

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
&
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition Nos.6148 and 6149 of 2016
&
W.M.P.Nos.5489 and 5490 of 2016

1. The Comptroller and Auditor General of India,
Deen Dayal Upadhy Marg,
New Delhi.
 2. The Principal Accountant General (A&E)
361, Anna Salai, Teynampet Chennai,
Tamil Nadu
- ... Petitioners in both W.Ps.

- Vs -

1. The Central Administrative Tribunal,
rep. by its Registrar,
City Civil Court Buildings,
High Court Complex, Chennai - 600 104.
- ...1st Respondent in both W.Ps.

Mangala Sundari

3. S.P.Ravichandran
4. D.Rajasekar
5. K.P.Sai Prabha
6. G.Mohan Kumar

... Respondents 2 to 6 in W.P.No.6148/2016

7. The Union of India rep. by
Secretary to Government,
Ministry of Personnel,
Public Grievances & Pension
Department of Personnel & Training
North Block, New Delhi.

..7th Respondent in WP.6148/16/33rd Respondent in WP.6149/16

2. S.Ananthanarayanan
3. N.Vijayan
4. M.S.Mahalakshmi
5. T.R.Ravi Sankar
6. D.Selvaraj
7. V.V.Kumaraswamy

8. C.S.Narayanasamy
9. K.Renganathan
10.R.Balakrishnan
11.W.Nazir Ahmed Khan
12.P.Rajani
13.R.Latha
14.S.Chitra
15.V.Bhanumathy
16.Padma Jagadishram
17.S.Ganesamoorthy
18.D.Hilda Geetharani
19.C.J.Venkataraman
20.R.Chitra
21.M.Radhakrishna Murthy
22.S.Narayanan
23.G.Sekar
24.K.S.Kathirvel
25.S.Chitra
26.Selvipandian
27.S.Vetriselvan
28.Jayalakshmi Narayanan
29.N.Elangovan
30.B.Kumar
31.P.Paramasivam
32.F.Selvakomagan

.. Respondents 2 to 32 in W.P.No.6149/2016

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari to call for the records from the file of the Central Administrative Tribunal in O.A. Nos.1720 and 1721 of 2014 dated 30.9.2015 and quash the same.

For Petitioners
In Both WPS. : Mr.V.Vijay Shankar

For Respondents : Mr.Muthukumarasamy, S.C
for Mr.A.Jenasenan - R2 to R6 in
WP.6148/2016

COMMON ORDER

(Order of the Court was made by R.SUDHAKAR,J.)

Challenging the order passed by the Tribunal dated 30.09.2015 made in O.A.Nos.1720 and 1721 of 2014, wherein, the Tribunal directed the concerned authorities to extend the benefits under MACP Scheme to the applicants therein, the appellants have filed the present Writ Petitions.

2. The brief facts of the case are as follows:

During the implementation of the Modified Assured Career

Progression Scheme (in short, MACP) introduced as per the recommendations of the Sixth Pay Commission, the petitioners herein have re-fixed the Grade Pay of the personnel in the post of Adhoc SOs/AAOs and Senior Accountants who had either failed in the SOGE Examination or opted not to take the same, who are juniors/subordinates to the respondents/applicants at Rs.5400/- in Pay Band 2. In the result, persons, who were promoted as Senior Officers while functioning as AAOs continued to remain in the Grade Pay of Rs.4800/-. Hence, the aggrieved persons, filed Original Applications before the Central Administrative Tribunal.

3. The Tribunal, after hearing both sides, held that the issue involved in the applications has already been decided by the Tribunal in O.A.Nos.966 and 967 of 2009 dated 29.12.2010 in favour of the applicants, which was confirmed by this Court in W.P.Nos.18611 and 18612 of 2011 dated 19.3.2014. Hence, the Tribunal following the order passed by this Court in W.P.Nos.18611 and 18612 of 2011 dated 19.3.2014, allowed the Original Applications. Aggrieved by the same, the petitioners are before this Court.

4. Learned counsel appearing for the petitioners submits that as the Scheme has not been considered by the earlier Division Bench, the petitioners have filed SLP before the Supreme Court and the Supreme Court dismissed the SLP, thereby left open the question of law. He further submits that the applicants before the Tribunal had earned promotions, whereas, the persons, who have been conferred with Grade Pay of Rs.5400/- got stagnated and such conferment is purely personal to them and has no relevance to the seniority position and hence stepping up of pay in the Pay Band or Grade Pay would be inadmissible to them. He also submits that MACP Scheme was formulated to give a quietus to the problem that arose out of lack of adequate promotion to the employees, who got stagnated in one post. He further submits that no stepping up of pay in the Pay Band or Grade Pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP scheme, which is an offshoot of the recommendation of the VI Pay Commission and it is in consonance with CCS (Revised Pay) Rules, 2008 and therefore, they cannot claim benefit under FR-22 and hence the order of Tribunal may be set aside.

5. Learned Senior Counsel appearing for the applicants/respondents submits that the issue involved in the present Writ Petitions is identical to the issue involved in W.P.Nos.18611 and 18612 of 2011, which were disposed of by this Court in favour of the applicants/respondents on 19.3.2014, which was also confirmed by the Supreme Court vide decision dated 20.8.2014 in S.L.P.CC No.11103 of 2014. He further submits that challenging the said MACP Scheme, several persons have filed Original Applications before the Tribunal in O.A.Nos.1063 and 1075 of 2010 and the said Original Applications

were allowed by the Tribunal. As against the said order, the official respondents in the Original Applications have filed Writ Petitions before this Court in W.P.Nos.1078, 10046 to 10049 and 18262 of 2012 and this Court by order dated 03.04.2014, following the decision dated 19.3.2014 in W.P.Nos.18611 and 18612 of 2011 dismissed the Writ Petitions, thereby confirmed the order of the Tribunal. Aggrieved by the said order of this Court, the petitioners in the Writ Petitions have filed Special Leave Petition before the Supreme Court and the Supreme Court dismissed the SLP on 07.11.2014 in SLP (CC) Nos.17241 to 17246 of 2014 and even the Review filed by the petitioners have been dismissed. Hence, he submits that when the issue had attained finality, the petitioners herein are not entitled to any further relief.

6. Heard the learned counsel appearing for the petitioners and the learned Senior Counsel appearing for the applicants/respondents and perused the materials placed before this Court.

7. The sum and substance of the fact is that consequent to the implementation of the MACP Scheme, the senior employees, who got promotion, were denied MACP Scheme and were granted Grade Pay at Rs.4,800/-, whereas, the juniors, who had availed the MACP Scheme, were granted Grade Pay at Rs.5,400/-. The challenge to the said pay anomaly before the Tribunal was positively answered in favour of the applicants therein by following its own order in O.A.Nos.966 and 967 of 2009.

8. It is seen that the Tribunal, after hearing both sides, allowed the applications, holding as follows:

"10. We are in agreement with the learned counsel for the applicants that the decision of the Hon'ble Madras High Court in the Writ Petition Nos.18611 and 18612 of 2011 dated 19.3.2014 would prevail over all other orders till the law is settled by the Hon'ble Apex Court and, therefore, should be taken as binding precedent to the cases before us. The case of the applicants herein is similar to that of the applicants in OAs 966 and 967 of 2009. The main contention of the respondents that in view of Clause 20 of the MACP Scheme and the provisions of FR 22 no relief could be granted to the seniors has been adequately dealt with in the Writ Petitions before the Madras High Court. Therefore, we have no hesitation in granting the relief to the applicants in these two applications. The respondents are accordingly directed to extend the benefits under the MACP Scheme to the applicants and fix their Grade Pay at Rs.5,400/- on par with their

juniors/subordinates, from the date on which such benefit was conferred on the juniors. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order."

9. It is seen that challenging the order passed by the Tribunal in O.A.Nos.966 and 967 of 2009, Writ Petitions have been filed before this Court in W.P.Nos.18611 and 18612 of 2011 and this Court, vide order dated 19.3.2014, has considered the issue in exten so and by placing reliance on the decision in the case of State of Andhra Pradesh v. G.Sreenivasa Rao [(1989) 2 SCC 290] held as follows:

"11. The appellants herein, under the guise of MACP scheme dated 19.05.2009 coupled with the clarification dated 09.11.2009, seeks to deprive the benefit of FR-22(1)(a)(i) to the private respondents and in the considered opinion of the Court, it is unsustainable as it violates equality and it also offends Article 14 of the Constitution of India and the MACP scheme dated 19.05.2009 as well as the impugned order dated 03.08.2009 do not spell out any reason the applicability of FR-22(1)(a)(i), has excluded for the persons like private respondents who are ultimately aggrieved/affected.

12. The Government of India passed series of orders issuing clarification in respect of FR-22 (I)(a)(i) and as per Clarification No.23(d), the pay anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 or any other rule or order regulating pay fixation of such promotion in the revised scale.

(emphasis supplied)

13. In the case on hand, the private respondents 4 to 26 in the original applications are admittedly juniors to the private respondents in these writ petitions and they did not qualify on time for getting their promotion and consequently got stagnated and on account of the same, they are not conferred with higher grade pay of Rs.5,400/-. The Tribunal has taken into consideration of the fact that admittedly the private respondents 4 to 26 did not pass the departmental tests on time and got stagnated at the level of Senior Accountants and since they have been conferred with higher grade pay of Rs.5,400/-, has rightly granted the said relief in their favour. It is to be pointed out at this juncture that the private respondents 4 to 26 in

the original applications have not been put to any prejudice and what the Tribunal done was, merely stepped up the pay scale of the original applicants to that of the private respondents 4 to 26 and it is in tune with the principle of parity and equity enshrined in Article 14 of the Constitution of India.

14. This Court, on a careful consideration of the rival submissions and scrutiny of the materials placed before it, is of the considered opinion that there is no error apparent or infirmity in the reasons assigned by the Tribunal for allowing the original applications and finds no merit in these writ petitions."

10. Challenging the above-said decision of this Court, the Official respondents/petitioners herein have filed SLPs before the Supreme Court in SLP(CC) No.11103 of 2014 and the Supreme Court dismissed the SLPs on 20.08.2014 holding as follows:

"Delay condoned.

We find no merit in this petition. The Special Leave Petition is dismissed.

However, the question of law is left open."

11. It is relevant to note that subsequent to the above decision, in an another proceeding, in the case of Railway Employees, the same identical issue has been raised. The aggrieved employees have filed Original Applications before the Tribunal in O.A.Nos.1075, 993, 1009, 1008, 1007 and 1063 of 2010, which were allowed by the Tribunal by following the judgment in O.A.Nos.996 and 997 of 2009. The said decision was also challenged before this Court in W.P.Nos.1078, 10046 to 10047 and 18262 of 2012. This Court, vide order dated 03.04.2014, after following the decision in W.P.Nos.18611 and 18612 of 2001 dated 19.3.2014 dismissed the Writ Petitions holding as follows:

"7. The point involved in these writ petitions, is similar to one raised in W.P.Nos.18611 and 18612/2011 filed by the Union of India, Represented by Secretary to Government, Ministry of Personnel, Public Grievances & Pension, (Department of Personnel & Training), North Block, New Delhi, and two others, wherein, this Court has upheld the orders passed by the Tribunal in O.A.Nos.966 and 967/2009, and dismissed both the writ petitions filed by the official respondents therein. The Tribunal has also placed reliance upon its earlier orders

passed in the above said Original Applications, and granted the relief.

8. In the light of the reasons assigned above, this Court finds that there are no merits in these writ petitions.

9. In the result, there writ petitions are dismissed, confirming the orders passed by the Central Administrative Tribunal, Madras Bench in O.A.No.1075, 993, 1009, 1008, 1007 and 1063 of 2010, dated 5.8.2011, 7.10.2011 and 21.11.2011. No costs. Consequently, connected MPs are also dismissed."

12. Aggrieved by the said order, the petitioners therein have filed SLPs before the Supreme Court in S.L.P.CC.Nos.17241-17246 of 2014 and the Supreme Court, by order dated 07.11.2014 dismissed the SLPs holding as follows:

"Heard learned Additional Solicitor General appearing on behalf of the petitioners.
Delay condoned.

No ground for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India.

The special leave petitions are accordingly dismissed."

13. It is to be stated that the petitioners, not satisfied with the order, have filed Review Petition before the Supreme Court and again the Supreme Court dismissed the Review Petition in Review Petition (C) Nos.1325-1330 of 2015 on 11.08.2015 holding as follows:

"Delay of 4 days in filing the review petitions is condoned.

The present petitions have been filed by the petitioners for review of order dated 7.11.2014 passed by this Court in SLP (C) Nos.30919-30924 of 2014 (arising out of CC Nos.17241-17246 of 2014), which were dismissed after hearing learned Additional Solicitor General, who appeared on behalf of the petitioners.

We have carefully perused the petitions for review, the order impugned and the papers annexed therewith. We do not find any error apparent on the face of record of this Court warranting reconsideration of the order impugned in the

instant petitions.

The review petitions are, accordingly, dismissed."

14. It is to be stated that when the issue had attained finality, it is not possible for this Court to reopen the same. At this juncture learned counsel appearing for the petitioners vehemently contended that the contentions of the petitioners that as per clause 20 annexure 1 of MACP Scheme, financial upgradation shall be purely personal to the employee and should have no relevance to his seniority position and no stepping up of pay in the Pay Band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP scheme, have not been considered by the earlier Division Bench. He further submits that the Supreme Court has left the issue open and hence, the petitioners are entitled to agitate before this Court.

15. It is seen that in the decision dated 19.3.2014, in W.P.Nos.18611 and 18612 of 2011, the said contentions were considered and negatived by the earlier Division Bench. For better appreciation, the contentions raised by the learned counsel appearing for the petitioners therein and the observations made by the Bench in this regard are as follows:

"3. Mr.T.Ravikumar, learned counsel appearing for the writ petitioners contended that as per the MACP scheme dated 19.05.2009, no stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme and insofar as persons serving in Indian Audit and Accounts Sections are concerned, orders will be issued after consultation with the Comptroller and Auditor General of India and therefore, it is not open to the private respondents/original applicants to base their claim on the basis of FR-22. It is further submitted by the learned counsel appearing for the petitioners that private respondents in these writ petitions, already got three promotions whereas the private respondents 4 to 26 in the original applications have got only two promotions and therefore, they were rightly conferred with the benefit of MACP scheme by putting them in the pay grade of Rs.5,400/- and as per the said scheme, it is purely a personal one and there shall be no change in the designation, classification or higher status and have no relevance to the seniority position and as such, it cannot be said that the private respondents are aggrieved persons. Moreover, MACP scheme, being the offshoot of the recommendations made by the VIth Pay Commission, has

to be read with in consonance with CCS (Revised Pay) Rules, 2008 notwithstanding the provisions of FR-22 and on that ground also, the private respondents are not entitled to make their claim that they should be put in grade pay of Rs.5,400/- as that of respondents 4 to 26 in the original applications. The learned counsel appearing for the writ petitioners has also drawn the attention of this Court to the additional affidavit dated 05.02.2014 filed in these writ petitions, wherein this Court has sought clarification on these aspects while reiterating the stand taken by them in the original applications and therefore, prays for setting aside the impugned common order passed in the original applications.

.....

7. It is the vehement submission of the learned counsel appearing for the writ petitioners that in view of MACP scheme which came into being in the year 2009, FR-22(I)(a)(i) has no application and since the private respondents 4 to 26 in the original applications are stagnated without any promotion, they have been rightly conferred with the benefit of pay grade of Rs.5,400/- and also contended that in the absence of any challenge to the said scheme, it is not open to the private respondents to attack the said benefit conferred on them. In the considered opinion of the Court, the said submission lacks merit and substance for the reason that any action of the State has to pass the test of reasonableness and shall not offend Article 14 of the Constitution of India."

(Emphasis supplied)

16. In the light of the above, when the earlier Bench of this Court has analysed the issue thoroughly, which went upto the Supreme Court, wherein, the decision taken by the Division Bench of this Court was confirmed, we have no hesitation in following the same. Further, even though as contended by the learned counsel appearing for the petitioners the issue was left open in the first SLP, in the second SLP the Supreme Court has clearly stated "No ground for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India". Even the Review Petitions filed by the petitioners have been dismissed by the Supreme Court holding as follows:

"We have carefully perused the petitions for review, the order impugned and the papers annexed therewith. We do not find any error apparent on the face of record of this Court warranting reconsideration of the order impugned in the instant petitions."

17. It is trite that a co-ordinate Bench is bound to follow the decision taken by the earlier Bench. In the case of Dashrath Rupsingh Rathod V.State of Maharashtra & Another (Crl.A.No.2287 of 2009) dated 01.08.2014, the Apex Court, while dealing with the criminal complaints filed under the provisions of Negotiable Instruments Act, held that a co-ordinate Bench is bound to follow the previously published view. For better appreciation, we extract below the relevant portion of the decision:

"The principle of precedence should promptly and precisely be paraphrased. A co-ordinate Bench is bound to follow the previously published view; it is certainly competent to add to the precedent to make it logically and dialectically compelling. However, once a decision of a larger Bench has been delivered it is that decision which mandatorily has to be applied; whereas a Co-ordinate Bench, in the event that it finds itself unable to agree with an existing ratio, is competent to recommend the precedent for reconsideration by referring the case to the Chief Justice for constitution of a larger Bench...."

18. Admittedly, the issue involved in these Writ Petitions is similar to the one raised in W.P.Nos.18611 and 18612 of 2011 and W.P.Nos.1078, 10046 to 10049 and 18262 of 2012, wherein this Court upheld the orders passed by the Tribunal in the Original Applications and dismissed the Writ Petitions. In the present case, the Tribunal following the decision of the Division Bench of this Court allowed the Original Applications.

19. In the light of the above, we find no merit in these Writ Petitions. Accordingly, both the Writ Petitions stand dismissed confirming the orders passed by the Central Administrative Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings, Chennai-104.

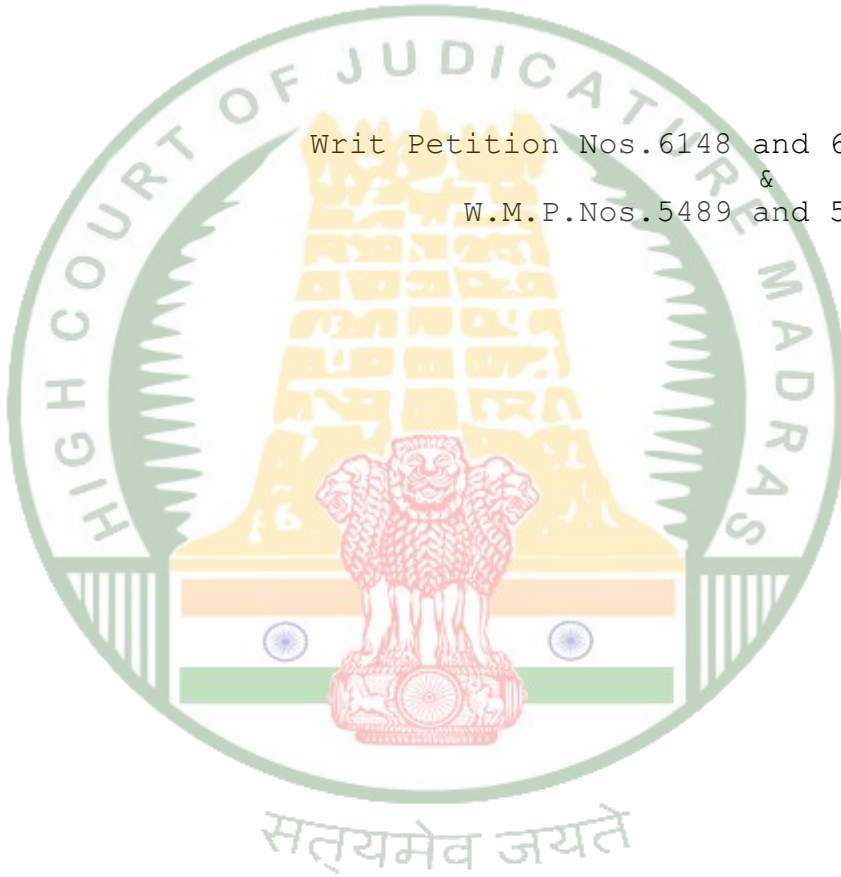
The Secretary to Government,
Union of India,
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Public Grievances & Pension
Department of Personnel & Training
North Block, New Delhi.

+ 2 ccs to Mr.V.Vijay Shankar, Advocate Sr Nos.11131 & 11132

+ 1 cc to Mr.A.Jenasenan, Advocate Sr 10621

KR/7/3/16

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