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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7062 OF 2014

The State of Maharashtra and ors. ... Petitioners
Vs.
Datatraya D. Mehta and ors. ... Respondents

WITH
WRIT PETITION NO. 5766 OF 2015

The State of Maharashtra and ors. ... Petitioners
Vs.
Govind Sakharam Deshpande and ors. ... Respondents

WITH
WRIT PETITION NO. 4506 OF 2015

The State of Maharashtra and ors. ... Petitioners
Vs.
Vitthal R. Pawar ... Respondent

WITH
WRIT PETITION NO. 2364 OF 2015

The State of Maharashtra and ors. ... Petitioners
Vs.
Shri. Ram Narsing Muley ... Respondent

WITH
WRIT PETITION NO. 2365 OF 2015

The State of Maharashtra and ors. ... Petitioners
Vs.
Narayan s/o. Vyankatrao Mundhe and ors. ... Respondents

WITH
WRIT PETITION NO. 2263 OF 2015

The State of Maharashtra and ors.	...	Petitioners
Vs.		
Gopal D. Muley	...	Respondents

WITH
WRIT PETITION NO. 9152 OF 2015

The State of Maharashtra and ors.	...	Petitioners
Vs.		
Ramakant A. Saraf and ors.	...	Respondents

WITH
WRIT PETITION NO. 9153 OF 2015

The State of Maharashtra and ors.	...	Petitioners
Vs.		
Smt. Meena M. Rasal and ors.	...	Respondents

WITH
WRIT PETITION NO. 9154 OF 2015

The State of Maharashtra and ors.	...	Petitioners
Vs.		
Tukaram P. Patil and ors.	...	Respondents

WITH
WRIT PETITION NO. 9155 OF 2015

The State of Maharashtra and ors.	...	Petitioners
Vs.		
Janardan D. Mokal and ors.	...	Respondents

WITH
CIVIL APPLICATION NO. 337 OF 2015
IN
WRIT PETITION NO. 7062 OF 2014

Balkrishna S. Borkar and ors. .. Applicants.

In the matter between
The State of Maharashtra and ors. ... Petitioners
Vs.
Datatraya D. Mehta and ors. ... Respondents

WITH
CIVIL APPLICATION NO. 339 OF 2015
IN
WRIT PETITION NO. 7062 OF 2014

Manohar H. Mali and ors. .. Applicants.

In the matter between
The State of Maharashtra and ors. ... Petitioners
Vs.
Datatraya D. Mehta and ors. ... Respondents

Mr. V.B. Thadani, AGP for the Petitioners-State, for the Petitioner.
Mr. Sanjay Kshirsagar for Respondent Nos.1 to 15 in Writ Petition No.
7062 of 2014.

Ms Swati P. Manchekar for Respondent Nos. 1 to 16 in Writ Petition
Nos. 9153 of 2015.

Mr. C.T. Chandratre for the Applicants in C.A. No. 337 of 2015.

Mr. Vilas N. Mali for the Applicants in CA. No. 339 of 2015.

CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.

DATE : JUNE 24, 2016

COMMON ORDER:

1] Rule in each of these petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] As the common issues of law and fact arise in these petitions, the learned counsel for the parties have agreed that these petitions can be disposed of with common judgment and order. In fact, the challenge in each of these petitions, is to the common judgment and order dated 23 December 2013 (impugned judgment and order) made by the Maharashtra Administrative Tribunal (MAT), Mumbai. Therefore, it is only appropriate that these petitions are disposed of with a common judgment and order.

3] The petitioner – State of Maharashtra, in each of these petitions has formulated Modified Assured Career Progression Scheme (MACP Scheme). This scheme, which has been made applicable from 1 October 2006 entitles eligible employees to pay scale of next promotional posts, twice in their service career upon completion of twelve years and 24 years of service. Although, the scheme was made applicable retrospectively from 1 October 2006, it was clarified that for the period between 1 October 2006 and 1 April 2010, i.e., the date of Government Resolution (G.R.) by which the

scheme was formulated, the employees will be entitled to only notional benefits, but not actual arrears.

4] The State by yet another G.R. dated 1 July 2011 has purported to “*clarify*” that even though the G.R. dated 1 April 2010 makes applicable the MACP Scheme retrospectively with effect from 1 October 2006, the benefit of such scheme will not apply to such of the employees who may have retired from service between the period 1 October 2006 and 31 March 2010. The MAT , by the impugned judgment and order has struck down such “*clarification*” (impugned clarification) *inter alia* on the ground that the same is arbitrary, unreasonable, violative of Article 14 of the Constitution of India and therefore unconstitutional. Aggrieved by such determination, the State has instituted the present petitions.

5] Mr. V.B. Thadani, learned AGP for the petitioners-State, has submitted that there is no obligation on the part of the State to either formulate or extend schemes like the MACP Scheme. The very formulation and extension of such scheme, is a policy matter. Therefore, the date from which and the extent to which the benefits of such schemes are to be extended, is also a policy matter. The MAT was quite unjustified in interfering with such a policy matter.

6] Mr. V.B. Thadani, learned AGP, further submitted that the class of employees, who retired between 1 October 2006 and 31 March 2010 are incapable of availing *de facto* promotions. Therefore, according to Mr. Thadani, their exclusion from the benefits of MACP Scheme was based upon a rational criteria, not in any manner violative of Article 14 of the Constitution of India.

7] Mr. V.B. Thadani, learned AGP finally submitted that the Division Bench of this Court at Aurangabad, in case of ***Bhalchandra D. Pandit and ors. Vs. The State of Maharashtra and ors.***¹, had in fact, in its judgment and order dated 22 August 2014, had taken the same view, which is now reflected in the impugned judgment and order. However, the Aurangabad Bench, by order dated 29 January 2016 has reviewed and recalled its judgment and order dated 22 August 2014. Accordingly, Mr. Thadani submitted that the impugned judgment and order made by the MAT, is clearly in excess of jurisdiction and warrants interference by this Court.

8] Mr. Sanjay Kshirsagar, Ms Swati Manchekar, Mr. C.T. Chandratre and Mr. Vilas Mali, learned counsel for the respondents-employees, have submitted that there is no jurisdictional error whatsoever in the impugned judgment and order made by the MAT. They have submitted that by G.R. dated 1 April 2010, the MACP Scheme was made retrospectively applicable from 1 October 2006.

1 Writ Petition NO. 7007 of 2011 decided on 22 August 2014

The effect of such retrospective application could never have been nullified by the State, on the basis of the impugned clarification. Besides, they submitted that the impugned clarification has effected an artificial classification amongst the set of employees similarly placed and such classification has no nexus whatsoever with the objective of the MACP Scheme, which is to relieve the employees from baneful effects of stagnation in service. They pointed out that the MACP Scheme does not contemplate any *de-facto* promotions. Further, only notional benefits and not arrears for the retrospective period, have been provided under the scheme. For all these reasons, learned counsel for the respondents-employees and some of the intervenors urged that these petitions be dismissed.

9] The rival contentions now fall for our determination.

10] One of the notorious features of Government service is that several employees, though eligible and ever willing to be promoted, do not actually secure such promotions, sometimes, during the entire tenure of their service. This stagnation, naturally leads to frustration. The State has consequently adopted schemes for redressal of such situation arising out of lack of sufficient promotional avenues and the consequent stagnation. Broadly, such schemes do not contemplate actual promotions to the next higher post, but by way of consolation, award the pay-scale of the promotional posts, generally, upon an

employees stagnating in a particular post for twelve years or twenty four years respectively. Such schemes, were earlier referred to as Time Bound Promotion Schemes and are now referred to as Assured Career Progression Schemes. The MACP Scheme, with which, we are presently concerned was formulated by the State Government vide G.R. dated 1 April 2010. This G.R specifically states that the scheme will be applicable with retrospective effect, i.e., from 1 October 2006.

11] The G.R. dated 1 April 2010 makes reference to the objective of the scheme, which is alleviation of the sufferings on account of stagnation. In case of **Dwijen Chandra Sarkar & Anr. vs. Union of India & Ors.**², the Supreme Court had occasion to explain the objective of such schemes and further, the importance of such objective, in the interpretation of such schemes. At paras 11 and 12, it is observed thus:

“11. However, the position in regard to “time-bound” promotions is different. Where there are a large number of employees in any department and where the employees are not likely to get their promotion in the near future because of their comparatively low position in the seniority list, the Government has found it necessary that in order to remove frustration, the employees are to be given a higher grade in terms of emoluments — while retaining them in the same category. This is what is generally known as the time-bound promotion. Such a time-bound promotion does not affect the normal seniority of those higher up.

² (1999) 2 SCC 119

12. *If that be the true purpose of a time-bound promotion which is meant to relieve frustration on account of stagnation, it cannot be said that the Government wanted to deprive the appellants who were brought into the P&T Department in public interest — of the benefit of a higher grade. The frustration on account of stagnation is a common factor not only of those already in the P&T Department but also of those who are administratively transferred by the Government from the Rehabilitation Department to the P&T Department. The Government while imposing an eligibility condition of 16 years' service in the grade for being entitled to time-bound promotion, is not intending to benefit only one section of employees in the category and deny it to another section of employees in the same category. The common factor for all these employees is that they have remained in the same grade for 16 years without promotions. The said period is a term of eligibility for obtaining a financial benefit of a higher grade.*
(emphasis supplied)

12] The entire MACP Scheme, with which we are concerned is set out in great details in the G.R. dated 1 April 2010. The salient features of MACP Scheme, are as follows:

- i) *The scheme is made applicable from 1.10.2006. However, for the period between 1.10.2006 till the date of G.R., i.e., 1.4.2010, the employees will be entitled to only notional benefits and not actual arrears.*
- ii) *Under this scheme, an eligible employee is entitled for the pay scale of next promotional post twice in his service career i.e. eligible for two financial upgradations on completion of 12 years and 24 years of service.*

iii) *In the case of an employee who has been granted time bound promotion/ACP it would be presumed that he got the first benefit of this modified ACP Scheme on that date.*

iv) The second financial upgradation will be available to the employee on completion of 12 years of service from the date of first financial upgradation.

13] In order to combat certain practical difficulties in the matter of implementation of MACP Scheme, the State vide G.R. dated 1 July 2011 has issued certain clarification. At serial No.1 of Annexure to the said G.R. dated 1 July 2011, it is “clarified” the benefit of MACP Scheme, as formulated in G.R. dated 1 April 2010 will not be available to employees, who have retired from service between the period 1 October 2006 (retrospective date from which scheme was made applicable) and 31 March 2010 (one day prior to the date of G.R. dated 1 April 2010, by which the scheme was directed to be implemented with retrospective effect). As noted earlier, it is this clarification, which has been struck down by the impugned judgment and order of the MAT.

14] Although, the formulation and extension of MACP Scheme may be in realm of policy, nevertheless, once such scheme is formulated and implemented by the State of its own accord, there is no question of State practising discrimination, as between the class of persons, otherwise uniformly entitled to benefit of such scheme. Once,

the State has taken a decision to formulate and implement the MACP Scheme, Article 14 of the Constitution will ensure that such scheme is not implemented with an unequal hand and that the employees who are otherwise entitled to avail the benefit of such scheme, are left out on basis of irrational or unreasonable parameters. Therefore, there is no merit in the first submission of Mr. Thadani that since the very formulation and implementation of MACP Scheme is in the realm of policy, the State has some unfettered discretion in the matter of choice of beneficiaries or that such choice is not capable of judicial review.

15] The circumstance that the class of employees excluded on account of the impugned clarification were not capable of availing *de facto* promotions, is quite an irrelevant circumstance, particularly considering the terms of the MACP Scheme as formulated in the G.R. dated 1 April 2010 and the objective of such scheme. In fact, the question of extension of benefits under the MACP Scheme arise, precisely because the employees are in no position to avail *de facto* promotions. That apart, since MACP Scheme has been made retrospectively applicable since 1 October 2006, for the period between 1 October 2006 and 31 March 2010, the employees, prior to their actual retirement, were theoretically capable of availing *de facto* promotions. Therefore, employees completing twelve years or twenty four years of service in any particular post between the period 1 October 2006 and 31 March 2010 cannot be deprived of the benefits

of the scheme, merely on account of fortuitous circumstance that they may have retired between the period 1 October 2006 and 31 March 2010. Such exclusion appears to be arbitrary, unreasonable and based upon no rational criteria. This is admittedly not a case where MACP Scheme, by itself, has been made applicable with effect from 1 April 2010. This is a case where the scheme has been made applicable from 1 October 2006 retrospectively. Therefore, there is no justification in the creation of artificial classification on the basis of the impugned clarification. Such classification bears no intelligible differentia whatsoever and in any case, differentia, if any, has no nexus whatsoever with the objective of the scheme, i.e., to compensate employees for stagnation on account of lack of promotional avenues, whilst in service. Thus, construed we detect no jurisdictional error in the view taken by the MAT in the impugned judgment and order.

16] The G.R. dated 1 April 2010 was quite clear in that the MACP Scheme was made applicable with retrospective effect from 1 October 2006. Accordingly, there was neither any reason nor any occasion for issuance of the impugned clarification, which has the effect of excluding employees, who are otherwise on par with the included on the employees, in the matter of receipt of benefits under the MACP Scheme. Besides, we note that the MACP Scheme contemplates only notional pay fixation for the period between 1 October 2006 and 1 April 2010, without there being any liability to

make actual payment of arrears. In the absence of any ambiguity in the G.R. dated 1 April 2010, there was no question of issuance of impugned clarification. Further, it is impermissible for the State to substantively modify the G.R. dated 1 April 2010, under the guise of issuance of impugned clarification.

17] In case of ***Bhalchandra Pandit (supra)***, the Aurangabad Bench of this Court, in its order dated 22 August 2014, had struck down the impugned explanation as being unreasonable and violative of Article 14 of the Constitution of India. However, in doing so, the Division Bench, had relied upon the decision in case of ***Savitribai N. Guddapa Vs. The State of Maharashtra***³. The State, instituted Review Application (St.) No. 9086 of 2015 and pointed out that the issue involved in Writ Petition No. 8985 of 2011 was different and unconnected with the issue involved in Writ Petition No. 7007 of 2011. Accepting this submission, the Division Bench at Aurangabad has recalled its order dated 22 August 2014 and restored the Writ Petition No. 7007 of 2011 for fresh adjudication. Mr. Thadani, candidly submitted that the issue involved in Writ Petition No. 8985 of 2011 is distinct and unconnected with the issue involved either in Writ Petition No. 7007 of 2011 or for that matter, the issue involved in the present batch of petitions. Thus, the recall of order dated 22 August 2015 in Writ Petition No. 7007 of 2011 upon such ground, in no manner advances the case of the State Government. The recall order

3 Writ Petition No. 8985 of 2011 decided on 9 May 2014

upon such a ground does not imply that the Division Bench has reviewed its earlier decision on merits. In fact the Writ Petition No. 7007 of 2011 is pending adjudication in terms of recall order dated 29 January 2016. Therefore, the submission of Mr. Thadani, learned AGP, on the basis of the position in Writ Petition No. 7007 of 2011, cannot be accepted for the aforesaid reasons.

18] There is neither any jurisdictional error nor any perversity in the view taken by the MAT in the impugned judgment and order. We are, accordingly, satisfied that there is no case made out to interfere with the impugned judgment and order.

19] Since the impugned judgment and order made by the MAT is not being interfered with, there is no reason to allow the Civil Application Nos. 337 and 339 of 2015, seeking intervention in these petitions. The intervenors, in any case, were duly heard through their respective counsel Mr. C.T. Chandratre and Mr. Vilas Mali, in defence of the impugned judgment and order made by the MAT. The Civil Applications are disposed of accordingly.

20] Rule is therefore, discharged in each of these petitions. However, there shall be no order as to costs in each of these petitions.

[M. S. SONAK, J.]

[V. M. KANADE, J.]