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

\+   **WRIT PETITION (CIVIL) No. 5789/2015**

Reserved on: 29th January, 2016
%   **Date of Decision:** 19th May, 2016

SURESH CHAND GARG ....Petitioner
Through Mr. D.S. Mahendru, Advocate.

Versus

CHIEF SECRETARY, GOVERNMENT OF NCT OF DELHI & ANR. .....Respondents
Through Mr. Anuj Aggarwal, ASC.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.

Suresh Chand Garg, by this writ petition, assails order dated 6th November, 2012 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi (Tribunal, for short) whereby his OA No.4457/2011 was dismissed. The petitioner has also challenged the order dated 18th January, 2013 whereby review application RA No. 7/2013 was dismissed.

2. The contention of the petitioner is that he is entitled to benefit of second/third financial upgradation under the Assured Career Progression Scheme (ACP Scheme) made applicable with effect from 9th August, 1999

or the Modified Assured Career Progression Scheme (MACP Scheme) made applicable with effect from 1st September, 2008.

3. The petitioner was appointed to the post of Trained Graduate Teacher (TGT) on 21st November, 1973. He retired as Vice-Principal on 28th February, 2011. During his service career spreading 37 years and 3 months, the petitioner was granted senior scale payable to TGTs Rs.1640-2900 with effect from 1st January, 1986. He was subsequently selected and appointed by way of direct recruitment, without break in service, as Post Graduate Teacher (Maths) (PGT) on 15th February, 1992 in the same pay scale of Rs.1640-2900, which was earlier granted to him as senior scale TGT with effect from 1st January, 1986. On enforcement of the ACP Scheme with effect from 9th August, 1999, the petitioner was granted financial upgradation applicable to the post of Vice-Principal in the scale of Rs.7500-12000 as he had completed 24 years of continuous service. Subsequently, the petitioner was promoted to the post of Vice-Principal with effect from 8th January, 2008 in the pay scale of Rs.7500-12000, i.e., the pay scale granted to him on financial upgradation under the ACP Scheme since 9th August, 1999. Thus, the promotion to the post of Vice-Principal in the pay scale of Rs.7500-12000 did not entail any financial benefit or further upgradation.

4. Pursuant to implementation of the Sixth Central Pay Commission, which was made applicable to the employees of Directorate of Education in Government of NCT of Delhi, the petitioner was entitled to replacement grade pay of Rs.5400 in Pay Band-3 (Rs.15600-39100).

5. As noticed above, MACP Scheme was made applicable with effect from 1st September, 2008. The said scheme, in paragraphs 1 and 2 provides as under:-

> "1. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.
>
> 2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion."

The aforesaid paragraphs stipulate in plain words that a government servant shall be entitled to grant of three financial upgradations on completion of 10, 20 and 30 years of continuous regular service, from direct entry into the grade, whenever the said employee has spent 10 years continuously in the same grade pay. MACP Scheme has modified and replaced ACP Scheme. Under the ACP Scheme, a government servant was entitled to two financial upgradations after 12 and 24 years of continuous service. Paragraph 28 of the MACP Scheme, by way of illustrations explains the scope and ambit of paragraphs 1 and 2 of the MACP Scheme. As one of the illustrations in sub-paragraph B is relevant, the same is reproduced below:-

> "28.(B) If a Government servant (LDC) in PB-1 in the Grade Pay of Rs.1900 is granted 1st financial upgradation under the MACPS on completion of 10 years of service in the PB-1 in the Grade Pay of Rs.2000 and 5 years later he gets 1st regular promotion (UDC) in PB-1 in the Grade Pay of Rs.2400, the 2nd financial upgradation under MACPS (in the next Grade Pay w.r.t. Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-1 in the Grade Pay of Rs.2800. On completion of 30 years of service, he will get 3rd ACP in the Grade Pay of Rs.4200. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date 2nd promotion or at 30th year of service, whichever is earlier."

This position is also clarified by way of a flow chart incorporated in the MACP Scheme, which for the sake of convenience, is extracted below:-

"Para28(B)

1^{st} ACP on completion of 10 years.

↓

1^{st} promotion on completion of 15 years (i.e.. 10+5).

↓

Officer gets 2^{nd} ACP on completion of 20 years.

↓

Officer gets 3^{rd} ACP on completion of 10 years i.e. in 30^{th} year.

”

Illustration in paragraph 28(B) reflects that where an employee has earned two promotions before completion of 20 years, he would be entitled to a third financial upgradation on completion of 10 years of service in the grade pay from the date of the second promotion or on 30 years of service, whichever is earlier. An employee need not, therefore, have worked in the grade pay/pay scale applicable to the second promotion for a period of 10 years, provided he had already worked for a period of 30 years on or after the MACP Scheme became applicable. As on 1^{st} September, 2008, the petitioner had already put in more than 35 years of service. Therefore, the petitioner would meet the qualifying continuous regular service requirement and was entitled to a third financial upgradation under the MACP Scheme.

6. The contention of the respondents, however, is that the petitioner was selected and appointed as PGT by a process of direct recruitment on 15th February, 1992 and, therefore, the service rendered by him in the post of TGT from 21st November, 1973 till 14th February, 1992 cannot be treated as continuous regular service for the purpose of MACP Scheme. The said contention, in our opinion, is fallacious and has to be rejected in terms of paragraph 9 of the MACP Scheme, which reads:-

> "9. 'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on ad hoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post."

The aforesaid paragraph clarifies that the term 'regular service', for the purpose of MACP Scheme, means the entire time/period commencing from the date of joining the post in direct entry grade on regular basis by different modes like direct recruitment/absorption/re-employment, etc.

Pertinently, it stipulates that past continuous regular service in another Government Department, in a post carrying the same grade pay, prior to regular appointment in the new department without any break, shall be counted towards qualifying regular service for the purpose of MACP Scheme. It is clarified that the said regular service in the Government in the same grade pay may or may not be eligible and counted for regular promotions. The service rendered on ad hoc/contractual basis before regular appointment or re-appointment or training is not to be reckoned. As noticed from the factual matrix mentioned above, the petitioner, on appointment after selection as PGT (Maths) on 15th February, 1992 was granted pay scale of Rs.1640-2900, which was identical to the pay scale given to him on grant of senior scale, TGT with effect from 1st January, 1986. The two posts, i.e, the posts of TGT (senior scale) and PGT (Maths) were carrying the same pay scale, i.e, Rs.1640-2900. There was no increase or enhancement of pay scale pursuant to selection by the process of direct recruitment to the post of PGT (Maths). Therefore, in the case of the petitioner, he would be entitled to count and include previous regular service from 1st January, 1986 till 14th February, 1992, when he had worked in the post of TGT (senior scale). In case the petitioner had enjoyed financial upgradation or increase in pay scale on appointment as PGT (Maths) on 15th February, 1992, the legal position would have been different. In other words, the petitioner had more than 25 years of continuous regular service from 1st January, 1986 till his retirement on 28th February, 2011. During this period, the petitioner was granted only one financial upgradation to the grade payable to Vice-Principal in 1999. He was subsequently also promoted as Vice-Principal, but without any additional financial upgradation.

7. The Tribunal in the impugned order dated 6th November, 2012 has dealt with the contention raised by the respondents that the petitioner was wrongly granted benefit of financial upgradation on 9th August, 1999 under the ACP Scheme by counting the period when the petitioner had worked as TGT and TGT (senior scale) from 21st November, 1973 till 14th February, 1992. The Tribunal, in this connection, has referred to the clarification issued by Department of Personnel and Training in OM dated 10th February, 2000 on points of doubt Nos. 4 to 6. The said OM relates to ACP Scheme. The relevant portion reads as under:-

"

Point of Doubt	Clarification
4. In a case where a person is appointed to a post on transfer (absorption) basis from another post, whether 12 years and 24 years of service for the purpose of ACPS will count from the initial	The benefits under ACPS are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should

appointment or otherwise.	be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment, absorption (transfer)/deputation, or at different places should be taken into account for computing the prescribed period of service for the purpose of ACPS. Also, in case of absorption(transfer)/deputation in the aforesaid situations, promotions earned in the previous/present organizations, together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is made to higher pay scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under ACPS. Needless to
5. Whether a Government servant, who is direct recruit in one grade and subsequently joins another post again as direct recruit, is eligible for first financial upgradation under ACPS after completion of 12 years of service counted from the first appointment or from the subsequent second appointment as direct recruit?	
6. An employee appointed initially on deputation to a post gets absorbed subsequently, whether absorption may be termed as promotion or direct recruitment. What will be the case if an employee on deputation holds a post in the same pay-scale as that of the post held by him in the present cadre? Also, what will be the situation if he was holding a post in the parent cadre carrying a lower pay-scale?	

	say, in cases of transfer on administrative ground, involving only change of station within the same department, the service rendered in the same grade at two stations may count for ACPS, as such transfers are within the same organization, ordered generally for administrative/personal considerations and the service rendered in the earlier station counts as eligibility service for promotion.

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As noticed above, the petitioner on being appointed as PGT on 15th February, 1992 was entitled to the same pay scale, that he was drawing since 1st January, 1986 on being granted TGT senior scale. The pay scale in the two posts was identical, i.e., Rs.1640-2900 and did not undergo a change. The principle applicable in such situation in the ACP Scheme was identical to the situation set out in paragraph 9 of the MACP Scheme, quoted and interpreted above. In these circumstances, the petitioner was rightly granted benefit under the ACP Scheme with effect from 9th August, 1999 as he had completed 24 years of service by then and had earned one financial upgradation. Even if we count the period between 1st January, 1986 till 9th August, 1999, the petitioner had completed 12 years of regular service. In the facts of the present case, on being appointed as PGT (Maths), the petitioner had not gained a higher pay scale.

8. As we are reversing the order of the Tribunal, we would like to reproduce the reasoning given by the Tribunal in the impugned order dated 6th November, 2012 and point out the error made. Paragraphs 17 and 18 of the impugned order dated 6th November, 2012 read as under:-

> "17. However, two things intervened, first was his promotion as Vice Principal on 08.01.2008, within 10 years of his eligibility for grant of 1st financial upgradation under ACP Scheme, with effect from 01.01.1998, payable to him with effect from 09.08.1999, the date of introduction of the ACP Scheme, and the second thing which intervened was the replacement of the ACP Scheme itself by the MACP Scheme with effect from 19.05.2009 through Annexure R-3. Under the new MACP Scheme, since the element of stagnation within the same Grade Pay was introduced, and the Grade Pay for TGT is different than that of PGT, for the purpose of MACP Scheme, the applicant can start counting his period of stagnation only in the grade of a PGT, from the date of his appointment as PGT i.e. 15.02.1992. Under the MACP Scheme, he cannot count the benefit of the period earlier spent by him under the same 5th CPC pay scale with effect from 01.01.1986 to 14.02.1992 in the Senior Scale of TGT, for the purpose of counting of stagnation, since the two posts of TGT and PGT do not carry the same Grade Pay.
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> 18. The applicant thereafter completed 10 years of service in the Grade Pay associated with the pay scale of PGT on 14.02.2002, and he would have been eligible for grant of his 1st financial upgradation under MACP Scheme after 10 years of continuous service in the post of PGT, with effect from 15.02.2002, and would have been eligible for grant of his second financial under MACP Scheme on completion of 20 years of service as PGT on 15.02.2012, but for the period of his stagnation as PGT being interrupted and cut short on account of his promotion as Vice-Principal on 08.01.2008, and his superannuation thereafter on 28.08.2011."

As noticed above, the petitioner was promoted as Vice-Principal on 8th January, 2008, but the pay scale given to him was the same as that was granted to him under the ACP Scheme of Rs.7500-12000. After implementation of the Sixth Pay Commission, the petitioner was given grade pay of Rs.5400 in PB-3. Thus, the first factor noticed in paragraph 17 though relevant, was not a factor, which would deny and deprive the petitioner of the benefit under the MACP Scheme. The second factor recorded by the Tribunal in paragraph 17 refers to the existing pay scales/grade pay applicable to TGT and PGT after implementation of the Sixth Pay Commission and holds that the petitioner would not be entitled to include and count the period from 21st November, 1973 to 14th February, 1992. It is difficult to accept the said reasoning. The question of financial upgradation is not to be examined with reference to the pay scale prescribed as a result of the Sixth Pay Commission. The question and factual position is to be examined by referring to actual facts, and whether or not the government servant was granted financial upgradation or higher pay after he was appointed with reference to the regular service rendered by the employee. According to the factual position, the petitioner on appointment as PGT (Maths) on 15th February, 1992 was already enjoying TGT senior scale of Rs.1640-2900 granted with effect from 1st January, 1986 and, therefore, on appointment as PGT on 15th February, 1992, he did not draw an enhancement or increase in pay scale. His pay scale continued to remain Rs.1640-2900. The issue of review of pay scale may become relevant in case there is merger of posts, etc. *Albeit*, such a case is not made out by the respondents or stated in the aforesaid paragraph of the impugned order. With regard to paragraph 18, we have already referred to paragraphs 1 and 2 of the MACP Scheme and paragraph 28(B) and the appended illustration. It may also be noted that the promotion earned by the petitioner to the post of Vice-Principal from 8th January, 2008 was inconsequential and without any financial upgradation, for the petitioner was already enjoying the pay scale of Rs.7500-12000 since 9th August, 1999 upon financial upgradation under the ACP Scheme.

9. No other point or issue was raised and argued before us.

10. For the aforesaid reasoning, we would allow the present writ petition and set aside the order dated 6th November, 2012 passed by the Tribunal and hold that the petitioner would be entitled to a third financial upgradation with effect from 1st September, 2008. As per Section 1, Part-A of the first schedule of the Central Civil Services (Revised Pay) Rules, 2008, the petitioner would be entitled to grade pay of Rs. 6600 in PB-3 with effect from the said date. The respondents will accordingly calculate the arrears, including arrears of pension, consequent to the petitioner's retirement on 28th February, 2011 and pay the same to the petitioner within

a period of three months from the date a copy of this order is made available to them. In case the said payment is not made within three months, the respondents will be liable to pay interest @ 8% per annum on the aforesaid amount from the date of this judgment till payment is made. The petitioner is also entitled to costs, which are assessed at Rs.10,000/-. The writ petition is accordingly allowed and disposed of in the aforesaid terms.

-sd-
(SANJIV KHANNA)
JUDGE

-sd-
(NAJMI WAZIRI)
JUDGE

MAY 19, 2016
VKR