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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 22.09.2022

+ W.P.(C) 1539/2016

UNION OF INDIA & ANR

..... Petitioners

versus

GIRBAR SINGH & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. T.P.Singh, Senior Central Government Counsel.

For the Respondent: Mr. Wajeesh Shafia with Mr. Nimish Chib, Ms. Ramsha Shan, Ms. Sabika Ahmad and Mr. Divve Chugh, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner Union of India impugns order dated 12.05.2015 whereby the original application filed by the respondent has been allowed and petitioner has been directed to consider the claim of the respondents for financial upgradation in terms of the MACP Scheme, 2009 disregarding condition 10 of the MACP Scheme.

2. Respondents had filed the subject Original Application before the Principal Bench of the Central Administrative Tribunal seeking benefit of the service rendered in the parent cadre (State Government)

while considering the eligibility and suitability for financial upgradation in terms of MACP Scheme issued vide O.M No. 35034/3/2008-Estt. (D) dated 19.05.2009.

3. The only ground on which the petitioners denied benefit of financial upgradation to the respondents with reference to their service rendered in the parent organization, was in terms of clause 10 of condition 4 of the MACP scheme which provided that past services rendered by a permanent employee in State Government/Statutory Body/Autonomous body/Public sector organization before appointment in the Government shall not be counted as regular service for the purposes of the scheme.

4. The Tribunal in the order dated 12.05.2019, impugned herein, has noticed that a bench of the Tribunal at Jodhpur by order dated 13.04.2015 in O.A 279/2010 (*Kishan Lal vs. UOI*) struck down clause 10 of the MACP Scheme.

5. The Principal Bench of the Tribunal in the impugned order has noticed that the Coordinate bench of the Tribunal at Jodhpur in *Kishan Lal* (Supra) had relied upon another decision of the Tribunal at Jodhpur dated 12.09.2006 in O.A 97/2004 in the case of *D.K.Sharma vs. Union of India & Ors.*

6. The decision in *D.K.Sharma* (Supra) was upheld by the High Court of Judicature for Rajasthan at Jodhpur by its order dated 05.04.2010 in CWP No.504/2008 and the Special Leave Petition

against the said order [SLP No.15324/2010] was dismissed in limine on 04.10.2010 by the Supreme Court.

7. The Principal Bench of the Tribunal in the order dated 12.05.2015, impugned herein, had referred to the decision of the Supreme Court in *S.I.Roopal & Anr. vs. Lt. Governor through Chief Secretary Delhi & Ors (2000(1) SCC 644)* wherein the Supreme Court has held that the bench of a Tribunal is bound by the view taken by a coordinate bench of equal strength. Referring to the decision in *Roopal (Supra)* the Principal Bench of the Tribunal has held that it found no reason to differ with the view taken in *Kishan Lal's* case.

8. It may further be noticed that the decision of the Rajasthan bench of the Tribunal in *Kishan Lal's* case was impugned by the Union of India (petitioner therein) before the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Writ Petition No.1830/2016. Said writ petition was dismissed by the Division Bench of the Rajasthan High Court by its order dated 24.08.2016 holding that no ground had been urged before it to show that the case of *Kishan Lal* was different from *D.K.Sharma* which had been relied on by the Bench of the Tribunal.

9. It is an admitted position that the petitioners have not impugned the decision of the Rajasthan High Court in *Kishan Lal* any further and have accepted the judgment. It is also not in dispute that both *Kishan Lal* and *Dharmendra Kumar Sharma* have been given the benefit

which is sought to be denied to the respondents herein.

10. The Principal Bench of the Tribunal by the order impugned herein has merely followed the decision in *Kishan Lal* whereby the Central Administrative Tribunal, Jodhpur Bench has quashed clause 10 of the MACP Scheme.

11. Once a particular clause of a scheme is quashed and that quashing is upheld by the High Court, said clause ceases to exist in the scheme particularly when the Government has decided to accept the decision of the High Court and implemented the same.

12. For all practical purposes clause 10 ceases to exist from the MACP Scheme and as such the ground on which respondents have been denied the benefit i.e. application of clause 10 is an erroneous application of the said scheme.

13. The contention of learned counsel for the petitioner that the order was implemented in *Kishan Lal* (Supra) only qua *Kishan Lal* is not acceptable for the reason that there is no such direction either by the Tribunal or by the Rajasthan High Court that the scheme has to be implemented in the peculiar facts and circumstances of the case. On the other hand in *Kishan Lal's* case the Tribunal has struck down clause 10 of the scheme which has been upheld by the High Court and such striking down has been accepted by the petitioners. Once the petitioners in the case of *Kishan Lal* have accepted the striking down

of the particular clause they cannot seek to implement said clause qua other similarly situated employees.

14. Attempt was made by learned counsel for the petitioners to distinguish the case of the respondents herein from the case of *D.K.Sharma* (Supra).

15. We may at this stage notice that in the present writ petition there is no attempt made to factually distinguish the case of the respondents from the case of *D.K.Sharma* (Supra).

16. The only ground urged in the petition qua *D.K.Sharma* (Supra) is ground D which reads as under:-

“D. That the Tribunal gave undue weightage to the earlier judgement passed in the case of UOI & Ors V/s D K Sharma and absorbed that the said order has attained finality as the SLP filed by the UOI has been dismissed. However, the fact is that the Hon'ble Apex Court dismissed the said SLP without passing any speaking order and as such it cannot be said with precision that the issues has been settled by the Hon'ble Apex Court conclusively.”

17. Perusal of ground D clearly shows that petitioners have not even attempted to distinguish the case of the respondents from that of *D.K.Sharma* (Supra).

18. It may also be noticed that the Division Bench of the Rajasthan High Court while disposing of *Kishan Lal's* case also observed that no attempt was made by the petitioner to distinguish the case of *Kishan Lal* from that of *D.K.Sharma*.

19. Even otherwise as noticed hereinabove, since clause 10 has already been quashed in *Kishan Lal's* case, petitioners cannot rely upon the same to deny benefit to the respondents herein.

20. Learned counsel for the petitioners contends that being a policy decision the Jodhpur bench erroneously quashed clause 10 of the scheme.

21. We are unable to accept the contention of learned counsel for the petitioners for the reason that the Tribunal in the order impugned herein has not quashed clause 10 of the scheme but has only relied upon a decision of the Jodhpur bench of the Tribunal which had quashed clause 10 of the Scheme, the quashing of which was upheld by the Division Bench of the High Court and that quashing was accepted by the petitioners and the order was implemented.

22. So for all practical purposes, in the scheme that has been applied today, there is no clause 10 existing which could be given effect to for denying benefit to the respondents. As such we find no

merit in the said contention also and reject the same.

23. In view of the above, we find no merit in the petition. The petition is accordingly dismissed.

24. We observe that the Tribunal by the order impugned herein dated 12.05.2015 had granted three months' time to the petitioners to complete the exercise. Accordingly, we direct the petitioners to complete the exercise as directed by order dated 12.05.2015 within a period of three months from today.

SANJEEV SACHDEVA, J.

TUSHAR RAO GEDELA, J.

SEPTEMBER 22, 2022/rk