



2023:DHC:7142-DB



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: October 03, 2023

+ W.P.(C) 12924/2023

GOVT OF NCT OF DELHI

(THROUGH SECRETARY) & ANR.

..... Petitioners

Through: Mr.Yeeshu Jain, ASC, GNCTD with
Ms.Jyoti Tyagi, Ms.Manisha and
Mr.Hitanshu Mishra, Advocates

versus

P.K. SAINI

..... Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA****V. KAMESWAR RAO, J.(ORAL)****CM APPL. 50879/2023**

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 12924/2023, CM APPL. 50878/2023

1. The challenge in this writ petition is to an order dated March 18, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter, referred to as the 'Tribunal') in OA No. 1828/2021 whereby the Tribunal has allowed the OA filed by the respondent herein by stating in paragraphs 6 and 7 as under:

"6. We have heard the learned counsel for the parties at great length. We have also gone through the documents on record.



Learned counsel for the applicant has also given to us a copy of the DoP&T OM dated 22.10.2019, which gives an elaborate clarification and explanation of the MACP Scheme. The scheme envisages “three financial upgradations”, “counted from the direct entry grade on completion of 10, 20 and 30 years service respectively or years of continuous service in the same level in pay matrix, whichever is with effect from 05.11.1997, the date which we deem to be his entry level date as Inspecting Officer, the period of years gets completed on 05.11.2017. However, in the alternative, 10 years from the date of first financial upgradation gets completed on 30.08.2018. Now, the Scheme says “whichever is earlier”. If we read this with the illustrations given in the scheme, the date of 05.11.1997 is the earlier date. Moreover, as stated earlier, we have no hesitation in concluding that since the applicant got appointed as Inspecting Officer on 05.11.1997 by way of a direct recruitment through open competition, the date of his entry into the grade for the purpose of the MACP Scheme shall be the said date. We also have no hesitation in holding that his promotion as Labour Officer cannot be considered promotion since there was no financial upgradation either by way of a higher pay scale or a higher grade pay. In the event of such a promotion, the MACP Scheme categorically states that only if there is a benefit of financial upgradation at the time of promotion shall that be offset against the claim for MACP. That not being the case, the applicant’s claim for MACP cannot be denied merely on the ground that he was promoted to the post of Labour Officer, especially as such a promotion did not entail any financial language of the scheme is unambiguous, that is, 10 years from the date of financial upgradation or 10/20/30 years from the date of entry, “whichever is earlier”. Certainly the earlier date is 05.11.2017. Accordingly, the applicant is entitled for grant of financial upgradation immediately after this date.



7. In the light of this discussion, the OA is allowed. The impugned orders are quashed with a further direction that the applicant shall be granted the benefit of second financial upgradation under MACP Scheme, subject to his meeting all other criteria set forth in the scheme, with effect from 06.11.2017. The Competent Authority shall pass appropriate orders to this effect within a period of eight weeks from the date of receipt of a certified copy of this Order. The applicant shall also be entitled to all the consequential benefits including, but not restricted to, refixation of his pension.”

(emphasis supplied)

2. The challenge of the respondent before the Tribunal was to the orders dated July 06, 2021 and October 23, 2019 with a further prayer that he be granted second financial upgradation under the Modified Assured Career Progression ('MACP', for short) w.e.f. November 06, 2017 with all consequential benefits. The respondent was initially appointed as Lower Divisional Clerk ('LDC', for short) in April, 1980 in the Labour Department of National Capital Territory of Delhi. He was promoted to the post of Upper Divisional Clerk ('UDC', for short) in March 1996. It is stated that he was promoted as Labour Officer on May 22, 2013. Later, he appeared in the selection process for the post of Inspecting Officer within the department of Labour in response to the vacancy notice dated September 19, 1997 and got selected on merit through open competition and was appointed as an Inspecting Officer on November 05, 1997. It was his case before the Tribunal that on introduction of the MACP Scheme in the year 2008, he became entitled to the second financial upgradation on completion of 20



years from the date of entry into the service. It was also his case that he was appointed as an Inspecting Officer by way of direct recruitment on November 05, 1997 and this shall be the date of his direct entry into the grade. Accordingly, he has completed 20 years of service on November 05, 2017 and he is liable to get the second financial upgradation under the MACP Scheme w.e.f. November 06, 2017. The petitioners herein have rejected the claim of the respondent by relying upon the advice of Services Department, i.e., the appointment of the respondent as Inspecting Officer was through promotion. It was also stated that the respondent got promoted as Labour Officer on May 22, 2013, therefore, his claim for second financial upgradation under the MACP Scheme would be after 10 years from that date.

3. The submission of Mr.Yeeshu Jain, learned ASC, GNCTD for the petitioners is primarily based upon the 'Note' of the Services Department, at page 54 of the paperbook. According to him, as the recruitment to the post of Inspecting Officer was confined to the Departments of Govt. of NCT of Delhi, in that sense, the recruitment to the post of Inspecting Officer need to be considered as 'promotion' and as such the respondent was not entitled to the second financial upgradation under the MACP Scheme w.e.f. November 06, 2017. He also submits that as in the year 2013, the respondent got promoted to the post of Labour Officer, he shall not be entitled to the grant of second financial upgradation under the MACP Scheme.

4. We are not impressed by the submissions made by Mr.Yeeshu Jain for the simple reason that the appointment to the post of Inspecting Officer need to be considered as a 'direct recruitment' as the Notification issued by the



petitioners on September 19, 1997 inviting applications for recruitment to the post of Inspecting Officer was from all the departments of the Govt. of NCT of Delhi including the Labour Department. That apart, a perusal of the Appointment Letter dated November 05, 1997 issued to the respondent would reveal that it was an appointment on direct recruitment basis. In this regard, appropriate would be to reproduce, two Memorandums issued by the petitioners on October 20, 1997 and November 05, 1997 appointing the respondent as the Inspecting Officer, which can be found at page Nos.59 and 60 of the paperbook, as under:

*“GOVERNMENT OF THE NATIONAL CAPITAL TERRITORY
OF DELHI LABOUR DEPARTMENT, 15 RAJPUIR ROAD
DELHI-54.*

No.F.1/31(4)/97-LC/Estt./496

Dated 20/X/97

MEMORANDUM

Shri Pradeep Kumar Saini, is hereby informed that his name has been sponsored by the employment exchange/self for the post of inspecting offer in the pay scale of Rs.5500-175-9000/- plus usual allowances as admissible under the rules form time to time. He is directed to appear before the administrative officer, administration branch, labour department, room no.1, 15 Rajpur Road, Delhi-54 between 10.30 am to 4.30 p.m. on 28.10.1997, along with the following documents in original as well as attested copies for verification:-

- 1. Certificate of age indication date of birth*
- 2. Employment exchange registration card*
- 3. Educational qualification s certificates*
- 4. Experience certificate, if any.*
- 5. Certificates of professional qualifications.*
- 6. Any other relevant certificate*



7. Caste certificate.

No TA/DA will be admissible in this regard

Sd
J.C. Negi
Dy. Labour Commissioner(Admn)”

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**“GOVERNMENT OF THE NATIONAL CAPITAL TERRITORY
OF DELHI LABOUR DEPARTMENT: 15 RAJPUR ROAD,
DELHI-54.**

No.F.1/31(4)/97-LC/Estt./4859

Dated 5.11.97

MEMORANDUM

On the recommendations of the staff selection board, the undersigned is pleased to offer Sh. Pradeep Kumar Saini a temporary post of inspecting officer, on a pay of Rs.5500/- in the office of the labour commissioner, Govt, of NCT of Delhi, Delhi. The appointee will also be entitled to dearness allowance and other allowances at the rate admissible subject to the conditions laid down in the rules and order governing the grant of such allowances in force from time to time. The post carries the pay scale of Rs.5500-175-9000.

2. The terms and conditions are as follows:-

- a. The candidate will be on probation for a period of two years from the date of his appointment unless extended by the competent authority.*
- b. The appointment may be terminated at any time by one month notice given by either since viz. The appointee or the appointing authority without assigning any reason. The appointing authority, however, reserves the right of terminating the service of appointee forthwith or before*



expiration of the stipulated period of notice by making payment of him of a sum equivalent to the pay and allowances for the period of notice of the in-expired portion thereof.

- c. _____
- d. *Other conditions of service will be governed by the relevant rule and order in force from time to time.*
- e. *Inter -se seniority of the official will be determined in accordance with the position in the merit list.*

3. The appointment will be further subject to:-

- i. *Production of certificate of fitness from the competent authority (medical) namely (Authorized medial attendant/staff surgeon, Guru Teg Bahadur Hospital, Shahadra, Delhi.*
- ii. *Submission of declaration in the prescribed form and in the event of having more than one wife, the appointment will be subject to being exempted from the enforcement of requirement in that behalf.*
- iii. *Taking of an oath of allegiance/faithfulness to the Constitution of India(or making a solemn affirmation to that effect) in the prescribed form.*
- iv. *Production of the following original certificates:-*
- a) *Educational qualifications certificates, if any.*
- b) *Certificate of age.*
- c) *Character certificate from two gazette officers or Central/State Government or stipendiary Magistrate in the prescribed form.*
- d. *Discharge certificate in the prescribed from of previous employer, if any.*
- e) *Production of employment exchange registration card.*
- f) *Verification of character and antecedent from the concerned District Magistrate.*
4. _____
5. *If any declaration given or information furnished by Shri Pradeep Kumar Saini proves to be false, he will be liable to*



- be removed from service and such action as Govt. may deem necessary would be taken against him.*
6. *If Sh. Pradeep Kumar Saini, accepts the offer at the above terms, he should send his acceptance in writing within fifteen day of the receipt of this memorandum. If no reply is received within the prescribed period the offer will be treated as cancelled.*
7. *No travelling allowance will be allowed for joining the appointment.*

Sd/-
(A.S. Awasthi)
Labour Commissioner, Delhi

To
Shri Pradeep Kumar Saini
Inspecting Officer (ad hoc)
South West Delhi
Labour Department, Delhi."

6. It is clear from the above that the respondent had to establish his eligibility to the post by producing the documents like Date of Birth Certificate; Educational Qualifications; Experience Certificate; Professional Qualifications, etc. That apart, his appointment as Inspecting Officer was on a temporary post like a fresh appointment. He was put on probation. He underwent medical fitness. Even his appointment could have been terminated by giving one month notice during probation. It must be stated, if the appointment as Inspecting Officer was a promotion, the terms of probation would not have been laid down in the manner depicted above. This we say so for two reasons: i) a promotion is usually made from amongst the employees already serving in the next lower grade and ii) the appointment in the present



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case was not confined to persons working in the lower grade but to all persons working in different departments of Govt. of NCT of Delhi.

7. In view of our discussion above, we agree with the finding of the Tribunal that the appointment of the respondent to the post of Inspecting Officer was 'direct recruitment'. The present petition being devoid of merit, is dismissed. No costs.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

October 03, 2023/v