IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: September 20, 2023

+ REVIEW PET. 133/2023 & CM APPLs. 28921/2023, 24516/2023 & 28920/2023
IN
W.P.(C) 614/2023

DELHI TRANSPORT CORPORATION
..... Petitioner
Through: Mr. Rikky Gupta, SC with Ms. Ananya Singh, Adv.

versus

SH. SURESH KUMAR
..... Respondent
Through: Mr. G.S. Chaturvedi, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

V. KAMESWAR RAO, J

CM APPL. 28921/2023

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM APPL. 24516/2023

This is an application filed by the respondent / review petitioner seeking condonation of 21 days of delay in filing the review petition. For the reasons stated in the application, the same is allowed.

Application stands disposed of.

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CM APPL 28920/2023

This is an application filed by the respondent / review petitioner seeking permission to place on record additional documents. For the reasons stated in the application, the same is allowed.

Additional documents are taken on record.

Application stands disposed of.

REVIEW PET. 133/2023

1. This review petition has been filed by the respondent/review petitioner seeking review of order dated February 16, 2023 passed by this Court, wherein in paragraphs 9 & 10, it has been held as under:-

> *"9. So it follows that the petitioner shall not be entitled to recover the benefits granted to the respondent on the basis of grant of 2nd ACP on September 1, 2005, but henceforth, the petitioner shall be within its right to re-fix and grant the 2nd ACP to the respondent w.e.f September 1, 2010 and re-fix the pay accordingly. The said re-fixation shall have a bearing on the pension being received by the respondent. Henceforth the pension shall be paid to the respondent on the basis of re-fixation of pay of 2nd ACP w.e.f September 1, 2010. The respondent shall not be entitled to the benefit of the 3rd ACP as the same could not have granted to the respondent in 2020, as by the time the respondent had retired.*
>
> *10. During the course of hearing, Mr. Chaturvedi has stated that recovery of the amount has been made by the petitioner from the Gratuity by claiming interest on the said amount. If that be so, respondent shall be entitled to release of the amount deducted which is ₹5,88,980/- with interest @ 4% per annum on the said amount from the date its deduction till repayment."*

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2. The submission of Mr. G.S. Chaturvedi, learned counsel appearing for respondent is primarily that a material error has crept in the order dated February 16, 2023, passed by this Court, wherein it has been held that 1st and 2nd ACPs could not have been granted to the respondent on a single day, i.e., on September 1, 2005.

3. It is also the submission of Mr. Chaturvedi that when this Court had disposed of the W.P.(C) 614/2023, against the respondent, the respondent could not bring the following facts before this Court for the reason that he had undergone his Cataract operation on February 4, 2023 and as such, he was not in a position to brief his counsel:-

A. The ACP Scheme was extended to DTC organization w.e.f. August 12, 2002. As per the ACP Scheme, the 1st ACP is granted to an employee, upon completion of 12 years of one's service. The respondent joined DTC on September 1, 1980, therefore, he became entitled to 1st ACP immediately upon introduction of the Scheme in DTC organization, i.e., on August 12, 2002, i.e., by that time, the respondent had completed 22 years of services in DTC. In other words, the respondent had already completed 22 years of service as against 12 years of service which is required for grant of 1st ACP;

B. The respondent had represented DTC against non-grant of 1st ACP on its due date, i.e., on September 1, 2002. Consequently, 1st ACP was granted to the review petitioner on 1st September, 2005 along with the 2nd ACP. The reason being, on September 1, 2005, the respondent had already completed 25 years of service and that is why he was granted both the ACPs on a single date, i.e., on September 1, 2005. On this day

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itself, the requirement of rendering of 24 years of service for grant of 2nd ACP got completed. Though the respondent got eligible for grant of both the ACPs on September 01, 2004, i.e., after rendering 24 years of service, however, the same were granted to him only on September 01,2005, which could be due to a purported adverse entry in the ACR of the review petitioner for the year 2001. Moreover the respondent was also given arrears on account of late grant of 1st ACP.

C. The MACP Scheme was introduced in DTC organization in terms of circular dated December 17, 2009. As per the Scheme of MACP, 3rd MACP is granted upon completion of 30 years of service. In the present case, the respondent was rightly granted 3rd MACP on September 1, 2010, i.e., after completion of 30 years of service in the DTC organization.

D. Grant of ACPs and MACP does not warrant tinkering, when 14 years have already been lapsed since the grant of 1st and 2nd ACP, and 9 years of 3rd MACP, respectively, as the same is barred by the principle of delay and laches.

E. The fact that the ACP scheme, though introduced by the Government of India, in 1999, was only implemented in DTC organization in 2002 and similarly, the fact of MACP Scheme being implemented in DTC organization w.e.f. December 17,2009, could not be brought to the knowledge of this Court for the reasons stated above. The Circulars to this effect were also not available with the counsel of the respondent, as, on account of his illness, he could not properly instruct his counsel. Moreover, the W.P.(C) 614/2023, was also disposed of on the 1st date of appearance on behalf of respondent. Under such circumstances, the aforesaid vital facts and

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documents could not be brought to the knowledge of this Court. Consequently, the error has crept in the order dated February 16, 2023.

4. In effect, the submission of Mr. Chaturvedi is that the respondent has been rightly granted the 1st and 2nd ACPs on September 1, 2005 for the reason that the grant of 1st ACP on September 1, 2002 was deferred due to adverse grading in the ACR of respondent for the year 2001. According to him, 1st ACP having been deferred to September 1, 2005, the second ACP was rightly granted on the said date, as by that date, the respondent had already completed 24 years of service in DTC organization. In other words, according to him, though the 1st ACP got deferred on September 1, 2005, the same shall not have the effect of deferring the 2nd ACP to a future date for the reason that he had already completed 24 years of service on September 01, 2004 and moreover, there was nothing adverse in the ACRs of the respondent between 2002-2004, for deferring the grant of 2nd ACP. It is further his submission that the 3rd MACP was also rightly granted to the respondent on September 1, 2010, as on that date, he had rendered 30 years of service in DTC organization.

5. We have perused the order dated February 16, 2023, and also the grounds on which the review is being sought, which have already been reproduced in paragraph 3 above. The Tribunal in the impugned order dated September 15, 2022, has quashed the impugned orders dated April 10, 2019 and May 13, 2019, passed by the petitioner herein, whereby, recovery was made from the retiral dues of the respondent and his salary, re-fixed. On the aspect of recovery, we

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agree with the conclusion drawn by the Tribunal, which is based on the Judgment of the Supreme Court in the case of ***State of Punjab v. Rafiq Masih & ors., (2015) 4 SCC 334***. The second aspect of re-fixation of salary has been dealt by us in paragraphs 9 and 10 of the order dated February 16, 2023, which have already been reproduced in paragraph 1 above.

6. Suffice to state, it appears that the petitioner DTC had filed the Special Leave Petition, being SLP (Civil) No.6945/2023, before the Supreme Court against the order dated February 16, 2023. Though, the copy of the SLP has not been placed on record, it appears the same was filed against our finding whereby, we upheld the order of the Tribunal on the aspect of recovery of the amount of ₹5,88,980/- from the retiral dues of the respondent herein.

7. In the present review petition, the respondent has challenged the order dated February 16, 2023, in respect of our conclusion in paragraphs 9 and 10 of the same.

8. Having considered the grounds urged by Mr. Chaturvedi, the issue which emerges is whether the action, of the petitioner granting 2nd ACP w.e.f. September 1, 2010 and accordingly re-fixing the salary of the respondent from the same date, as was the stand put up by the DTC organization, before this Court, is justified.

9. Though, we have upheld the stand of the petitioner in the order dated February 16, 2023, the submission of Mr. Chaturvedi is that the 2nd ACP was rightly granted to the respondent on September 1, 2005, inasmuch as, by that time, the respondent had already rendered 24 years of service in DTC organization and more so, when

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there were no adverse remarks in the ACRs of the respondent between 2002-2004, which could have made a bearing on the grant of 2nd ACP w.e.f. September 1, 2005.

10. On the aspect of grant of 3rd MACP, Mr. Chaturvedi has also contested the stand of the petitioner by submitting that the respondent was rightly granted 3rd MACP on September 1, 2010, as on that date, he had completed 30 years of service, in the petitioner organization.

11. Therefore, Mr. Chaturvedi has contested the order of this Court, on both the findings i.e., grant of 2nd ACP w.e.f. September 1, 2010 and as well as the respondent being not entitled to grant of 3rd MACP, as erroneous.

12. We accordingly deem it appropriate to issue notice on this review petition, on the petitioner/ DTC organisation, returnable on October 6, 2023.

V. KAMESWAR RAO, J

MINI PUSHKARNA, J.

SEPTEMBER 20, 2023/*jg*

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