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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.820/2021

Pundlik s/o Pratapsingh Rathod,
Aged about 62 years, Occ.-Retired,
R/o Pandurna, Post-Bori (Arab), Tah. Darwha,
District Yavatmal.

.... Petitioner.

Versus

1. The State of Maharashtra,
through its Chief Secretary, Finance Department,
Mantralaya, Mumbai-400 032.
2. Superintending Engineer,
Yavatmal Patbadhare Mandal, Yavatmal, Civil Lines,
Waghapur Road, Yavatmal, Tah. and District Yavatmal.
3. Maharashtra Administrative Tribunal, Mumbai
Bench at Nagpur, through its Presiding Officer,
Civil Lines, Nagpur.

.... Respondents.

Mr. I.G. Meshram, Advocates for Petitioner.
Mr. A.M. Kukday, Advocate for respondent no.2.
Mrs. N.P. Mehta, Additional Government Pleader for respondent no.1.

CORAM : Nitin W. Sambre & Abhay J. Mantri, JJ

Reserved on : 22-12-2023

Pronounced on : 04-01-2024

J u d g m e n t (Per Abhay J. Mantri, J.)

Heard. **Rule**. The rule is made returnable forthwith.

2. This petition challenges the judgment and order dated 27-02-2020, passed in Original Application No.979/2018, by the learned Maharashtra Administrative Tribunal, Nagpur Bench,

Nagpur (for short, the "*Tribunal*"), dismissing the application filed by the petitioner claiming to set aside the impugned communication dated 14-11-2018, issued by the respondent no.2, in his favour.

3. On 24-08-1984, the petitioner was appointed as a Mukadam. On 24-08-1996, the petitioner received the '*first benefit*' of the Assured Career Progression Scheme (for short - ACPS). Thereafter, Vide Government Resolution dated 29-09-2003, the petitioner was absorbed as a Karkoon from the post of Mukadam accordingly, his pay scale was fixed as per the said Government Resolution. After that, on 29-04-2008, he was promoted to '*Civil Engineer Assistant*' in the Class-III cadre. On 31-08-2015, he retired from the service.

4. On 14-12-2017, he made a representation to respondent No. 2 for grant of a *Second* benefit under the ACPS. However, vide communication dated 14-11-2018, respondent no.2 informed him about negating his claim for grant of a *Second benefit* under the ACPS. Aggrieved by the said communication/order, he approached the learned Tribunal. Learned Tribunal vide order dated 27-02-2020, dismissed the Original Application. Being disgruntled by the same, he has preferred this petition.

5. Learned Advocate for the petitioner has vehemently contended that respondent no.2 has misinterpreted the

Government Resolution dated 01-07-2011 (for short 'the GR') while negating the Second benefit under the ACPS. Respondent no.2 erred in observing that twice an up-gradation in salary was given to the petitioner and therefore the petitioner is not entitled to get the benefit of a Second ACPS. In fact, the petitioner has received only one promotion, but respondent no.2 wrongly observed that the petitioner was promoted to Class-III cadre on 24-08-2008, and from that date he has not completed 12 years of service, therefore, he is not entitled to the Second benefit under the ACPS. The said observations in the letter are contrary to the terms and conditions in the GR and, therefore, the same is liable to be quashed and set aside in this petition.

6. *Per Contra*, Learned Advocate for respondent no.2 strenuously argued that as per the GR, the second benefit under the ACPS would be given to employees who have completed 24 years of service in the same cadre. However, the petitioner has not completed his 24 years of service in the Class-III cadre and therefore he is not entitled to the Second benefits under the ACP Scheme. Secondly, he submitted that on 29-04-2008, the petitioner was promoted to the post of Civil Engineer Assistant in the Class-III cadre. As such twice, he had received the up-gradation in the pay scale, therefore also he was not entitled to the second benefit. It is also contended that on 29-02-2003, the petitioner was promoted from the post of Class-IV to the post of Class-III and thereafter he was promoted to the post of Civil

Engineer Assistant in Class-III cadre. Thus, twice he had received a promotion or up-gradation in the pay scale, therefore, he is not entitled to the relief as claimed. Alternatively, it is argued that the petitioner cannot be given the second benefit under the ACPS as he has not completed uninterrupted 12 years' service in the post of Civil Engineer Assistant, hence the learned Advocate for respondent no.2 has submitted that passing of the order by the learned Tribunal is just, legal, and proper and no interference is required to it.

7. Having heard the rival contentions of the parties and perusal of the record, the following short, but crucial questions arise:-

- (i) Whether the conversion of post-Mukadam to Karkoon (Clerk) can be said to have a *promotion* or *up-gradation* in the pay scale;
and
- (ii) Whether the petitioner is entitled to get the second benefits under the ACPS.

8. To determine the controversy between the parties and to ascertain the exact terms and conditions embodied in the GR it is necessary to see the terms and conditions mentioned in the GR. So, we would like to consider Clauses (3) and (4) with their clarifications in Schedule 'A' of the said GR, which deals with the

entitlement of the 'Second benefit' under the ACPS by Government employees. As per the Clarification given in Clause (3), it seems that on completion of 12 years of regular service after receiving the first benefit under the ACPS, the employee would be entitled to get the Second benefit under the ACPS. Clause (4) of the said GR deals with the entitlement of the benefits under the ACPS would depend on the number of promotions obtained during the service period. However, it is clarified that after receiving the first benefit, the employee who had obtained one promotion is also entitled to the Second benefit under the ACPS. Likewise, the employee with two promotions is entitled to get only one benefit under the ACPS.

9. A bare perusal of the Clauses (3) and (4) of the Clarification of the said GR clearly reveals that the Government employee who had completed 12 years of regular service after receiving the first benefit under the ACPS, is entitled to get the second benefit under the ACPS, if he had not received twice up-gradation in the pay scale or two promotions after receiving the first benefit under the ACPS. After getting the first benefit, if the employee got one promotion, in that case, he would be entitled to get the '*Second benefit*' under the ACPS. In the aforesaid background and terms and conditions of the GR, it is necessary to see whether the petitioner is entitled to get a '*Second benefit*' or not.

10. The learned Advocate for respondent no.2 mainly harped on the point that after getting the first benefit, in the year 2003, the petitioner was absorbed as Karkoon from Mukadam, which means he was promoted from the post of Mukadam to Karkoon for the first time and after that he was promoted on 29-04-2008 on the post of Civil Engineer Assistant. Therefore, the petitioner is not entitled to get the Second benefit under the ACPS.

11. In view of the aforesaid submissions and facts of the case, the moot question arises as to whether the conversion of the post of the petitioner from Mukadam to Karkoon can be said to have a promotion or up-gradation in the pay scale of the petitioner. If it is a promotion or up-gradation in the pay scale, in that case, the petitioner is not entitled to get the Second benefit under the ACPS. *Per Contra*, if it is neither a promotion nor an up-gradation in the Pay Scale, in that case, he would certainly be entitled to get the Second benefit as per the said GR.

12. According to the learned Counsel for respondent no.2, vide Government Resolution dated 29-09-2003, for the first time the petitioner was promoted to the post of Karkoon from the post of Mukadam, and thereafter, his pay scale was fixed in the pay scale of ***Rs.3050-75-3950-80-4590*** (according to respondent no. 2 i.e. the first up-gradation in pay scale). Sometimes it is stated that it is a conversion or an absorption, and sometimes it is stated that

it is a promotion and up-gradation in the service. Therefore, to ascertain the contents of the said order, respondent no. 2 was directed to produce the copy of said order on record. But, despite granting opportunities, respondent No. 2 failed to produce a copy of the order on record by which the petitioner's post was converted from Mukadam to Karkoon. In fact, it was incumbent on respondent No. 2 to produce a copy of the order on record to ascertain the exact fact i.e. whether the petitioner was promoted or absorbed or his post was converted from the post of Mukadam to Karkoon. Moreover, respondent no.2 has not explained the same in the reply.

13. It is pertinent to note that respondent no.2 by filing the affidavit dated 22-04-2022 has produced a copy of the extract of the service book of the petitioner at Annexure R-2-I (at pages nos. 91 to 93). On perusal of the same, it clearly appears that on 01-01-1996, the petitioner was posted as a Mukadam, and his pay scale band was Rs.3050-75-3950-80-4950. On 01-10-1998, his pay was shown as Rs.3575/-, on page no.92 though the heading showed that the petitioner was promoted to the post of Karkoon, in the subject it is stated that "*Jobwise rank and rank wise pay scale*". Further, it is mentioned that based on the Government Resolution dated 29-09-2003, the petitioner was absorbed as Karkoon from the post of Mukadam in the pay scale band of Rs.3050-75-3950-80-4590. Thus, it seems that though the heading mentioned that the promotion to the post of Karkoon in

fact was not a promotion, but it was a conversion of the post of the petitioner from the post of Mukadam to Karkoon based on a Government Resolution dated 29-09-2003. Therefore, it cannot be said to be a promotion. Secondly, in the year 1996, he was already in the pay scale band of Rs.3050-75-3950-80-4590, and after absorption on the post of Karkoon also his pay scale was same, which means, there was no up-gradation in the pay scale. On the same pay scale only, he was absorbed by conversion of his post as per the Government Resolution dated 29-09-2003 i.e. absorbed as a Karkoon from Mukadam. Therefore, a mere perusal of the same, we do not find substance in the contention of the learned Counsel for respondent no.2 in that regard.

14. Respondent no.2 by filing an affidavit dated 22-04-22 deposed that “*after receipt of the first benefit under the ACPS petitioner’s pay scale band was Rs.3050-75-3950-80-4590, thereafter the petitioner was placed in the pay scale of Rs.4000-100-6000 after he was absorbed as Civil Engineering Assistance.*” Also, in an affidavit dated 13-03-2023 in paragraph 2 he affirmed the conversion of post Mukadam to the post of Karkoon on the same existing pay scale.

15. Had it been the fact that the petitioner would have been promoted or his pay scale was up-graded then certainly respondent no.2 would have produced a copy of the order by which the petitioner was absorbed as a Karkoon or converted from the post of Mukadam to Karkoon before the Court to show that the

petitioner was promoted or his pay scale was up-graded, non-production of the said order leads to draw an adverse inference about raising of the objection by respondent no.2. Moreover, the respondent no.2, has not given proper explanation about the same in the reply filed by him.

16. Thus, on careful scrutiny of the extract of the service book of the petitioner from page no.91 to 92, it clearly appears that as per the Government Resolution dated 29-09-2003, the petitioner's post was converted from the post of Mukadam to the post of Karkoon as per the conditions enumerated in the Government Resolution i.e "*Jobwise rank and rank wise pay scale*". Thus, it reveals that the petitioner was posted on the post of Karkoon on the same existing pay scale and there was no up-gradation in his pay scale. Consequently, we have no hesitation to hold that the petitioner was neither promoted nor there was an up-gradation in his pay scale. Hence, we answer point no.1 in the negative.

17. Perused the impugned communication dated 14-11-2018, wherein respondent no.2 has mentioned that the petitioner received the first benefit of ACPS in the year 1996 and thereafter based on Government Resolution dated 29-09-2003, he was absorbed and posted in class-III cadre. Then he was posted as a Civil Engineer Assistant, therefore it was contended that the petitioner had not completed his 12 years of service in the

Class-III cadre likewise twice up-gradation was given to him in the pay scale and therefore he is not entitled to get the Second benefit under the ACPS. In fact, as per the GR dated 01-07-2011, on completion of 12 years of regular service after receiving the first benefit under the ACPS, the Government employee is entitled to get the Second benefit under the ACPS, if he would not have got twice promotion or up-gradation in the pay scale. Therefore, the observation of respondent no.2 in the impugned communication that the petitioner has not completed 12 years of his service in the Class-III cadre is incorrect and contrary to the conditions enumerated in the GR.

18. Besides, in the impugned communication respondent No.2 though referred to clarification No.5 of the GR, but has not explained it in the said communication or the reply before the learned Tribunal or before this Court as to how the said clarification is applicable in the case in hand. Replies are silent about the applicability of clarification No. 5. We perused the said clarification No.5, and it appears that the same does not come in the way while considering the claim of the petitioner.

19. Perusal of the impugned communication dated 14-11-2018, it seems that mainly on two grounds respondent no.2 has refused to grant the Second benefit under the ACPS to the petitioner. The first one is, that the petitioner has not completed 12 years of his service in the Class-III cadre (i.e. from 24-08-2008

on which date he was promoted to Civil Engineer Assistant.) The second ground is, that on two occasions petitioner's pay scale has been upgraded, and therefore also he is not entitled to get the Second benefit under the ACPS.

20. While considering the first point/issue, we have already observed that the conversion of posts from Mukadam to Karkoon (Clerk) cannot be said to have a promotion or up-gradation in the pay scale. Therefore, the observations/comment of respondent no.2 that on two occasions the pay scale was upgraded is contrary to the record. Hence, it seems that the conclusion drawn by respondent no.2 based on the assumption is incorrect and contrary to the GR dated 01-07-2011. That being so, we answer point no.2 in the affirmative. As a result, the said communication is liable to be quashed and set aside in this petition.

21. Perused the impugned order dated 27-02-2020, It seems that the learned Tribunal has not considered the GR dated 01-07-2011 as well as the copy of the extract of the service book of the petitioner placed on record in its proper perspective and without assigning reasons dismissed the application holding that *"in whole 31 years of service the applicant (petitioner herein) has got two hikes of pay scales, therefore the petitioner was not entitled to claim second benefit under the ACPS before 2008 or even after that before his retirement as per the Government*

Policy.” The said finding of the learned Tribunal appears to be contrary to the Clauses (3) and (4) of the GR dated 01-07-2011. Thus, it reveals that the finding given by the learned Tribunal cannot be sustained in the eyes of the law and the same needs to be quashed and set aside.

22. Thus, to sum up, the above discussion it reveals that on 24-08-1996, the petitioner received the first benefit under the ACPS. Also, as per the GR on completion of 12 years of regular service after receiving the first benefit under the ACPS, the petitioner would be entitled to get the Second benefit under the ACPS i.e. on 24-08-2008, if he had not received twice promotions or up-gradations in the pay scale (on two occasions) after receiving the first benefit. While concluding point no. 1 we have already held that the conversion of the post-Mukadam to Karkoon (Clerk) is neither a promotion nor an up-gradation in the pay scale, therefore as per Clarifications given in Clauses No. (3) and (4) of the GR dated 01-07-2011 the petitioner is entitled to get the second benefit under the ACPS. Likewise, the grounds recorded in the impugned communication dated 14-11-2018 by respondent no.2 are incorrect and contrary to the Clauses (3) and (4) of the said GR. Therefore, the said communication is liable to be quashed and set aside. Also, the learned Tribunal has not considered the said GR in its proper perspective and erred in dismissing the application filed by the petitioner. On the basis of the said finding, the order passed by the Tribunal cannot be

sustained in the eyes of the law, and therefore the same is liable to be quashed and set aside. *Per Contra*, it seems that based on the Government Resolution dated 01-07-2011, the petitioner is entitled to get the Second benefit under the ACPS.

23. For the aforesaid reasons, we proceed to pass the following order:-

- (a) The order dated 27-02-2020 passed by the Tribunal in Original Application No.979/2018, and the impugned communication dated 14-11-2018 issued by respondent no.2 in favour of the petitioner are hereby quashed and set aside.
- (b) Respondent no.2 is directed to release the '*Second benefit*' under the ACPS in favour of the petitioner from 24-08-2008 within a period of eight weeks from the receipt of this order.

24. Rule is made absolute in the above terms. No order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)