giving retrospective effect, then the case of the petitioners that only regular service would be counted and any service rendered by the employees either on ad hoc or contract basis before such regular appointment cannot be taken into account for the purposes of ACP/MACP schemes can be accepted. It is not open to the petitioners to contend that the respondents are not entitled to count the service rendered on temporary basis as it is falling outside the scope of regular service defined under MACP scheme once they themselves have chosen to give retrospective effect to the regularization of the respondents.



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12. The Tribunal has appreciated the respective cases put forth by the parties and in and by a reasoned order allowed the OA and directed the petitioners to count the services of the respondents from the initial dates of appointment from the date of regularization of service ie., 01.07.1991 as qualifying service for the purpose of awarding ACP / MCAP Scheme. We do not find any infirmity or perversity in the said order.

13. For all the above reasons, the writ petition is dismissed. The respondent is directed to settle the amount within a period of 8 weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

(D.K.K.J) & (P.B.B.J)
15.09.2023

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To

The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.



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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI,J
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Pre-delivery order in
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