

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO**

WRIT PETITION NO.22214 OF 2011

O R D E R : (Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the applicant in O.A.No.1047 of 2010 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad. Therein, his prayer was to declare the prescription of 01.09.2008 as the cut off date for implementing MACP scheme, in the impugned O.M. dated 19.05.2009 of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Government of India, in deviation from the prescribed date of 01.01.2006 specified in the Ministry of Finance Resolution dated 29.08.2008 as illegal insofar as it prescribed the said later cut off date; to declare the memo dated 04.06.2010 issued by the Director, Intelligence Bureau, Government of India, as illegal; to declare that he was entitled to be considered for grant of 3rd upgradation under MACP scheme w.e.f.01.01.2006 and to consequently direct the respondents to revise his pay by conferring the 3rd upgradation scale under the MACP scheme w.e.f.01.01.2006. By order dated 08.04.2011, the Tribunal dismissed the O.A. Aggrieved thereby, the petitioner came before this Court.

Perusal of the record reflects that the Office Memorandum dated 19.05.2009 indicates that the Government considered the recommendations of the 6th Central Pay Commission for introduction of MACP scheme and approved the same. However, while giving effect to the scheme, the Deputy Secretary to the Government of India, who issued the said Memorandum on behalf of the Ministry of

Personnel and Public Grievances and Pension (Department of Personnel & Training), Government of India, stated that final upgradations as per the provisions of the scheme would be operational w.e.f.01.09.2008. However, the resolution dated 29.08.2008 of the Ministry of Finance, Government of India, indicates that the Government specifically approved the Central Pay Commission's recommendations with regard to revised scales of pay and Dearness Allowance for employees of the Central Government and employees of All India Services w.e.f.01.01.2006 and only the revised allowances, other than Dearness Allowance, were to be made effective from 01.09.2008.

That being so, the Office Memorandum dated 19.05.2009 clearly went against the Government's approval of the Commission's recommendations. Further, the issue as to whether such an executive instruction in the form of an Office Memorandum could be issued in violation of the Government's approval is no longer *res integra*. In ***Union of India vs. Balbir Singh Turn***¹, the Supreme Court considered this very issue in the context of the Armed Forces. The observations of the Supreme Court in para 11 of the judgment are apposite of extraction:

11. We are only concerned with the interpretation of the Resolution of the Government which clearly states that the recommendations of 6th CPC as modified and accepted by the Central Government in so far as they relate to pay structure, pay scales, grade pay etc. will apply from 01.01.2006. There may be some gainers and some losers but the intention of the Government was clear that this Scheme which is part of the pay structure would apply from 01.01.2006. We may also point out that the Resolution dated 30.08.2008 whereby the

¹ Civil Appeal No.3744 of 2016 dt.08.12.2017

recommendation of the Pay Commission has been accepted with modifications and recommendations with regard to pay structure, pay scales, grade pay etc. have been made applicable from 01.01.2006. This is a decision of the Cabinet.

This decision could not have been modified by issuing executive instruction. The letter dated 30.05.2011 flies in the face of the Cabinet decision reflected in the Resolution dated 30.08.2008. Thus, administrative instruction dated 30.05.2011 is totally ultra vires the Resolution of the Government.”

Following the afore-stated observations, this Court holds that it was not open to the Ministry of Personnel speaking through its Deputy Secretary to sit in appeal over the Government’s approval of the Central Pay Commission’s recommendations. In effect, the revised scales of pay and Dearness Allowance in terms of the MACP would have to be extended to the petitioner from 01.01.2006 and only the revised allowances other than Dearness Allowance would take effect from 01.09.2008.

The Writ Petition is accordingly allowed to this extent. Arrears payable in terms of this order shall be released to the petitioner within six weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

3rd April, 2018
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