

07.05.2025
(D/L-48)
Ct. No.4
(B.K.N.)

W.P.C.T. 71 of 2024

**Union of India & Ors.
Vs.
Shri Damodar Pradhan**

Mr. Brajesh Jha,
Mr. Rajesh Kumar Shah
...for the Petitioners/U.O.I.

Mr. Soumen Bhattacharjee,
Mr. Ankan Das,
Ms. Shradhya Ghosh
...for the Respondent

1. The present petitioner was appointed in the Ordinance Factory Board by order of the Director General, Ordinance Factories. The appointment order is dated 08.07.1981 read with 22.08.2018. A bare perusal of the appointment order shows that the appointment was with the approval of the Controller of Accounts. The appointment was in a pay scale and it is not in dispute that the appointment was made against an existing vacancy.
2. The service book of the petitioner had earlier been opened when he was appointed as a Staff Car Cleaner in the year 1975. The same contains an endorsement regarding this appointment of 08.07.1981 read with 22.08.2018. It appears from copy of the service book, forming part of the records before this Court that since after his appointment as such, he was being paid salary in a prescribed pay

scale for Drivers and was being given annual increments also. Such appointment continued uninterruptedly. As per direction of the same Director General, Ordnance Factories another order was issued on 17.12.1986 communicating approval of the petitioner's appointment as a Temporary Staff Car Driver Grade II.

3. Being appointed in the year 1981 the petitioner has retired in the year 2011. He did not receive any benefits under the Assured Career Progression scheme (ACP) or Modified Assured Career Progression scheme (MACP). He thus approached the authorities. His claim was rejected by an Office Memorandum dated 19.19.2012 placing reliance on the provisions contained in the ACP and MACP scheme. The Office Memorandum rejected the claim by assigning the reason, extracted herein:

“2. As per extant instruction of the Government of India laid down under point 09 of DOP&T O.M. No.35034/3/2008-Estt.(D) dated 19th May 2009 read with point 08 of subsequent clarification issued vide MOD I.D. No. 11(3)/2009-D(Civ-I) dated 31/07/2012 in the subject, “Regular service for the purpose of MACPS shall commence from the date of joining of a post in direct entry on a regular basis either on direct recruitment basis or on absorption /re-employment basis. Service rendered on ad-hoc / contract basis before regular appointment on pre-appointment training shall not be taken into reckoning.”

4. This order was put to challenge by the petitioner before the Central Administrative Tribunal, Kolkata

Bench in O.A. 1185 of 2013. The Original Application was disposed of by an order dated 28.08.2015 directing the authorities to issue a reasoned and speaking order in respect of the petitioner's claim. Thereafter an order has been issued disallowing the petitioner's claim which brought the petitioner before the Tribunal by filing a second Original Application. The O.A. 1704 of 2016 filed by the petitioner was disposed of allowing the period from issuance of the first appointment letter dated 04.05.1981 till 17.12.1986, to be counted for all purposes including for the purposes of grant of benefits under the MACP scheme. It is this order which has been assailed by the writ petitioners, who were respondents before the Tribunal.

5. The learned counsel for the writ petitioner submits that the MACP scheme itself contains stipulations relevant to the petitioner's claim contained in point 09 of the scheme. According to the said scheme regular service for the purpose of MACP is to commence from the date of joining on a post in direct entry grade on a regular basis either by way of direct recruitment or on the basis of absorption/reemployment. The point 09 further contemplates that services rendered on an ad hoc/contract basis before regular appointment or the period spent on pre appointment trainee is not to

be taken as regular service for the purposes of grant of MACP.

6. According to the learned counsel for the writ petitioner the period prior to issuance of appointment order dated 17.12.1986, therefore, cannot be counted as service which can be acknowledged for the purposes of grant of benefit under the MACP scheme. He thus submits that the order of the Tribunal is unsustainable because it has wrongly allowed the period prior to issuance of the appointment letter dated 17.12.1986 to be counted as service for the purposes of benefit under the MACP scheme.
7. Learned counsel for the private respondent on the other hand submits that point 09 does not apply to the claim of the petitioner. According to him the period of service rendered by the petitioner before the issuance of the appointment letter dated 17.12.1986 was not a period of pre appointment trainee. The provisions contained in point 09, therefore, would have no application.
8. On consideration of the rival submissions we deem it appropriate to take into consideration the tone and tenor of the letter dated 08.07.1981 read with appointment letter dated 22.08.1981 relying on which the writ petitioner submits that petitioner's were ad hoc employee and not a permanent/regular

employee. We are of the considered opinion that these two letters are required to be considered along with the subsequent appointment letter dated 17.12.1986.

9. From a harmonious reading of these three letters only it can be ascertained whether at any point of time in between, the petitioners can be considered to be having a status lesser than a permanent/regular employee for the purpose of benefits under the MACP Scheme.
10. From the two letters dated 08.07.1981 and 22.08.2018 it is apparent that the petitioner's appointment in the Board was by the competent authority and after due approval of the Controller of Accounts. The authorities availed the services of the petitioner by appointing him against a existing vacancy and against a pay scale for the Staff Car Driver. He has been granted the annual increments as is apparent from copy of the service book. For all purposes he was treated as regular employee.
11. Subsequent issuance of the letter dated 17.12.1986 does not in any way alter the petitioner's status in the organization. The same is a one line letter approving the appointment of the applicant/respondent in the following terms:

“The DGOP/Chairman, O.F. Board has approved of the appointment of Shri Damodar

Pradhan as Temporary Staff Car Driver, Grade II with immediate effect.”

12. Bare reading of the letter dated 17.12.1986 leaves no room for doubt that appointment of the petitioner as Temporary Staff Car Driver in Grade II has been “approved”. The letter merely accords approval to the earlier appointment. Issuance of this letter cannot be made the basis of depriving the petitioner benefits of services rendered prior thereto for the purposes of grant of any benefits, including under the MACP Scheme, by placing reliance on point 09 of the scheme. The fiction sought to be created by the authorities that there are two different periods based on two distinct nature of services, and that the earlier one prior to issuance of the letter dated 17.12.1986 is ineligible for the MACP Scheme, is clearly unsustainable in the facts and circumstances, taken note of above.
13. The petitioner has served the organization for a period of nearly 31 years. Three appointment letters have been issued by the competent authority appointing the petitioner against an existing vacancy, after approval of the competent authority against a pay scale. He has been granted annual increment throughout the entire period, i.e even prior to issuance of the third letter dated 17.12.1986. Thus, the petitioner cannot be deprived

of benefits for any period of service rendered by him since after his initial appointment in the year 1981 for all purposes.

14. In the circumstances we find no reason to interfere with the order dated 26.06.2023 passed by the Tribunal in O.A 1704 of 2016.

15. The writ petition is accordingly dismissed.

16. Since the writ petition is being disposed of upholding the order of the Tribunal we only consider it necessary to modify the time frame specified therein for its compliance by extending all consequential benefits; which we extend for a further period of eight weeks from date.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)