



\$~45

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 2925/2024 & CM APPL. 12073/2024 -Stay., CM APPL. 12074/2024 -Ex.

UNION OF INDIA AND ORS

..... Petitioner

Through: Mr.Kirtiman Singh, CGSC with
Mr.Waize Ali Noor, Mr.Varun Pratap Singh,
Mr.Kartik, Advs.

versus

DHARAMPAL SINGH AND ORS

..... Respondent

Through: Mr.M.K.Bharadwaj with Ms.Priyanka
M Bharadwaj, Mr.Arun Prakash, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

28.02.2024

%

1. The present writ petition under Article 226 of the Constitution of India seeks to assail the order dated 03.08.2023 passed by the learned Central Administrative Tribunal in O.A.2416/2016.
2. Vide the impugned order, the learned Tribunal has allowed the O.A. filed by the respondents and has consequently directed that the respondents would be entitled to grant of second ACP despite their not fulfilling the qualification for the promotional post of Assistant Director (Data Science).
3. Learned counsel for the petitioners submits that the impugned order is wholly perverse as the learned Tribunal has failed to appreciate that unless the respondents fulfil the promotional norms for the post of Assistant Director (Data Science) i.e a graduation degree in the



subject as prescribed under the Recruitment Rules, they could not be granted any benefit under the ACP scheme. Consequently, the petitioners were justified in extending the benefit of second MACP as against second ACP to them along with the third MACP. He, therefore, prays that the impugner order be set aside.

4. On the other hand, learned counsel for the respondents, who appears on advance notice, supports the impugned order and submits that since it has now been categorically held by the Apex Court in ***Amresh Kumar Singh & Ors. v. State of Bihar & Ors.***[2023 SCC Online SC 496] that possession of educational qualifications prescribed for a higher post is not a mandatory condition for extending the benefits of ACP, the learned Tribunal has rightly granted the benefits of second ACP to the respondents. In support of his plea, he seeks to place reliance on a recent decision dated 17.10.2023 of a Coordinate Bench in ***Union of India & Ors. v. Rishi Raj & Ors.***[W.P.(C)5597/2015], whereunder challenge to a similar order passed by the learned Tribunal for grant of ACP without insisting on fulfilling the educational qualifications of the promotional post, was rejected.
5. In order to appreciate the rival submissions of the parties, we may begin by noting hereinbelow the findings of the learned Tribunal, as contained in para 12 and 13 of the impugned order:

“12. From the aforesaid judgment of the Hon’ble Apex Court in Amresh Kumar Singh and others (Supra), it is evident that the position of law stands settled that for being entitled for the benefits of financial upgradation under ACP Scheme first time or second time, possession of educational qualification prescribed for the higher post is not mandatory.



13. In view of the aforesaid facts and law, the O.A. deserves to be allowed. The same is allowed with following orders:-

(i) The impugned order dated 06.07.2016 (Annexure A/1) is set aside, the applicants are declared to be entitled for grant of the 2nd financial upgradation in Grade pay of Rs. 5400/-, in Pay Band-III after completion of 24 years of regular service.

(ii) Respondents are directed to comply with the orders by passing an appropriate order as expeditiously as possible and preferably within six weeks of receipt of a copy of this order. The respondents shall also release the difference of pay and allowances in accordance with rules accruing to the applicants in compliance of the aforesaid, as expeditiously as possible and preferably within 6 weeks thereafter. “

6. As we find that the learned Tribunal has allowed the O.A. filed by the respondents primarily by relying on the decision of the Apex Court in ***Amresh Kumar Singh & Ors. (supra)***, it may be apposite to refer to the relevant extracts of the said decision as contained in paras 17 to 21 thereof. The same read as under:

“17. It was further observed that fulfilment of educational qualifications prescribed under the recruitment rules for the purposes of promotion are not necessary for non-functional in situ promotion. In other words, educational qualification required for the purposes of promotion is not necessary for the grant of in situ promotion, i.e., only for extending the monetary benefit where there are no promotional avenues and the employees are likely to be stagnated.

18. In the aforesaid case, the employees were working as malis (Gardeners) and had claimed promotion in the higher pay scale. The Central Administrative Tribunal seized of the original applications observed that the employees cannot claim the scale



of the next higher post by way of in situ promotion. On the matter being taken to the High Court by way of a writ petition, the contention of the employees was accepted and it was observed that the object of in situ promotion on non-functional posts, is to ensure that the group C and D employees are not stagnated in the same cadre/pay scale and that they should be provided with certain monetary benefits. Therefore, the rejection of the claim for such nonfunctional in situ promotion on the ground that the employees do not possess the necessary minimum qualification of matriculation as per the rules is not justified and renders the order erroneous in law. The view so taken by the Division Bench of the High Court was affirmed by this Court in the above referred Civil Appeals holding that the High Court has correctly analysed the object of the in situ promotion and fixation of pay scales to Group C and D employees to avoid stagnation.

19. In view of the aforesaid legal position coupled with the fact that the qualification of graduation prescribed is for the promotion to the post of Accounts Officer rather than for the grant of in situ promotion on the non-functional post or for extending the benefit of ACP which is purely and simply in the nature of grant of monetary benefit without actually effectuating any promotion to any higher post, we are of the opinion that the judgment and order of the Division Bench of the High Court impugned in the appeals cannot be sustained. It is accordingly hereby set aside and that the judgment of the writ court dated 28.11.2017 is restored. The appellants are extended the benefit of ACP, as directed by the writ court.

20. We have not considered it necessary to deal with the two cases on the basis of which the Single Judge has allowed the writ petitions and granted the benefit of the ACP to the appellants, as we have independently of those two decisions have considered and held that the appellants are entitled to financial upgradation under the ACP Scheme on completion of requisite regular service ignoring the higher qualification prescribed for the next higher post as grant of such benefit is not actually a promotion but only financial upgradation and if the higher qualification is insisted it



would frustrate the purpose of the entire scheme.”

7. From a perusal of the aforesaid, what emerges is that the Apex Court has in ***Amresh Kumar Singh & Ors.(supra)*** categorically held that for the purposes of grant of financial upgradation under the ACP scheme, an employee is not mandatorily required to possess the qualification prescribed for the promotional post. Learned counsel for the petitioner has vehemently contended that since the respondents do not possess the requisite qualifications as per the Recruitment Rules for promotion to the post of Assistant Director (Data Science), the post vis-a-vis the benefit of second ACP was to be extended to them, the petitioners were justified in not extending benefits of the same to them.
8. In our view, once the Apex Court categorically held in ***Amresh Kumar Singh & Ors. (Supra)*** that financial upgradation under the ACP scheme can be granted even to an employee, who does not possess the qualifications prescribed for the promotional post, we have no option but to dismiss the present petition.
9. The petition is, accordingly, dismissed with no orders as to costs.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

FEBRUARY 28, 2024

sr