

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1144 OF 2017

Shri Rajan Dattatraya Jambhale ... Petitioner
Vs
The State of Maharashtra & Ors. ... Respondents
...
Dr. Mahadev B. Ghule for the Petitioner.
Mrs. R.A.Salunkhe, AGP for the Respondent Nos.1 and 2.
Mr. Nitin P. Deshpande for the Respondent No.3.

**CORAM : A.S.OKA &
SANDEEP K. SHINDE JJ.
RESERVED ON : 4 DECEMBER, 2018
PRONOUNCED ON: 18 DECEMBER, 2018**

JUDGMENT : [Per Shri Sandeep K. Shinde, J.]

Heard. **Rule.** Rule made returnable forthwith. With consent of the learned counsel for the parties, the Petition is taken up for final hearing and disposal.

2 The Respondents declined to extend the benefit of the Modified Assured Career Progression Scheme (In short '**MACP**' Scheme) to the Petitioner on the completion of his 24 years of

service and thus, this Petition under Article 226 and 227 of the Constitution of India.

3 On 26th February, 1981, the first Respondent appointed the Petitioner as 'Junior Assistant'. He had passed qualifying examination in 1994, i.e., within the stipulated period applicable to the staff working in the category of Audit and Accounts. He was thus granted pay of senior scale on 1st October, 1994. Later, he has passed second examination in November, 1997 conducted by Pune Zilla Parishad and secured eligibility for promotional benefit of pay-scale at the second stage.

4 The Petitioner took voluntary retirement on 1st February, 2009. At the relevant time, he was 'Senior Assistant' (Audit & Accounts) on the establishment of the Respondent No.1. The State of Maharashtra vide Resolution No.1109/PK44/Seva.3 dated 1st April, 2010, formulated MACP Scheme and made it applicable with effect from 1st October, 2006. Under the Scheme, eligible employees are

entitled to claim pay-scale of the next promotional post, twice in their service career upon completion of 14 years and 24 years of service in form of notional benefits and not actual arrears. The salient features of the MACP Scheme are as under:

“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 his 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.”

5 That by another Government Resolution dated 1st July, 2011, it was clarified that though the MACP scheme is made applicable retrospectively with effect from 1st October, 2006, benefits

of the scheme will not be extended to such of the employees who may have retired from service between 1st October, 2006 and 31st March, 2010.

6 The Petitioner was eligible and entitled for promotional benefits of pay-scale when he passed examination conducted by Pune Zilla Parishad in November, 1997 had he continued in the service and not voluntarily retired on 1st February, 2009. The State denied the benefits of the MACP Scheme in view of the G.R. dated 1st July, 2011.

7 The State vide Clarification No.Vetan-111/pra.kra.8/Seva-3 issued on 9th December, 2016 has clarified, that since the subject scheme has been made applicable retrospectively with effect from 1st October, 2006, the employees who have retired between 1st October, 2006 and 31st March, 2010 are eligible for the benefit of the Government Resolution dated 1st April, 2010. Thus, in view of this clarification, the Petitioner was

entitled to claim and receive Second Financial Upgradation.

8 The Chief Executive Officer, Zilla Parishad, Pune declined to grant Second Financial Upgradation on the ground that the Petitioner after availing first Financial Upgradation on 31st November, 1997, had not completed 12 years of continuous service on 1st February, 2009, i.e. his date of retirement.

. This submission of the first Respondent is factually incorrect. The Petitioner was granted pay in Senior Scale on 1st November, 1994 after passing qualifying examination. In November, 1997, the Petitioner had passed next qualifying examination conducted by the Pune Zilla Parishad and as such, he was eligible for next promotional post; however, he was not promoted. The Petitioner retired on 1st February, 2009. On the date of his retirement he had completed 12 years of continuous service from 1st financial upgradation i.e. from 1st November, 1994. Thus, in view of the facts aforesaid, Respondents' contention that he had not completed twelve years of services from the date of first financial upgradation is

incorrect.

9 The series of Petitions were filed before the Maharashtra Administrative Tribunal as well as before this Court by the employees of the State who had retired between 1st October, 2006 and 31st March, 2010 to whom the benefit of the Government Resolution was declined by the State. In batch of the Petitions, i.e. Writ Petition No.7062 of 2014, the **State of Maharashtra and Ors. v. Dattatraya D. Mehta and Others**, the Division Bench of this Court has held that employees completing 12 and 24 years of service in any particular post between 1st October, 2006 and 31st March, 2010 cannot be deprived of benefits of the scheme merely on account of fortuitous circumstances that they may have retired between 1st October, 2006 and 31st March, 2010. It was held that such exclusion is arbitrary, unreasonable and based upon no rational criteria. That for the reasons aforesaid, the Petition succeeds and hence, the following order:

(1) The Petition is allowed in terms of prayer clause (a).

(2) The Respondents are directed to extend benefits of Modified Assured Career Progression Scheme formulated vide Government Resolution dated 1st October, 2006 read with the clarification dated 9th December, 2016 issued by the Financial Department, Government of Maharashtra under Reference Vetan-1111/pra.kra.8/Seva to the Petitioner after verifying his service record.

(3) The Respondents shall complete the exercise within a period of three months from the date on which the Petitioner will produce copy of this order before the Respondents.

10 The Petition is disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)