

Court No. - 8

Case :- WRIT - A No. - 845 of 2014

Petitioner :- Krishna Kumar Singh And Another

Respondent :- Union Of India Through Secy. Ministry Of Home Affairs
New De

Counsel for Petitioner :- Rajeev Singh, Pradeep Chandola, Sharvan
Kumar Upadhyay

Counsel for Respondent :- A.S.G., Neerav Chitravanshi, Sm Singh
Royekwar

Hon'ble Dinesh Kumar Singh, J.

1. Heard Sri Pradeep Chandola, learned counsel for the petitioners and Sri S.M. Singh Royekwar, learned counsel appearing for the opposite parties.

2. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioners, who are employed as Head Constables in Central Reserve Police Force (CRPF) for granting them promotional pay scale with grade pay of Rs.4,200/- w.e.f. 1.4.2008 in stead of Grade Pay of Rs.2,800/-, which is being paid to the petitioners on completion of 26 years of satisfactory service under the Modified Assured Career Progression.

3. The petitioners were appointed on the post of Constable in the year 1988. They have been promoted to the post of Head Constable on 24.12.2003 and 9.12.2004 respectively. To avoid stagnation on a post where the promotional avenues are negligible, the Government has come out with Assured Career Progression scheme as per the recommendation of the Pay Commission. Under the Sixth Pay Commission, the Assured Career Progression scheme has been modified and it has been provided that three financial up-gradations to a employee shall be given on satisfactory completion of 10, 20 and 30 years of

satisfactory service respectively. The petitioners were granted the first financial up-gradation in the Pay Band of Rs.5,200-20,200/- with Grade Pay of Rs.2,400/- in the year 1998 and, thereafter, they were granted the second financial up-gradation with Grade Pay of Rs.2,800/-. The petitioners are claiming that they should have been granted the promotional pay scale instead of financial up-gradation on the Pay Band of Rs.9,300-34,800/- with Grade Pay of Rs.4,200/-.

4. Learned counsel for the petitioners submits that for a similarly situated persons, the Delhi High Court has granted promotional pay scale with Grade Pay of Rs.4,200/-. He has been placed reliance on the judgement of the Delhi High Court passed in ***Writ Petition (Civil) No.3549 of 2018, Sunil Kumar Tyagi Vs. Union of India and another, decided on 1.5.2019.***

5. On the other hand, Sri S.M. Sigh Royekwar, learned counsel for the opposite parties has opposed the prayer made in the writ petition and submitted that the financial up-gradation and the promotion are two different aspects in the service. As the petitioners have not been promoted, therefore, they have been granted financial up-gradation under the Modified Assured Career Progression. Under the Sixth Pay Commission itself, it is provided that what pay scale and the grade pay would be applicable on financial up-gradation. The petitioners have been provided the financial up-gradations as per the recommendation of the Sixth Pay Commission. There is no provision for granting them the promotional pay scale as claimed by the petitioners.

6. Sri S.M. Singh Royekwar, learned counsel for the opposite parties has placed reliance on the judgement of the Supreme Court rendered in the case of ***Union of India and others Vs. M.V. Mohanan Nair***, (2020) 5 SCC 421.

7. I have considered the submissions advanced on behalf of the

learned counsel for the parties and the judgments cited by the learned counsel for both the parties.

8. Paragraph 3 of the Delhi High Court's judgement in the case of *Sunil Kumar Tyagi* (supra) would read as under:-

"3. As regards the fixing of the correct pay scale of the Petitioner, it is seen that in BSF/General Duty, there is no post of ASI/General Duty in the pay scale of Rs.4000-100-60000 (pre-revised) which had been converted into Pay Band-I i.e. 5200-20200 in the grade pay of Rs.2800/- having pay band of Rs.8560/- with the total pay (basic pay) of Rs.11360/-. Thus, in the case of the petitioner, the second financial up-gradation was required to be given in the pay scale of Rs.5500-900 (re-revised). Since this was not granted to other similarly placed as the petitioner, writ petitions were filed in this Court. A series of judgments have been passed by this Court in those writ petitions, are a result of which the Respondents extended the benefit of financial up-gradation in the pay scale of Rs.5500-9000 to all personnel who had completed 24 years of regular service during the period 9th August 1999 to 31st August 2008."

9. In the case of *Union of India and others Vs. M.V. Mohanan Nair* (supra), the Supreme Court has framed the relevant question involved in this case in paragraph 3.1 of the judgement and the said question has been answered in paragraph 38 of the judgement. Paragraph 3.1 and paragraph 38, which are relevant, would be apt to extract herein under:-

"3.1.(i) Whether MACP Scheme entitles financial upgradation of pay to the next grade pay or to the grade pay of the next promotional post as envisaged under the Assured Career Progression (ACP) Scheme? Whether MACP Scheme envisages grant of financial upgradation in grade pay hierarchy and not in promotional hierarchy?"

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38. *The prescription of pay scales and incentives are matters where decision is taken by the Government based upon the recommendation of the expert bodies like the Pay Commission and several relevant factors including financial implication and court cannot substitute its views. As held in Haryana Civil Secretariat Personal Staff Assn. [State of Haryana v. Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72 : 2002 SCC (L&S) 822] , the Court should approach such matters with restraint and interfere only when the Court is satisfied that the decision of the Government is arbitrary. Even in a case where the Court takes the view that order/scheme passed by the Government is not an equitable one,*

ordinarily only a direction could be given to the State Government or the authority for consideration of the matter and take a decision. In the present batch of cases where the respondents are claiming financial upgradation in the grade pay of promotional hierarchy, no grounds are made out to show that the MACP Scheme granting financial upgradation in the next grade pay is arbitrary and unjust; warranting interference. The implementation of the MACP Scheme is claimed to have led to certain anomalies; but as pointed out earlier, MACP Scheme itself is not under challenge.”

10. In *Sunil Kumar Tyagi* (supra), the financial up-gradation in the pay scale of Rs.5500-9000/- has been held to be applicable to all those who have completed 24 years of regular service during the period of 9.8.1999 to 31.8.2008. The petitioners admittedly did not complete 24 years of service during this period and, therefore, the said judgement has no applicability in the case of the petitioners. The petitioners have been granted financial up-gradation on completion of 10 and 20 years of service as per the recommendation of the Pay Commission.

11. I find no substance in the present writ petition, which is hereby ***dismissed***.

Order Date :- 3.7.2023

Rao/-