

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.31579 of 2017
and
W.M.P.No.34707 of 2017

- 1.Union of India
rep.by the General Manager,
Heavy Alloy Penetrator Project,
Tiruchirappalli-620 025.
- 2.The Deputy General Manager / Admin,
Heavy Alloy Penetrator Project,
Tiruchirappalli-620 025.
- 3.The Chairman,
Ordinance Factory Board,
10-A, S.K.Bose Road,
Kolkata-700 001.
- 4.The Secretary,
Ministry of Defence,
Department of Defence Production,
South Block, New Delhi-110 001. Petitioners

-VS-

- 1.R.Rajeswari
- 2.The Central Administrative Tribunal,
Chennai Bench, rep.by its Registrar,
City Civil Court Building,
High Court Campus,
Chennai-600 104. Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the respondent Tribunal in the impugned order dated 06.04.2017 in O.A.No.1138 of 2016 and quash the same.

For Respondents :: Mr.R.Pandian for R1

(Made by HULUVADI G.RAMESH, J.)

"Though the applicant was absorbed permanently w.e.f.07.05.1990, based on the order passed by this Tribunal in O.A.1182/92 and batch, her services were regularised w.e.f. 03.03.1986. The financial upgradation under the II MACP Scheme accrues to the applicant on completion of 20 years of service from the date of initial appointment or 10 years from the date of first promotion whichever is earlier. Since this Tribunal had passed an order that the services of the applicant should be regularised w.e.f. 03.03.1986 ie., the date of her initial engagement, the II MACP would accrue to the applicant w.e.f. 01.09.2008. Also the mere redesignation of the applicant from Punch and Verify Operator to Data Entry Operator will not take away the right of the applicant and MACP cannot be denied on that basis. Under such circumstances, we deem it appropriate to set aside the impugned order passed by the respondents and direct the respondents to

restore the benefit of MACP II in PB2 with Grade Pay of Rs.4200 in favour of the applicant w.e.f. 01.09.2008 and grant MACP III w.e.f. 03.03.2016. Accordingly OA is allowed. MA 362/2017 filed by the respondents to vacate the stay is dismissed. No costs."

2.Challenging the impugned order passed by the Tribunal, the present writ petition has been filed by the Department.

3.The learned standing counsel appearing for the petitioners/ Department has submitted that the first respondent was appointed as Lower Division Clerk on 03.03.1986 on casual basis and subsequently offered regular appointment as Punch and Verifying Operator in the pay scale of Rs.950-1500. Upon the direction issued by the Central Administrative Tribunal, the services of the first respondent was regularised with effect from 03.03.1986 and the first respondent was redesignated as Data Entry Operator. When the first respondent was granted I ACP financial upgradation on 31.05.2002, ie., on completion of 12 years, she accepted the same without any dispute. Thereafter, MACP Scheme came into force and the first respondent was inadvertently granted II MACP with effect from 01.09.2008. In view of the same, corrective measures were taken up by the Department by passing orders amending the date of II MACP. The learned standing counsel has relied upon the clarifications issued by the Department in Sl.No.5 of the annexure to Office Memorandum No.35034/1/97- Estt(D)(Vol.IV) dated 10.02.2000 of the Director, Ministry of Personnel, Public Grievances and Pensions, Government of India, in support of his contention and prayed for quashing the impugned order passed by the Tribunal.

4.The learned counsel for the first respondent has filed a counter affidavit in which it is stated that the first respondent was granted I Financial Upgradation as per the ACP Scheme of 1999 in V-CPC Pay Scale of Rs.4500-7000 which is the equivalent pay in VI CPC PB-1 with GP 2800, and on coming into force of the MACP Scheme, she was rightly granted the benefits of II MACP with effect from 01.09.2008 in PB-2 with GP 4200. Reiterating the contentions made in the counter, the learned counsel for the first respondent has submitted that the Tribunal has considered the matter in proper perspective and has passed the impugned order and hence the same does not require any interference.

5.Heard the learned counsel on either side and perused the materials available on record.

6.In Sl.No.5 of the annexure to Office Memorandum No.35034/1/97- Estt(D)(Vol.IV) dated 10.02.2000 issued by the Director, Ministry of Personnel, Public Grievances and Pensions,

Government of India, as against the point of doubt raised as to "Whether a Government servant who is direct recruit in one grade and subsequently joins another post again as direct recruit, is eligible for the 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?", it has been clarified that "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".

7. Taking into consideration of the said clarification, the Department took corrective measures in accordance with law, by passing orders amending the date of II MACP with effect from 07.05.2010 instead of 01.09.2008 and consequently recovery order has been passed to recover the arrears. Without taking into consideration of this aspect, the Central Administrative Tribunal has passed the impugned order quashing the orders passed by the second appellant and restoring the benefit of MACP II in PB2 with grade pay of Rs.4200 with effect from 01.09.2008 and also directing to grant MACP III with effect from 03.03.2016.

8. In view of the above stated circumstances, the impugned order passed by the Tribunal is set aside and the writ petition is allowed. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

KM
To

1. The General Manager,
Union of India,
Heavy Alloy Penetrator Project,
Tiruchirappalli-620 025.
2. The Deputy General Manager / Admin,
Heavy Alloy Penetrator Project,
Tiruchirappalli-620 025.

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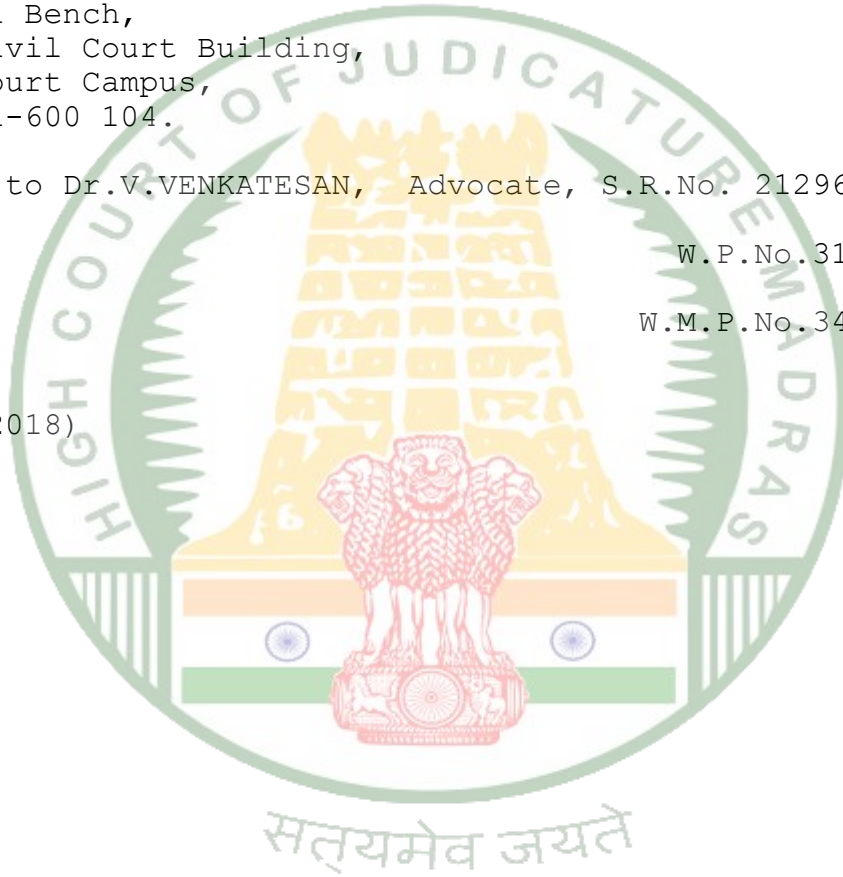
4.The Secretary,
Ministry of Defence,
Department of Defence Production,
South Block, New Delhi-110 001.

5.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
City Civil Court Building,
High Court Campus,
Chennai-600 104.

+1cc to Dr.V.VENKATESAN, Advocate, S.R.No. 21296

W.P.No.31579 of 2017
and
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VD(CO)
TR(12/04/2018)



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