

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

+ **W.P.(C) No. 2118/2012**

% **11<sup>th</sup> February, 2015**

SH.ANIL KUMAR NASA & ORS. .... Petitioners  
Through Mr.M.K.Bhardwaj with Ms.Priyanka  
M.Bhardwaj, Advocates.  
versus

DELHI URBAN SHELTER IMPROVEMENT BOARD & ORS.  
..... Respondents  
Through Mr.Kirtiman Singh, Advocate for R-1.

**W.P.(C) 2117/2012**

SHASHI MALIK AND ORS ..... Petitioners  
Through Mr.M.K.Bhardwaj with Ms.Priyanka  
M.Bhardwaj, Advocates.  
versus

THE CHIEF EXECUTIVE OFFICER AND ORS. .... Respondents  
Through Mr.Kirtiman Singh, Advocate for R-1.

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioners who are the employees of the respondent nos.1 and 2/Delhi Urban Shelter Improvement Board seek the relief of quashing of the impugned order dated 22.3.2012 whereby the benefits of Assured Career

Progression (ACP) Scheme granted to the petitioners vide order dated 31.3.2009 were withdrawn. The impugned order reads as under:-

**“OFFICE ORDER**

On the recommendation of Screening Committee, Competent Authority vide his orders dated 20.03.2012 has accorded approval to withdraw the benefit of ACP Scheme granted erroneously vide O.O.No.GA/1190/01/Admn./2009/D-59 dated 31.03.2009 and allow the benefit under Modified Assured Career Progression Scheme in respect of 50 officials/officers as per list enclosed. The grant of MACP is subject to the conditions mentioned in the Office Memorandum No.35034/3/2008/Estt.(D) dated 19.05.2009. The benefit of MACP Scheme is being granted on the basis of information furnished by the concerned DDos/Estt. Section. If at any stage, it is found that any information furnished is wrong in respect of any employee, the case in respect of that employee will be reviewed.

The Competent Authority further ordered that all DDO's will obtain option from officials concerned about number of instalments in which recovery is to be made. However, the number of instalments will not be more than 24 in any case. Further, it may also be ensured that the recovery should be made before the superannuation of an official, if in any case it falls during intervening recovery period. The DDO's will also ensure that recovery must start from the salary of April 2012, payable on 30/04/2012.”

2. Counsel for the petitioners argues that though the Modified Assured Career Progression (MACP) Scheme in question was notified on 19.5.2009 however w.e.f the back date of 1.9.2008, but, para 11 of the MACP Scheme specifically protected the past cases wherein ACP benefits were already granted. Para 11 of the MACP Scheme dated 19.5.2009 reads as under:-

“11. It is clarified that no past cases would be re-opened. Further, while implementing the MACP Scheme, the differences in pay scales on account of grant of financial upgradation under the old ACP

Scheme (of August 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly.”

3. It is also conceded before this Court on behalf of the petitioners that in future petitioners will be governed by the clauses of the MACP Scheme and petitioners cannot and will not take benefit of the ACP Scheme which stands superseded by the MACP Scheme promulgated on 19.5.2009 and w.e.f 1.9.2008 i.e it is made clear that the periods for the benefit of the MACP Scheme so far as the petitioners are concerned, will be counted taking that one ACP benefit stands granted to the petitioners pursuant to the order dated 31.3.2009 and periods for further benefits under the MACP Scheme will be the periods which will be taken from the dates of benefits granted under the ACP Scheme.

4. Learned counsel for the respondents although tried to argue that the MACP Scheme supersedes the ACP Scheme w.e.f 01.9.2009, however, counsel for the respondents had no answer to para 11 of the selfsame MACP Scheme which clarifies the position that no past cases would be re-opened, and which is the correct legal position because monetary benefits cannot be retrospectively taken away by an employer.

5. In view of the above, the writ petition is allowed and the impugned order of the respondents dated 22.3.2012 is set aside. The ACP benefits

granted to the petitioners by the order dated 31.3.2009 will continue. The periods for grant of future benefits will be calculated qua the petitioners from the date of the ACP benefits already granted and in terms of the fresh periods specified in the MACP Scheme and not the older periods specified in the erstwhile ACP Scheme which stands superseded by the MACP Scheme dated 19.5.2009. It is clarified that the pay-scales or grade pay or pay bands which are specified in the original ACP Scheme only are granted w.e.f 31.3.2009 and not the fresh pay-scale etc which are specified in the new MACP Scheme. No costs.

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This petition is also allowed in terms of the reliefs granted while disposing of the W. P.(C) No.2118/2012.

**FEBRUARY 11, 2015  
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**VALMIKI J. MEHTA, J**