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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision:- 12.03.2024***

+ W.P.(C) 11718/2016

+ W.P.(C) 11719/2016

GOVT. OF NCT OF DELHI & ORS

..... Petitioner

Through: Ms.Latika Chaudhary, Adv.

versus

VIRENDER PAL SINGH

KULDEEP KUMAR & ORS

..... Respondents

Through: Mr.Pardeep Kumar, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****REKHA PALLI, J(ORAL)**

1. The present writ petitions under article 226 of the Constitution of India seeks to assail the common order dated 01.08.2016 passed by the learned Central Administrative Tribunal in O.A.2008/2011 and O.A.3319/2012. Vide the impugned order, the learned Tribunal has allowed the Original Applications preferred by the respondents with a direction to the petitioners to extend the benefit of ACP Scheme to them by taking into account the O.M. dated 01.11.2002 issued by the Government of India.
2. Before dealing with the rival submissions of the parties, we may note the factual matrix of the matter as emerging from the record. For the sake of convenience, we are referring to the facts in W.P(C)11718/2016.
3. On 01.08.1983, the respondent was, based on his performance in Clerks Grade & Stenographers Examination 1981 conducted by the Staff



Selection Board, appointed as Grade IV(DASS/LDC) with the petitioner. After rendering 9 years of service as an LDC, the respondent was on 30.09.1992 promoted as Grade III(DASS/UDC). On 09.08.1999, the Government of India, with a view to remove stagnation in service introduced an Assured Career Progression Scheme, commonly known as the ACP scheme. The said scheme was adopted by the Government of NCT and consequently, its employees, subject to their not earning any promotion, were granted the benefits of first and second promotion after 12 and 24 years of service, respectively. On 02.11.2002, the Central Government issued a clarificatory OM, thereby clarifying that for computing eligibility for grant of ACP the service of the employee would be counted w.e.f 01 July, following the year of examination.

4. However, before the respondent was considered for grant of 2nd ACP, an FIR was lodged against him with the Anti Corruption Branch Delhi Police on 01.01.2006. Consequently, due to the ongoing criminal proceeding against him, the respondent was not granted the benefits under the ACP scheme. The criminal proceedings were, however, dropped as no charge-sheet was filed against him and therefore, he submitted representation with a prayer that he wa be considered for grant of 2nd ACP. It was the respondent's claim that as per OM dated 01.11.2002, his service w.e.f 01.07.1982 was to be counted for the purposes 2nd ACP and not from the date of his actual appointment on 01.08.1983.

5. Upon receiving no response to his representations, the respondent approached the learned Tribunal with a prayer for grant of 2nd ACP w.e.f 01.07.2006. The Tribunal, after considering the OM dated 01.11.2002, has allowed the O.A. vide the impugned order by directing the petitioners to



extend the benefits of 2nd ACP to the respondents w.e.f 01.07.2006 in terms of the OM dated 09.08.1999, read with OM dated 01.11.2002.

6. Before us, learned counsel for the petitioners while conceding that the ACP Scheme as introduced by the Central Government on 09.08.1999 was adopted by the Govt. of NCT of Delhi in its entirety, urges that the subsequent clarification dated 01.11.2002 issued by the Government of India would not be applicable to the Govt. of NCT of Delhi as promotions under the Govt. of NCT are governed by its own promotional rules. She, therefore, contends that the respondent's service was rightly taken into account only from 01.08.1983, i.e the date on which the respondent was appointed as an LDC and prays that the impugned order be set aside.

7. On the other hand, learned counsel for the respondents supports the impugned order and submits that once the petitioners had themselves taken a conscious decision to adopt the ACP Scheme promulgated by the Government of India in its entirety, it was bound by all the modifications and clarifications thereto issued by the Government of India. He, therefore, contends that the examination pursuant where to the respondent was appointed, having been held in 1981, the learned Tribunal was justified in directing that his service be taken into account from the first of the July following the year of the conduct of the examination i.e with effect from 01.07.1982.

8. Having considered the rival submissions of the parties, we may begin by noting the relevant extracts of the impugned order as contained in para 7,8 and 10 thereof. The same read as under:-

“7. There is no dispute that ACP guidelines have been made applicable to the employees of GNCT of Delhi. Therefore, there



are two issues in this matter; whether the O.M. dated 01.11.2002 will be applicable in the case of the applicant and; whether the criminal case pending against him would deny him financial upgradation under ACP Scheme.

8. As regards O.M. dated 01.11.2002, it is basically a clarification issued by the DoPT about the ACP Scheme. We are of the view that once ACP has been adopted, the Govt, cannot have double standards with respect to two sets of employees. Therefore, we reject this argument of the respondents that O.M. dated 01.11.2002 does not apply in the applicant's case.

10. In view of the above, the O.A, is allowed, with a direction to the respondents to grant 2nd financial upgradation to the applicant w.e.f. 01.07.2006 as per O.M. dated 01.11.2002, within a period of three months from the date of receipt of a certified copy of this order. No order as to costs."

9. From a perusal of the aforesaid extract of the impugned order, we find that the learned Tribunal was of the opinion that the O.M. dated 01.11.2002 was simply in the nature of a clarification of the ACP Scheme introduced vide O.M. dated 09.08.1999, which was adopted by the petitioners. Consequently, the learned Tribunal was of the view that the petitioners having adopted the ACP scheme in its entirety were bound to extend the ACP benefits by taking into account the clarificatory O.M. dated 01.11.2002.

10. As noted hereinabove, before us, the learned counsel for the petitioners has reiterated the submissions as made before the learned Tribunal by urging that the petitioners having laid down its own promotional rules, were not bound by the clarification OM dated 01.11.2002. Having given our thoughtful consideration to this plea, we are unable to accept the



petitioners' stand that the clarificatory OM dated 01.11.2002 issued by the Government of India was not applicable to the employees of the Govt of NCTD. No doubt, despite having adopted the original ACP scheme, as introduced on 09.08.1999, it was always open for the petitioners to come up with a circular/notification specifying therein that the clarificatory O.M. dated 01.11.2002, would not be applicable to its employees. However, having failed to do so, the petitioners cannot now be permitted to urge that only the ACP Scheme as introduced on 09.08.1999 would be applicable to its employees and not the subsequent clarification issued thereto. In our considered view, once the ACP scheme was adopted in its entirety by the Govt. of NCT of Delhi, the petitioners cannot be permitted to pick and choose or urge that the clarifications or modifications to the original scheme adopted by them would not be applicable to its employees.

11. For the aforesaid reasons, we have no hesitation in concurring with the view adopted by the Tribunal. The writ petitions being meritless are, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

MARCH 12, 2024
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