

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2017

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR. JUSTICE V. PARTHIBAN

Writ Petition Nos. 33946, 34602 and 27798 of 2014
and

M.P.Nos.1 to 1 of 2014 (3 Nos.)

M.P.Nos.1 to 1 of 2015 (3 Nos.)

and

W.M.P.Nos.32682 and 32683 of 2016

W.P.No.33946 of 2014

- 1 The Union of India
Rep. by the Engineer-in-Chief
Military Engineering Services
Integrated HQ of MOD (Army)
Kashmir House, Rajaji Marg
New Delhi-110011.
- 2 The Chief Engineer
Southern Command
Manekji Mehta Road
Pune-411 001.
- 3 The Chief Engineer
MES Island Grounds
Chennai Zone
Chennai-600 009.
- 4 The Chief Engineer (R&D)
(Opp) Jubilee Bus Station,
Secunderabad-500 651.
- 5 The Chief Engineer (Factories)
MES S.P. Road
(Opp) Parade Grounds
Hyderabad-500 003.
- 6 The Cheif Engineer (Navy)
MES Station Road
Vizag-530 004.

7 The Chief Engineer (Air Force)
MES No.2 D.C.Area MES Road
Yeswanthapur Post
Bangalore-560 022.

.. Petitioners

Versus

1 S.Ranjit Samuel
2 V.Sathya
3 G.Maira Joseph
4 A.Senguttvan
5 D.Ravichandran
6 T.G.V.Mahesh
7 Gowri Venkat
8 V.Sitaramachandran
9 Santhi Thirunavukkarasu
10 P.R.Anantha Kumar
11 Buvana Ravi
12 Usha
13 A.Porchelvi
14 Sumathi Vethanayaranan
15 Sumathi Manoharan
16 E.B.Chandrasekaran
17 T.Senguttuvan
18 N.Rajenthiren
19 A.V.Prabhakar
20 C.T.Sudhakaran
21 K.Sampath Kumar
22 N.Krishnan
23 R.Ganesh
24 AX Jolly
25 R.Manivannan
26 Umaa Saivignesh
27 Chithra Rajagopal
28 The Registrar
Central Administrative Tribunal
City Civil Court Buildings
Chennai-600104.

.. Respondents

Writ Petition No.33946 of 2014 has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 28th respondent's Tribunal passed in O.A.No.1170 of 2012 dated 26.02.2014 and quash the same.

W.P.No.34602 of 2014

- 1 The Union of India
Rep. by the Engineer-in-Chief
Military Engineering Services
Integrated HQ of MOD (Army)
Kashmir House, Rajaji Marg
New Delhi-110011.
- 2 The Chief Engineer
MES, Southern Command
Manekji Mehta Road
Pune-411 001.
- 3 The Chief Engineer
MES Island Grounds
Chennai Zone
Chennai-600 009.
- 4 The Cheif Engineer (Navy)
Station Road
Vizag-530 004. Petitioners

Versus

- 1 R.Uma Shankar
- 2 V.Pandian
- 3 Kalaivani Manoharan
- 4 The Registrar
Central Administrative Tribunal
City Civil Court Buildings
Chennai-600104. Respondents

Writ Petition No.34602 of 2014 has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 4th respondent's Tribunal passed in O.A.No.437 of 2013 dated 26.02.2014 and quash the same.

W.P.No.27798 of 2014

- 1 The Union of India
Rep. by Directorate General of
Personnel (CSCC)
Military Engineer Services
Engineer-in Chief's Branch
Integrated HQ of MoD (Army)
Kashmir House, Rajaji Marg,
New Delhi.

- 2 The Military Engineer Services
Chief Engineer,
Southern Command,
Pune.
- 3 The Military Engineer Services
Chief Engineer
Military Engineering Service
Chennai Zone, Chennai-9.

... Petitioners

Versus

- 1 Girija Ganesan
2 N.Sundaraganesna
3 S.Padmasree
4 Vijaya Rajaram
5 R.Gopal
6 Jayanthi Kannan
7 N.Madumathi
8 K.Amutha
9 Abdul Karim
10 Saralla Shankar
11 A.S.Pushpa
12 Rita P.Balaswamy
13 Devaki Balakrishnan
14 Rema Benedict
15 V.Ramani
16 Pushpa Saravanan
17 T.Loganathan
18 D.John Basco
19 N.Vijayan
20 Vasanthi Parthibhan
21 S.Srinivasan
22 Jeeva Nagarajan
23 N.K.Vijayakumar
24 T.M.Viswanathan
25 V.Subramanian
26 Shanthi Subramanian
27 P.J.Suseela
28 S.Lakshmi
29 Subhadra Ramesh
30 Sasikala Sidharan
31 Soundari Swaminathan
32 V.Janani Bai
33 V.Yogambal
34 Shanthi Ramakrishnan
35 S.Yamnabai
36 R.Malarkodi
37 V.Ravi

38 Wensilda Henry
39 Ranjana Prabakaran
40 A.Thiagarajan
41 S.Ramaprabhu
42 R.Krishnamurthy
43 G.Renuka Devi
44 Rajini Ravi
45 S.M.Kottesswaran
46 G.Govindaraj
47 Sumathy
48 DR.Dekswaran
49 Selvi Mahalingam
50 Sasikala Sarkunan
51 S.Santhiya
52 C.M.Krishnaveni
53 K.Vimala
54 G.Seshammal
55 M.Thangapandian
56 A.Kusalakumari
57 CL Nirmala
58 The Registrar
Central Administrative Tribunal
City Civil Court Buildings
Chennai-600104.

... Respondents

Writ Petition No.27798 of 2014 has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 58th respondent's Tribunal passed in O.A.No.818 of 2011 dated 06.11.2013 and quash the same.

For Petitioners in : Mr.V.Balasubramanian
all W.Ps. SPC

COMMON ORDER

(Order of the Court was delivered by V.PARTHIBAN, J.)

The Writ Petitions arise out of a common order passed by the Central Administrative Tribunal, Madras Bench in O.A.Nos.1170 of 2012 and 437 of 2013 dated 26.02.2014 and also the order passed in O.A.No.818 of 2011 dated 06.11.2013 disposing of the Original Applications filed by the employees, who were shown as private respondents herein.

2. For the sake of clarity, the parties are described as applicants and official respondents, as arrayed before the learned Tribunal.

3. All the applicants have a common grievance in the matter that they were not granted financial upgradation under the original Assured Career Progression Scheme, 1999 (herein after referred to as ACP Scheme), in the appropriate Grade Pay. The case of the applicants was that they were all working as Junior Engineers / Lower Division Clerks at the relevant point of time, without earning any promotion to the next higher grade. In terms of the ACP Scheme, many of them (in O.A.Nos.1170 of 2012 and 437 of 2013) had been granted the first financial upgradation, on introduction in August, 1999, in the pay scale of Rs.6500 - 10500 (pre-revised). In terms of the ACP Scheme, many of them (in O.A.No.818 of 2011) had been granted the first financial upgradation, on introduction in August, 1999, in the pay scale of Rs.4000 - 6000 (pre-revised). Between January and April 2009, all the applicants had completed 24 years of service and hence, the applicants (in O.A.Nos.1170 of 2012 and 437 of 2013) are entitled to second financial upgradation under the erstwhile ACP scheme in the pay scale of Rs.10,000 - 325 - 15,200 in the corresponding pay band of Rs.15,600 - 39,100 with Grade Pay of Rs.6600/- and the applicants ((in O.A.No.818 of 2011) are entitled to second financial upgradation under the erstwhile ACP scheme in the pay scale of Rs.6000 - 8000, which has been merged with the scale of Rs.5500 - 9000, in the corresponding pay band of Rs.9,300 - 34,800 with Grade Pay of Rs.4200/-. When their claim for second financial upgradation was pending, the Government of India issued Modified Assured Career Progression Scheme (herein after referred to as MACP Scheme), vide Office Memorandum dated 19.05.2009, which envisaged grant of 3 financial upgradation to the Government employees, on completion of 10, 20 and 30 years of service. The scheme was brought into effect from 01.09.2008 superseding the earlier ACP scheme. The principal difference between both ACP and MACP scheme was that in ACP scheme upgradation is granted in the next higher pay scale as per hierarchy of line of promotion, whereas MACP is concerned, it would only be in the next higher Grade Pay, as prescribed. Although the MACP scheme was introduced vide Office Memorandum dated 19.05.2009, it was retrospectively implemented with effect from 01.09.2008.

4. The applicants having completed 24 years of service, between January and April 2009, they were hoping to be bestowed with the benefit of financial upgradation under the ACP Scheme, which was more advantageous to them, since the fixation is done in the next hierarchy of promotion and not in the next higher Grade Pay, as contemplated under the MACP scheme. In the circumstances, the applicants have submitted representations that they have to be given financial upgradation under the ACP scheme and which representations having been rejected, they approached the Tribunal praying for the relief as narrated above.

5. According to the applicants, on the day when they completed 24 years of service, MACP scheme was not introduced, and as the same was introduced only by Office Memorandum dated 19.05.2009, their claim would fall within the four corners of the benefits available under the erstwhile ACP scheme, and an accrued right which was otherwise available to the applicants under the erstwhile ACP scheme cannot be curtailed or altered or taken away by retrospective implementation of the MACP scheme, with effect from 01.09.2008. According to the applicants, that the MACP Scheme itself provides for retention of the then existing scheme for the purpose of grant of financial upgradation, if it was more advantageous to the employees concerned.

6. Per contra, the claim of the applicants was sought to be resisted that on introduction of the MACP Scheme, the earlier Scheme had been replaced and question of grant of any benefit under the superseded Scheme cannot arise at all. According to the official respondents that it was completely within the domain of the policy makers to prescribe cut of date for implementation of various Schemes and such prescription of cut of date cannot be faulted with in the present circumstances.

7. The learned Tribunal, after taking note of the submissions of the parties, has disposed of the Original Applications on the basis of its earlier order passed in O.A.No.818 of 2011, wherein a similar issue was the subject matter of the application. The said application is the subject matter of W.P.No.27798 of 2014, which is also covered under the present orders. The learned Tribunal in paragraph-11 of the impugned order has passed the final directions, as extracted below:-

"11.

The respondents are directed to place the case of the applicants in both the OAs before the Screening Committee for consideration for grant of 2nd financial upgradation under ACP Scheme on completion of 24 years of service, provided they had completed this period as claimed by them between January and April, 2009 ie., prior to the issue of DOPT's OM dated 19.05.2009 by which MACP Scheme came to be introduced and if based on such consideration by the Committee, it is ordered to grant the above benefits, the benefits of financial upgradation under MACP Scheme, if extended would have to be withdrawn. The above exercise shall be completed within a period of four months from

the date of receipt / production of a copy of this order. In the circumstances, there shall be no order as to costs."

8. The learned Tribunal, while passing the directions, has also taken note of the fact that a similar application was decided by Chandigarh Bench of the Tribunal in favour of the employees holding that MACP Scheme cannot be applied retrospectively and it would be applied only from the date of the Office Memorandum dated 19.05.2009. As against the order passed by the learned Tribunal, the present Writ Petitions are filed.

9. The counsels appearing for the parties have reiterated the submissions. We have perused the pleadings and the materials on record.

10. Although it is a matter of record that MACP Scheme was introduced vide Memorandum dated 19.05.2009, but the same was put into effect from 01.09.2008. In the instant case, admittedly, before introduction of the MACP Scheme under the Office Memorandum dated 19.05.2009, the applicants have completed 24 years of service and their right to get second financial upgradation under the erstwhile ACP Scheme got crystallised and such right cannot be negated by bringing in a new Scheme with retrospective effect. The purpose and spirit of the Career Progression Scheme is only for the benefit of employees, who face stagnation in their career. That purpose and spirit cannot be defeated, if the benefit under the new Scheme is causing detrimental to the interest of the employees. The intention behind the Scheme would not be as such. In any event, as a principle of purposive interpretation, it has to be seen that what is more advantageous to the employees is what should be preferred, since the Scheme being a beneficial one, cannot be allowed to result in loss to the employees on its implementation. Therefore, in all fairness and fitness of things, till the introduction of MACP Scheme vide Office Memorandum dated 19.05.2009, the benefit which accrued to the employees under the erstwhile ACP Scheme ought to have been made available.

11. Moreover, it has to be seen that the Tribunal itself has allowed similar application and no contra material has been produced before us to take a different view in the matter. The well intended benefit under ACP or MACP Scheme cannot be allowed to suffer loss of proper fixation in the higher pay scale as such consequence would not further the purpose and spirit of the Scheme.

12. In these circumstances, We do not find anything wrong in the final direction passed by the learned Tribunal in the impugned orders. Therefore, the Writ Petitions fail and the same are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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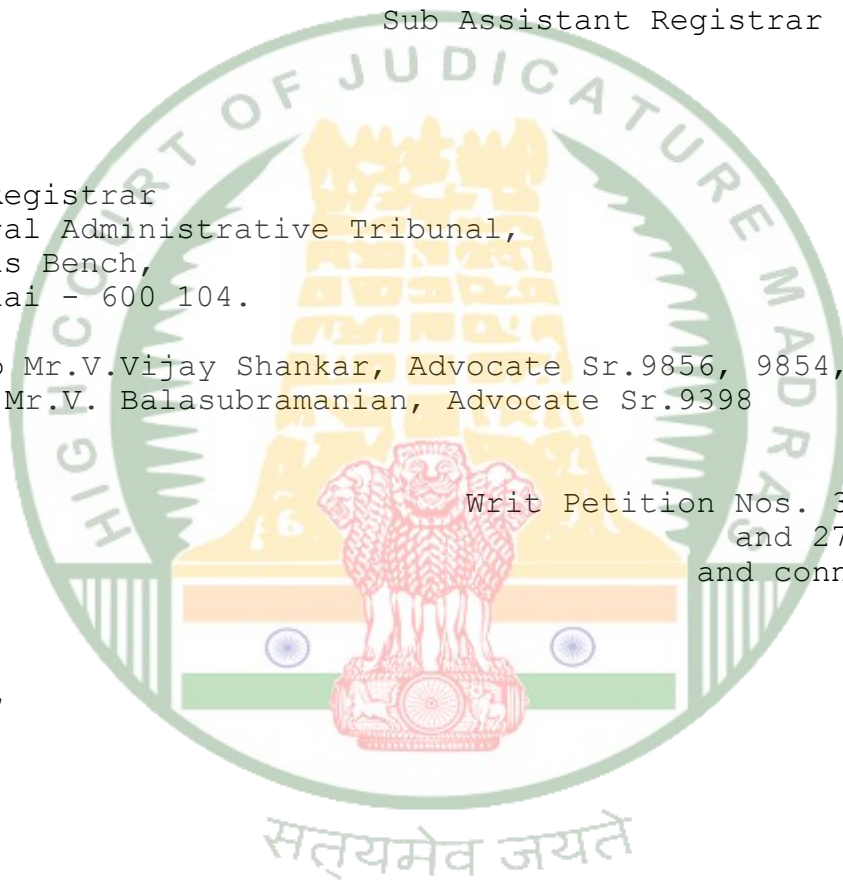
To

The Registrar
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 104.

+ 3 ccs to Mr.V.Vijay Shankar, Advocate Sr.9856, 9854, 9855
+ 1 cc to Mr.V. Balasubramanian, Advocate Sr.9398

Writ Petition Nos. 33946, 34602
and 27798 of 2014
and connected M.Ps.

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