



W.P.No.25147 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on	21.12.2023
Pronounced on	031824

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P.No.25147 of 2007
and
M.P.No.1 of 2007

N.Palani

... Petitioner

vs.

1.The Union of India
Represented by the Director of
Printing, Directorate of Printing,
R.Wing, Nirman Bhavan,
New Delhi – 110 011.

2. The Manager,
Government of India Press,
Coimbatore – 641 019.

3.The Central Administrative Tribunal,
Madras Bench, Chennai – 600 104,
Represented by its Deputy Registrar.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of



W.P.No.25147 of 2007

India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the third respondent in O.A.No.862 of 2005, dated 21.07.2006 upholding the order of the second respondent in CEE/A-12011/2/2005-06/Estt/3532, dated 28.09.2005 and quash the said orders and direct the respondents 1 and 2 to extend the benefit of the order in O.A.No.588/2002, dated 19.09.2003 passed by the Ernakulam Bench of the Central Administrative Tribunal to the petitioner and grant him second financial upgradation on completion of 24 years service as per the Assured Career Progression Scheme for the Central Government Civilian Employees and grant all consequential benefits to the petitioner.

For Petitioner	: Mr.P.Mohanraj
For R1 and R2	: Mr.P.G.Santhosh Kumar Senior Panel Counsel
For R3	: Tribunal

ORDER

P.DHANABAL, J.

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order in O.A.No.862 of 2005, dated 21.07.2006 passed by the third respondent



W.P.No.25147 of 2007

herein and to quash the same and direct the respondents 1 and 2 to extend the benefits of the order in O.A.No.588/2002, dated 19.09.2003 passed by the Ernakulam Bench of the Central Administrative Tribunal to the petitioner and grant him second financial upgradation on completion of 24 years service as per the Assured Career Progression Scheme.

2. According to the petitioner, he was working as Offset Machine Attendant at the Government of India Press, Coimbatore. He was initially appointed as Sweeper on 13.06.1973 and thereafter, lastly given INSITU promotion with effect from 01.04.1991. The said INSITU promotion was not a functional promotion and the employees who were given such INSITU promotion were continued to be shown in the seniority list of their respective lower grade/posts and considered for functional promotion to the higher scale/post in the normal line. The INSITU promotion is not a part of the hierarchy since the petitioner was continued to be a labourer even after the said INSITU promotion. As per the Assured Career Progression Scheme (ACPS) for the Central Government Civilian Employees, the Group B, C and E are given two financial upgradations



W.P.No.25147 of 2007

on completion of 12 years and 24 years of regular service respectively.

The INSITU promotion received by the petitioner was not a functional promotion. Therefore, on completion of 24 years service, the petitioner is entitled to receive the second financial upgradation. The Ernakulam Bench of the Central Administrative Tribunal also passed an Order in O.A.No.588 of 2002 by holding that the IN SITU promotion is not a part of the hierarchy and the IN SITU promoted persons are entitled to receive the second financial upgradation. Therefore, the petitioner submitted a representation to the Manager, Government of India Press, Coimbatore, for second financial upgradation. But the second respondent issued order, dated 28.09.2005, by declining to grant the second financial upgradation. Therefore, he approached the Central Administrative Tribunal and filed O.A.No.862/2005 and the same was dismissed through order dated 21.07.2006. The said order is contrary to law and liable to be set aside. Hence, this petition.

3. The respondents have not filed counter.



W.P.No.25147 of 2007

4. The learned counsel appearing for the petitioner would contend that the petitioner was appointed as Sweeper on 13.06.1973 and thereafter, posted as labourer on 17.04.1979 and he was given IN SITU promotion with effect from 01.04.1991. After completion of 24 years, he is entitled to second financial upgradation, in view of the ACP Scheme, but the second respondent declined for second financial upgradation, for the reasons that he was already granted INSITU promotion. In fact, the INSITU promotion is not a promotion and in a similar case, the Ernakulam Bench of the Central Administrative Tribunal has granted the second financial upgradation for the similar upgraded persons. Therefore, the petitioner filed original application before the Tribunal in O.A.No.862 of 2005 and the same was dismissed by the Tribunal. The Tribunal misconstrued that the INSITU promotion received by the petitioner is a normal promotion. In fact, the INSITU promotion is not a functional promotion and the petitioner continued to be INSITU promotion to be shown in the seniority list of their respective lower grade/posts and considered for functional promotion to the higher scale/post in the normal line. The petitioner is entitled to receive the



W.P.No.25147 of 2007

second financial upgradation on completion of 24 years service. The Tribunal erred in holding that the INSITU promotion was given to the petitioner on the part of the hierarchy. Therefore, the finding of the Tribunal that INSITU promotion was part of the hierarchy is not sustainable in law. The Tribunal has given interpretation invoking Clauses 5(1) and (13) of the ACP Scheme which is erroneous. The learned Tribunal itself interpreted the order of the Central Administrative Tribunal, Ernakulam Bench and erroneously dismissed the petition. Therefore, the order passed by the Tribunal is liable to be set aside.

5. The learned counsel appearing for the respondents would contend that the petitioner was initially appointed as Labourer, in this scale of pay of Rs.196-232 (corresponding to revise scale of pay Rs.2550 -3200) as the individual was not promoted in the Scheme in this scale of Rs.800-1150/- (revised pay scale of Rs.2650-65-3300-70-4000). The INSITU promotion was introduced by the Government for Group 'C' and 'D' cadres to ensure at least one promotion in service career to each groups 'C' and 'D' employees. As per orders, the applicant will be given



W.P.No.25147 of 2007

promotion INSITU which will continue to be borne in the seniority list of the lower cadre post and will be considered for functional promotion against available vacancies as per provisions of the Recruitment Rules. The INSITU promotion placed the applicant in the next higher scale without any additional responsibility. As per the then Recruitment Rules of 1993 ', a Labourer with nine years regular service in the grade subject to qualifying in the trade test is eligible for promotion to the post of Machine Attendant and accordingly, the applicant was promoted to Machine Attendant with effect from 26.02.1998, under 'failing which clause' stipulated in the Recruitment Rules of Government of India Press. In the applicant's case, the first Assured Career Progression Scheme is extended to the lower promotional grade with scale of Rs.800-1150 (Revised scale of pay of Rs.2650-4000) i.e., Proof Press Man Grade-II. Further, the Directorate of printing in their O.M.No.2/20/(2)/2000-A.1 (vol.II) dated 05.11.2004 in consultation with Department of Personnel & Training has clarified that Labourers should be given 1st Financial Upgradation under Assured Career Progression Scheme in the scale of Rs.2650-4000 and Second Financial Upgradation under Assured Career



W.P.No.25147 of 2007

Progression Scheme in the scale of Rs.3050-4590/-.

WEB COPY

5.1. The petitioner has already availed first INSITU promotion on 01.04.1991 and then, promotion to Machine Attendant on 26.02.1998 prior to the introduction of Assured Career Progression Scheme effective from 09.08.1999 granting further financial upgradation will amount to third financial upgradation which is not in the spirit of the ACP Scheme orders. The second financial upgradation was granted to the applicant to the pay scale of Machine Attendant on reaching of 24 years of regular qualifying service from his induction date and the post of Machine Attendant is a skilled post. The two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. Since the petitioner was already given INSITU promotion, he was qualified for the second financial upgradation only on completion of 24 years of regular service under the Assured Career Progression Scheme. Therefore, the Tribunal after elaborate discussion in Paragraph No.5.1 and 13 of the Annexure-1 of the ACP Scheme OM dated 09.08.1999 ,



W.P.No.25147 of 2007

correctly dismissed the application. Therefore, the order passed by the Tribunal is in order and the present petition is liable to be dismissed.

6. This Court heard both sides and perused the records.

7. In this case, the main contention of the petitioner is that he was appointed as Sweeper on 13.06.1973 and thereafter, he was appointed as Labourer and he was given INSITU promotion on the post of labourer with effect from 01.04.1991. The respondent Department also admitted the said fact.

8. According to the petitioner, the INSITU promotion is not a functional promotion and even after the INSITU promotion, he continued in the same post and thereby, he is entitled for next financial upgradation after completion of 24 years. According to the respondent Department, the petitioner was promoted to the post of Labourer and thereafter, he was granted through INSITU promotion and his pay scale was increased from Rs.2550-3200 to 2650-65-3300-70-4000/-. Therefore, he already



W.P.No.25147 of 2007

got financial upgradation and thereby, he is not entitled for the second financial upgradation.

9. This Court also perused the OM issued by the Government for ACP Scheme, dated 09.08.1999, wherein in the Annexure -1 “for Conditions for grant of benefits under the ACP Scheme”, it reads as follows:

“5.1. Two financial upgradations under the ACP Scheme in the entire Government Service career of an employee shall be counted against regular promotions (including in-situ promotion and fast track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify



WEB COPY



W.P.No.25147 of 2007

for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him”.

13. Existing time bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The administrative Ministry/Department – not the employees – shall have the option in the matter to choose between the two schemes, i.e., existing time-bound promotion scheme or the ACP scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz., for promotion, redistribution of posts, upgradation involving higher functional duties, etc.,) made under the former (existing) scheme would cause to be



W.P.No.25147 of 2007

operative. The ACP Scheme shall have to be adopted in its totality.”

(Emphasis supplied by this Court)

10. On careful perusal of both the conditions, they reveal that for two financial upgradations, the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee.

11. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case, two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him.

12. Further, the learned counsel appearing for the applicant also relied on the clarification given in OM dated 10.02.2000. The said point of doubt and clarification given thereof is extracted below:



WEB COPY



W.P.No.25147 of 2007

“SL.No.2. Point of Doubt:

Some employees have been allowed selection grade/in situ promotions though these grades are not a part of the defined hierarchy. Whether this is to be considered as promotion for the purpose of ACPS? Also, what will be the situation if selection grade has been allowed in lieu of higher pay scale?

Clarification:

Mobility under ACP is to be allowed in the 'existing hierarchy'. As such, if any selection grade/in situ promotion has been allowed to employees which is not a part of the hierarchy, it shall not be counted as promotion for the purpose of ACPS, For illustration sake, junior engineers of CPWD appointed in the grade Rs.5000-8,000/- are allowed the scale of Rs.5,000 – 9,000/- on completion of five years of regular service and the scale of Rs.6,500-10,500/- on completion of fifteen years of regular service. The scale of Rs.5,500-9,000/- is not a part of the defined hierarchy for them. In such cases, the pay scale which is not a part of the hierarchy may be treated to have been



W.P.No.25147 of 2007

withdrawn. However, fall in pay resulting out of this shall be protected by granting person pay in the aforesaid direct entry grade to be adjusted against future increments. Moreover, as per condition No.13 of ACPs, such existing (previous) schemes would be discontinued with the adoption of ACPS. However, in the case of common category of posts, the existing hierarchy in relation to a cadre would mean the prescribed grade recommended by the Fifth Central Pay Commission.

(Emphasis supplied by this Court)

13. Mobility under ACP Scheme is to have allowed in the 'existing hierarchy'. As such, if any selection grade/ IN SITU promotion has been allowed to employees which is not a part of the hierarchy, it shall not be counted as promotion for the purpose of ACPS.

14. The petitioner, who was given INSITU promotion in this scale of pay Rs.800-1150 is allowed to the grade which is part of the hierarchy. Therefore, the point of doubt or clarification would not apply to the



W.P.No.25147 of 2007

present case. Therefore, the INSITU promotion is next higher grade in accordance with the existing hierarchy of category of post and Paragraph No.13 of the condition specifically states that the earlier Career Advancement Scheme will not be concurrent with the ACP Scheme. Therefore, there is no possibility for the petitioner to claim the second financial upgradation.

15. The learned counsel appearing for the petitioner has produced the following judgments of the Hon'ble Supreme Court:

1. ***Union of India & Another Vs.G.Rajanna & Ors (2008) INSC 1739.***
2. ***UOI and ORS vs. SH Ramesh Chander Pal in W.P(C) No.13849 of 2009.***

16. The Tribunal has held that the petitioner is already given INSITU promotion in the scale of pay Rs.800–1150/- to the grade which is part of the hierarchy. Therefore, neither the point of doubt nor clarification applies to the case in the Ernakulam Bench of Central Administrative Tribunal which passed the order in O.A.No.588/2002 has



W.P.No.25147 of 2007

not appraised the Clauses 5(1) and 13 contained in the ACP Scheme 1998. In the above case, the INSITU promotion has not been brought to the knowledge of the Bench.

17. Further, the Tribunal, after relying upon the Judgment of the Hon'ble Supreme Court, held that the Clauses 5(1) and 13 of the ACP Scheme r/w Career Advancement (Group 'C' and Group 'D' Employees Scheme which have direct bearing on the issue, were not taken into account by the Central Administrative Tribunal, Ernakulam Bench. Besides, the question whether the IN SITU promotion/grade is part of hierarchy, was not considered. Therefore, the said decision is of no assistance to the applicant in this case and then, dismissed the petition. Therefore, the order passed by the Tribunal is a well reasoned order warranting no interference.

18. The decisions relied on by the learned counsel for the petitioner in support of his contentions are not applicable to the case on hand.



W.P.No.25147 of 2007

WEB COPY

19. In the light of the above discussions, we find no merit in this writ petition and therefore, we are not inclined to accept the submissions made by the learned counsel for the petitioner.

20. In the result, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K.J.] & [P.D.B.J.]
18.03.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes
ebsi

To

17/19



W.P.No.25147 of 2007

1. The Director of Printing,
Directorate of Printing,
R.Wing, Nirman Bhavan,
New Delhi – 110011.
2. The Manager,
Government of India Press,
Coimbatore – 641 019.
3. The Central Administrative Tribunal,
Madras Bench, Chennai – 600 104,
Represented by its Deputy Registrar.



WEB COPY



W.P.No.25147 of 2007

D.KRISHNAKUMAR, J.
AND
P.DHANABAL, J.

ebsi

Order made in
W.P.No.25147 of 2007

Dated:
18.03.2024