



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No. 12201 OF 2016

M. GANESHAN

...APPELLANT

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

- 1.** M. Ganeshan¹ is in appeal by special leave, granted on 14th December, 2016, questioning an order dated 19th July, 2013 passed by a Division Bench of the High Court at Calcutta, Circuit Bench at Port Blair, allowing a review application² of the respondents.
- 2.** The jurisdiction of the Central Administrative Tribunal, Calcutta³ was successfully invoked by the appellant. The Tribunal, *vide* order dated

¹ appellant

² R.V.W. No. 15 of 2010

³ Tribunal

14th December, 2009, allowed the respondent's original application⁴ by directing as follows:

"18. In that view of the matter, we hold that the appointment of the applicant to LGC from Gr. D category is to be treated as a case of direct recruitment and accordingly, he is entitled to get 1st ACP and 2nd ACP as per rules and at par with his contemporaries and the clarificatory circular of the DOP&T quoted above is not applicable to his case.

19. Accordingly, the OA is disposed of with a direction to the respondents decides his case for ACP benefits in the light of above order within a period of 3 months. No costs."

3. Challenge was laid by the respondents to the Tribunal's aforesaid order before the High Court in its writ jurisdiction. *Vide* order dated 16th March, 2010, the writ petition⁵ was dismissed by a Division Bench.

4. Having failed to obtain reversal of the order of the Tribunal, the respondents applied for a review. The petition came to be disposed of by the impugned order dated 19th July, 2013. It reads as follows:

"We allowed the petition on the ground that six similarly circumstanced employees have been extended the benefit. After we passed the order, the Administration, by a review DPC, recalled the benefit from chose six employees, hence they are seeking review of the order in the present case. The Administration admits they committed mistake in extending the benefits to six employees. We extended the benefit to the petitioner on the sole ground, similarly circumstanced persons were extended the benefit. Once such position is altered, this application for review should succeed.

We recall the judgment and order dated March 16, 2010 with the rider the pecuniary benefit which these six employees got, must also be extended to the present petitioner, being the respondent in the review application.

R.V.W. 15 of 2010 is, thus, disposed of along with the applications without any order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the parties, on priority basis."

⁴ OA No. 131/AN/09 dated 14th December, 2009

⁵ W.P.C.T. No. 927 of 2010

- 5.** Upon perusal of the impugned order, we are satisfied that the Division Bench committed serious error in exercising its review jurisdiction. It is revealed that the Division Bench proceeded on a mistaken notion that it had dismissed the writ petition of the respondents solely on the ground of parity. However, we have found from the order dated 16th March, 2010 of the Division Bench, while it dismissed the respondents' writ petition, the following finding:

"...

We asked Mr. Mandal to produce records pertaining to the recruitment of respondent and his colleagues. We find from the record that the respondent participated in the recruitment process in 10% reserved quota as in house candidate. However, for other purposes he was treated as direct recruit. Hence his past status of Group-D was of no consequence beyond 1983. The appointment as Group-C was a fresh appointment. Hence he was entitled to claim benefit of ACP on expiry of 12 years' period being in 1995. Admittedly, in 1995 there was no such scheme prevalent. The respondent also did not claim such benefit. Hence we need not deliberate on the said issue. Such benefit was extended to him in 2006 with retrospective effect from 1999 when the scheme came into existence. Such benefit in our view, must be considered as the 1st ACP and not the 2nd ACP. We also find on examination of the records produced by Mr. Mandal that at least three persons namely, ... were similarly circumstanced with the respondent as they were appointed as Group-C employees through the same selection process in the reserved quota for Group-D employees. The respondent categorically contended in pages 33-34 that those three persons amongst others were extended the benefit of 1st ACP. We do not see any reason why the respondent was excluded. The Tribunal approached the problem in a right direction.

... "

- 6.** It is clear from the aforesaid extract that the ground of parity was assigned by the Division Bench as an additional ground. It was not the sole ground, as erroneously referred by the Division Bench in the impugned order.
- 7.** The findings of the Division Bench accepting the claim of the appellant that his appointment as a Group 'C' staff in 1983 was a

fresh appointment and that benefit of Assured Career Progression, which was extended to him in 2006 with retrospective effect from 1999, was the 1st benefit and it was not the 2nd benefit, were not subjected to challenge in the review petition by the respondents.

8. In such view of the matter, we are of the considered opinion that the impugned order of the Division Bench dated 19th July, 2013 granting the prayer for review and allowing the respondents' writ petition suffers from an error which is apparent on the face of the record. We, thus, have no other option but to set aside the said order and restore the order dated 16th March, 2010 dismissing the respondents' writ petition.
9. The appeal, thus, succeeds. The impugned order dated 19th July, 2013 is set aside and dismissal of the respondents' writ petition *vide* order dated 16th March, 2010 is restored.
10. Respondents are directed to give effect to the order of the Tribunal, within three months from date. No costs.

.....J.
(DIPANKAR DATTA)

.....J.
(SHEEL NAGU)

**NEW DELHI;
AUGUST 04, 2026.**