

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 20.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. No.26223 of 2015

- 1 Union of India
Represented by its Director General of
Ordinance Factories Ordinance Factory Board
Kolkatta.
- 2 The General Manager
Ordinance Factory Tiruchirapalli-16. ... petitioners

versus

- 1 The Registrar
Central Administrative Tribunal
Madras Bench, City Civil Court Additional Building,
1st & 2nd Floors High Court Campus
Chennai-104.
- 2 Shri. P.K.A.Kurup
- 3 Shri. V.S.Simon
- 4 Shri. K.Masilamani ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records on the file of the 1st respondent order made in R.A. No.11 of 2014 in O.A. No.819 of 2011 dated 18.07.2014 and in O.A. No.819 of 2011 dated 17.06.2013 and quash the same.

For petitioner : Mr.Su.Srinivasan, A.S.G

For Respondents : Mr.R.Priya Kumar,
for respondents 2 to 4.

O R D E R

(made by K.K.SASIDHARAN, J.)

The Central Administrative Tribunal, Madras Bench, by following the judgment rendered by the Chandigarh Bench of the Tribunal, in O.A.No.1003/PB/2011, allowed the original applications filed by the respondents 2 to 4 and quashed the order dated 14 October 2010 and the clarification issued by the

Ordnance Factory, Tiruchirapalli, dated 5 May 2011 and directed them to fix the pay without disturbing the pay scale already granted and to grant them benefits of 2nd ACP. Feeling aggrieved by the order dated 17 June 2013, in O.A.No.819 of 2011, the petitioners are before this Court.

2. We have heard the learned Assistant Solicitor General of India on behalf of the petitioners. We have also heard the learned counsel for the respondents 2 to 4.

3. The respondents 2 to 4 were appointed initially to the cadre of semi skilled workers. Later, they were promoted to the grade of Highly Skilled/ Master Craftsmen. Respondents 2 to 4, (hereinafter referred to as "employees") were given the benefit of ACP-2 with the grade pay of Rs.4200/- with effect from 21 September 2008, 22 September 2008 and 18 October 2008, vide order No.1562-A dated 3 November 2008 and another order bearing FO476 dated 19 March 2009. The benefits were given on account of stagnation for more than 12 years. The petitioners, after introducing the revised MACP Scheme on 19 May 2009 with retrospective effect from 1 August 2008, recalled the earlier order resulting in downgrading the pay of the applicants to Rs.2,500/-. Since the reduction in the Grade pay would cause financial loss to the employees, they have filed original application before the Tribunal in O.A.No.819 of 2011. The Tribunal found that similar issue came up for consideration before the Chandigarh Bench and the Original Application was decided in favour of the employees. Since the issue was identical, the Tribunal followed the decision rendered by the Chandigarh Bench and allowed the original application. It is the said order which is impugned in this Writ Petition.

4. The issue raised by the petitioners is no longer *res integra*, in view of the recent decision of the Delhi High Court dated 1 September 2016 in *Delhi Urban Shelter Improvement Board vs. Shashi Mali and ors.* The following paragraph would make the position clear :-

"19. In the present case we are concerned with whether or not financial upgradation as payable under the ACP Scheme between 1st September, 2008 and 19th May, 2009 granted under the ACP Scheme, can be withdrawn and taken away. This question had arisen as the grant of financial upgradation under the ACP Scheme was more beneficial to the employee. Dual benefit is not claimed. In such cases, we would hold that the benefit of financial upgradation under the ACP Scheme cannot be taken away. In this context, the paragraph / clause 11 stipulates that "past cases" would not be

re-opened. Paragraph 9, on the other hand, deals with another set of cases where an employee finds it more beneficial to take advantage or benefit under the MACP Scheme, which is made applicable with retrospective effect from 1st September, 2008 by O.M. dated 19th May, 2009. It is in this context that the financial upgradation under the earlier ACP Scheme would be granted till 31st August, 2008. The idea behind paragraph / clause 9 is not to deny or withdraw higher or greater benefit which an employee may be entitled to under the MACP Scheme."

5. The Tribunal rendered the decision by following the Chandigarh Bench and granted relief to the employees. During the currency of this Writ Petition, the Delhi High Court rendered a judgment interpreting the provisions of MACP. The Court decided the issue as to whether financial upgradation granted under ACP scheme can be withdrawn and taken away on account of the subsequent MACP. There is no need for a factual adjudication of the matter in view of the decision rendered by the Delhi High Court. We are therefore of the view that there is no merit in the Writ Petition filed by the petitioners.

6. In the upshot, we dismiss the Writ Petition. No costs.

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Assistant Registrar

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Sub Assistant Registrar

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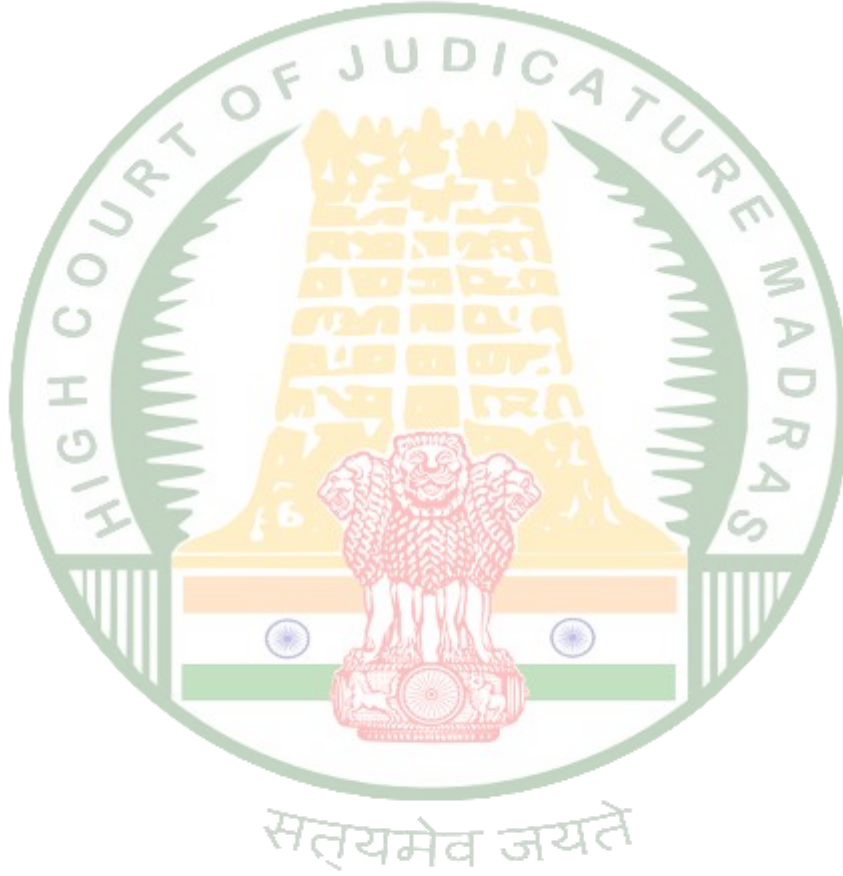
- 1 The Registrar
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- 3 The General Manager
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Trichy-16.

C.C. to MR.SU.SRINIVASAN Advocate SR.NO.17184

C.C. to MR.R.PRIYAKUMAR Advocate SR.NO.17135

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GJII (CO)
VS 13.04.2017



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