

**D. Uma Vs. The Development Commissioner (Handicrafts), New Delhi and Others**

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**Court :** Karnataka

**Decided On :** Jun-01-2016

**Judge :** Jayant Patel & B. Sreenivase Gowda

**Appeal No. :** Writ Petition No. 7136 of 2014 (S-CAT)

**Appellant :** D. Uma

**Respondent :** The Development Commissioner (Handicrafts), New Delhi and Others

**Judgement :**

(Prayer: This WP is filed under Articles 226 and 227 of the Constitution of India, praying to set aside by quashing the orders passed by Hon ble Central Administrative Tribunal Bangalore in O.A. No. 936/2012 dated 12.11.2013 vide Annex-N and etc.,)

1. The present petition is directed against the order dated 12.11.2013 passed by the Tribunal whereby the Tribunal for the reasons recorded in the order has dismissed the application preferred by the petitioner.

2. The short facts of the case appear to be that as per the petitioner, she was appointed on Ad-hoc basis on 10.03.1997 as Showroom Assistant. She continued in service. At the time when she was appointed, there were no recruitment rules.

But thereafter recruitment rules were framed for the post in question and as per the said recruitment rules, the requisite rules, the requisite qualification was graduation. Since she did not possess graduation and there were powers available for relaxation of the recruitment rules with the competent authority, she applied for relaxation. It appears that thereafter vide order dated 29.03.1989 she was communicated that the relaxation has been granted vide decision dated 29.08.1985. The petitioner continued in service and in the year 1999, she became entitled to first MACP and therefore the order was passed by the competent authority in the year 2000 for relaxing first MACP with effect from 1999. When the petitioner completed 20 years of service, she became eligible for release of second MACP and the same was also came to be released with effect from 2008. Thereafter, the petitioner further continued in service and she retired from service in the year 2012. As per the petitioner, in the year 2011 prior to the retirement, the representation was made by the petitioner to the authority praying to release third MACP. But the representation remained undecided. Therefore, the petitioner had preferred O.A. No. 147/2012 before the Tribunal for redressal of the grievance wherein the Tribunal vide order dated 16.08.2012 directed the respondents to take appropriate decision upon representation of the petitioner. It appears that thereafter, the respondent-authority vide order dated 27.09.2012 rejected the representation of the petitioner observing that the period prior to the regularization in service cannot be considered and therefore she is not entitled to third MACP. Under such circumstances, the petitioner approached before the Tribunal by preferring O.A. No. 936/2012. The Tribunal after hearing both the sides, passed the impugned order whereby the application of the petitioner has been dismissed. Under such circumstances, the present petition before this Court.

3. We have heard Sri. H. Basava Raju, learned counsel appearing for the petitioner.

4. Learned counsel for the petitioner mainly contended that the period during which the petitioner served as Ad-hoc Showroom Assistant cannot be excluded for the purpose of entitlement of MACP. The co-ordinate benches of the Tribunal namely Madras bench and Bombay bench had taken the view that such period is to be counted for the purpose of grant of MACP. It was also submitted that the

aforesaid decisions of the co-ordinate benches of the Tribunal were not interfered with by the Higher Forum. The Tribunal did consider the said decisions. But in the present matter, the Tribunal took a different view and dismissed the application. Hence, this Court may interfere.

5. It is true that in the decisions of the Madras bench and Bombay bench of the Tribunal, there were observation made that for the grant of MACP to the employee concern, the period of Ad-hoc/temporary service before the regularization can be taken into account and based on the same, the consequential orders were passed and they were not interfered with by the higher Forum. After considering the aforesaid decisions of the co-ordinate bench of the Tribunal, in the present matter the Tribunal has taken note of the aspect of Recruitment Rules for the post of Showroom Assistant. As per the Requirement Rules, the requisite qualification was graduation. It is not the case of the petitioner that she was fulfilling the educational qualification for the post in question as per the Recruitment Rules.

6. The Tribunal found that as the petitioner did not possess the requisite qualification of graduation when she was engaged as Showroom Assistant on Ad-hoc basis, she cannot claim to have been engaged after following all formalities of recruitment at the time when she was taken on service on Ad-hoc basis. Therefore, the Tribunal did not accept the claim for MACP.

7. It is true that, if the appointment of the employee concerned is on Ad-hoc basis and thereafter his services are regularized, the period may be considered during which he had worked as Ad-hoc employee prior to the regularization. But the question of meeting with the requisite qualification is one of the major aspects. If one is not qualified for holding the post, the appointment cannot be said to be irregular, but rather would be illegal. However, the learned counsel for the petitioner raised the contention that at the time when she was taken in service in the year 1977, there were no recruitment rules for Showroom Assistant and Recruitment Rules have come into force subsequently which provided for the qualification of graduation and therefore it could not be said that the petitioner had to meet with the requirement of qualification and hence the appointment cannot be said as illegal without holding necessary qualification. In our view, even if such

contention is considered for the sake of examination, the fact remains that the recruitment rules did provide for the qualification of graduation for the post of Showroom Assistant. When the services of the petitioner were to be regularized, she was confronted with the requirement of qualification. She having accepted the applicability of the rules applied for relaxation and such relaxation was granted in the year 1985. It is only after the relaxation was granted, the services came to be regularized. Until the relaxation was granted, it could not be said that the services of the petitioner was regularized. Under the circumstances, it could be said that, until relaxation was made, the petitioner could not be said to be fulfilling the requisite qualification for holding the post of Showroom Assistant. We need to further consider the facts inasmuch as after the relaxation was granted in the year 1985, the communication was made to the petition vide letter dated 29.3.1989 Annexure-R. Thereafter, in the year 1999 when the I MACP came to be granted, the requirement was 10 years service. Such 10 years service in any case was completed in the year 1995 if counted from the date of relaxation i.e. 29.8.1985. Further, as 20 years of service was also completed, in the year 2008 II MACP was released. However, for the purpose of entitlement of III MACP, 30 years service was required which in any case was not complete in the year 2012 when the petitioner retired from service.

8. The aforesaid aspect is coupled with the additional circumstances that when the I MACP was released on account of completion of 10 years of service and the II MACP was released on account of completion of 20 years of service, the petitioner did not raise any grievance nor objected. If the contention of the petitioner is to be considered for the sake of examination that the period is to be counted from 1977, then I MACP in the year 1987 and II MACP in the year 1997 and III MACP in the year 2007 had become due as per the petitioner but no such grievance was ever raised. It is only in the year 2011 when the petitioner was on the verge of retirement in the year 2012, the grievance was raised.

9. In our view, it cannot be said that the Tribunal has committed error in distinguishing the case of the petitioner since she did not fulfil the requisite qualification prior to the relaxation even if she had worked as Ad-hoc and temporary employee. It is not brought to our notice that in any other case the

period during which employee had worked as temporary or Ad-hoc is to be counted irrespective of the requirement to meet with the necessary qualification for holding the post in question.

10. In view of the aforesaid observation and discussion, we find that the Tribunal cannot be said to have committed any error in declining the claim of the petitioner for III MACP. Hence, the petition is merit less and therefore dismissed.

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