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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th August, 2018

\+ W.P.(C) 7460/2016

ANIL KUMAR NASA & ORS ..... Petitioners
Through : Mr. M.K. Bhardwaj, Adv.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD & ORS ..... Respondents
Through : Mr. Parvinder Chauhan, St. Counsel with Mr. Nitin Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

1. The petitioners, who, after being appointed as Junior Engineer, at the time of their initial appointment, in the Slum and J.J. Department of the Municipal Corporation of Delhi, (which was later rechristened as the "Delhi Urban Shelter Improvement Board" - "DUSIB") were stagnating for years together, were granted their first financial upgradation under the Assured Career Progression Scheme ("the ACP Scheme"), notified by the Department of Personnel and Training (DoPT), w.e.f. 9th August, 1999.

2. As per the said scheme, on completion of 24 years of regular service, the petitioners would have become entitled to second financial upgradation, in the scale of Rs.10,000 – 15,200, with effect from the date of acquiring eligibility therefor.

3. In the interregnum, on 19th May, 2009, an Office Memorandum

was issued by the DoPT, pursuant to the recommendations of the Sixth Central Pay Commission, notifying the Modified Assured Career Progression Scheme ("the MACP Scheme"). Annexure – I to the O.M. contained the modalities of the said scheme. Para 11 of the O.M. clarified that no past cases would be reopened, and that, while interpreting the MACP Scheme, the difference in pay scale, on account of financial upgradation under the erstwhile ACP Scheme and MACP Scheme within the same cadre would not be construed as an anomaly. That however, is not of particular significance, insofar as the controversy in the present case is concerned.

4. Clause 1 of Annexure – I to the aforementioned O.M. dated 19th May, 2009, merits reproduction thus :

> "There shall be three financial upgradations under the MACPs, counted from the direct entry grade *on completion of 10, 20 and 30 years service respectively*. Financial upgradation under the Scheme will be admissible *whenever a person has spent 10 years continuously in the same grade pay*."
>
> (Emphasis supplied)

5. Clause 26 of the said Annexure contains certain Illustrations apparently intended at facilitating understanding of the MACP Scheme and the manner in which it works. The said Clause 28 may be reproduced, to advantage as under:

> "28. <u>Illustrations</u>
>
> A (i) If a Government servant (LDC) in PB-I in the Grade Pay of Rs. 1900 gets his first regular promotion (UDC) in the PB-I in the Grade Pay of Rs. 2400 on completion of 8 years of service and then continues in

the same Grade Pay for further 10 years without any promotion then he would be eligible for 2nd financial upgradation under the MACPS in the PB-1 in the Grade Pay of Rs. 2800 after completion of 18 years (8+10 years).

(ii) In case he does not get any promotion thereafter, then he would get 3rd financial upgradation in the PB-II in Grade Pay of Rs. 4200 on completion of further 10 years of service i.e. after 28 years (8+10+10).

(iii) However, if he gets 2nd promotion after 5 years of further service in the pay PB-II in the Grade Pay of Rs. 4200 (Asstt. Grade/Grade "C")i.e. on completion of 23 years (8+10+5 years) then he would get 3rd financial upgradation after completion of 30 years i.e. 10 years after the 2nd ACP in the PB-II in the Grade Pay of Rs.4600.

In the above scenario, the pay shall be raised by 396 of the total pay in the Pay Band and Grade Pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same Grade Pay <u>or in the higher Grade Pay</u>. Only the difference of grade pay would be admissible at the time of promotions.

B. If a Government servant (LDC) in PB-I in the Grade Pay of Rs.1900 is granted 1st financial upgradation under the MACPS on completion of 10 years of service in the PB-I in the Grade Pay of Rs. 2000 and 5 years later he gets 1st regular promotion (UDC) in PB-I in the Grade Pay of Rs.2400, the 2nd financial upgradation under MACPS (in the next Grade Pay w.r.t. Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-I in the Grade Pay of Rs.2800. On completion of 30 years of service, he will get 3rd ACP in the Grade Pay of Rs.4200. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date 2nd promotion or at 30th year of service, whichever is earlier.

C. *If a Government servant has been granted either two* *regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned third promotion in the hierarchy."*

(Emphasis supplied)

6. It is not disputed that the MACP Scheme was implemented by the DUSIB, and applies to it.

7. Though para 11 of the OM dated 19th May, 2009 specifically proscribed reopening of past cases, an Office Order dated 22nd March, 2012, was issued by the DUSIB whereby the second financial upgradation, granted to the petitioner under the ACP Scheme, *vide* order dated 31st March, 2009 was withdrawn. This prompted the petitioners to move this court by way of WP(C) 2118/2012 (***Anil Kumar Nasa v. Delhi Urban Shelter Improvement Board***), which came to be allowed vide judgment dated 11th February, 2015. Para 5 of the said decision, which contains its operative portion, reads thus:

"5. In view of the above, the writ petition is allowed and the impugned order of the respondents dated 22.3.2012 is set aside. *The ACP benefits granted to the petitioners by the order dated 31.3.2009 will continue*. The periods for grant of future benefits will be calculated qua the petitioners from the date of the ACP benefits already granted and in terms of the fresh periods specified in the MACP Scheme and not the older periods specified in the erstwhile ACP Scheme which stands superseded by the MACP Scheme dated 19.5.2009. It is clarified that the pay-scales or grade pay or pay bands which are specified in the original ACP Scheme only are granted w.e.f. 31.3.2009 and not the fresh pay-scale etc which are specified in the new MACP Scheme. No costs"

(Emphasis supplied)

8. It is clear, from the reading of para 5 of the judgment of this Court in WP(C) 2118/2012, that this Court had accorded its imprimatur to the grant of second ACP to the petitioners, by order dated 31st March, 2009, and had also directed that the said benefit would continue to be in operation. Even while so stipulating, the Court had held, simultaneously, that the petitioners were entitled to benefits of the MACP Scheme for subsequent years.

9. It appears that the aforementioned judgment dated 11th February, 2015, in WP(C) 2118/2012 was carried, by the DUSIB, in LPA, which was withdrawn with liberty to move to the learned Single Judge in review. I am informed, at the bar, that the said review petition was also dismissed, against which the second LPA was preferred, and that the said LPA also being rejected, DUSIB is presently before the Supreme Court by way of Civil Appeal No.1486-1487/2017, (***DUSIB v. Shashi Malik & Ors.***), which stands admitted. Learned counsel are, however *adidem* that no interlocutory order has been passed by the Supreme Court in the said Civil Appeal till date.

10. In the interregnum, the petitioners completed 30 years of regular service and became eligible for the third financial upgradation under the MACP Scheme. The respondents, however, did not grant the said benefits to the petitioners, even while granting the third financial upgradation to persons, who according to the petitioners, were similarly situated, *vide* order dated 11th August, 2014.

11. Representations preferred by the petitioners, to the respondents, in this regard, failing to elicit any favourable response, the petitioners are before this court in the present proceedings.

12. The stand adopted by the DUSIB, in its counter affidavit, filed in response to the writ petition, is that the order, dated 31st March, 2009, granting the second financial upgradation to the petitioners under the ACP Scheme, was erroneously issued. They contend that they had specifically taken up this issue before the Supreme Court in the SLP filed by them and that therefore, the issue is still at large. The entitlement of the petitioners to the benefits of the MACP Scheme, the DUSIB would contend, could be considered only after the erroneous grant of second financial upgradation, under the ACP Scheme, was reconsidered and, in their submission, undone.

13. The stand of the DUSIB, regarding the grant of second financial upgradation to the petitioners, under the ACP Scheme, is that the petitioners were not eligible for grant of such upgradation prior to 1st September, 2008, and that only persons, who were eligible for such upgradation under the ACP Scheme, prior to 1st September, 2008, who would be extended the benefits of MACP Scheme inasmuch as the MACP Scheme itself came into operation on the said date. They would seek to distinguish the case of other officers, who had been cited by the petitioners, on the ground that these officers had, in fact, became entitled to grant of second financial upgradation, under the ACP Scheme, prior to 1st September, 2008.

14. In my considered opinion, it is not open to the respondents to deny grant of third financial upgradation under the MACP Scheme to the petitioners on the ground that the grant of second financial upgradation, to them, under the ACP Scheme, was erroneous. Moreover, the grant of second financial upgradation, stands sanctified

by the judgment, dated 11th February, 2015 *(supra)* passed by this court in WP(C) 2118/2012 *(supra)*, which remains undisturbed till date, even though the SLP preferred thereagainst, may be pending in the Supreme Court.

15. The submission, of the respondents, that grant of third financial upgradation under the MACP Scheme could be considered only after the Supreme Court adjudicates on the controversy pending before it in the SLP is, therefore, rejected.

16. Mr. Parvinder Chauhan, however, has another arrow in his quiver. He submits that Clause 1 of Annexure I to the OM dated 19th May, 2009 specifically stipulates that financial upgradation, under the MACP Scheme would be available only when a person has spent 10 years' continuous service in the same grade pay. The petitioners, he would seek to point out, have come into the grade pay presently being drawn by them, on 31st March, 2009, and have yet to complete 10 years in the said grade pay, so that they are, as yet, not entitled to the benefits of the MACP Scheme.

17. Though the said argument seems to have form, in view of the somewhat unhappy manner in which Clause 1 of the MACP Scheme has been worded, a holistic reading of the Scheme would show that it lacks substance. Mr. Chauhan, essentially, seeks to contend that the second sentence, in Clause 1 of the MACP Scheme, conditions and limits the first. In other words, he would seek to interpret the second sentence in the said clause as a proviso to the first. More simply put, Mr. Chauhan seeks to urge that three financial upgradations, at the end of 10, 20 and 30 years, are available under the MACP Scheme,

provided the employee has remanded for 10 years in the same grade pay.

18. This interpretation, thereof attractive at first blush, would stand negative by Illustration (c) in Clause 28 of the same scheme, which stands reproduced hereinabove. A bare reading of the said Illustration, indicates that though the hypothetical government servant, to whom the said illustration, alludes, receives his second financial upgradation on completion of 24 years of regular service, he is also regarded as entitled to the third financial upgradation *on completion of 30 years of service*, subject only to the condition that he has not earned his third promotion in the hierarchy. This would clearly substantiate the contention, urged by learned counsel for the petitioner, that the periods of 10, 20 and 30 years, stipulated in the MACP Scheme are sacrosanct and that Clause 1 of the MACP cannot be so understood so as to postponed grant of the third financial upgradation even after the employee reaches the 30 year mark till he completes 10 years in the grade pay held by him.

19. It is clear, from Illustration (c), that, even where the second financial upgradation is earned by the officer on completion of 24 years of service, he would, nevertheless, be entitled to the third financial upgradation, under the MACP Scheme, on completion of 30 years of service, and would not have to wait for 10 years in the grade pay drawn by him consequent on the second financial upgradation.

20. The submissions of Mr. Chauhan, learned counsel for the respondents, therefore, in my considered opinion lack merit.

21. In view of the above discussion, I am of the opinion that there is substance in the case of the petitioners. The petitioners would be entitled to the third financial upgradation, under the MACP Scheme, on completion of 30 years of service. The grant of said benefits, to the petitioners, in my view, cannot be kept pending, awaiting the outcome of the proceedings in the Supreme Court. However, grant of the said benefits would abide by the said decisions and the consequences thereof.

22. With the above caveat, the writ petition stands allowed. The respondents are directed to disburse, to the petitioners, the benefits which was accrued to them consequent on grant of third financial upgradation under the MACP Scheme, i.e., the grade pay next above that which was granted, consequent to the 2nd financial upgradation under the ACP Scheme on 30th March, 2009, on the respective dates, when they would complete 30 years of service.

23. Mr. Chauhan, however, submits that these benefits should be permitted to be released only after the suitability of the petitioners, to receive the benefits, is determined by his client. This seems to be a fair suggestion, and is accordingly acceded to.

24. The writ petition is allowed in the above terms. The respondents are directed to complete the exercise of ascertaining eligibility of the petitioners for grant of benefits in accordance with the directions contained above within a period of four weeks from today, and to disburse the benefits to the petitioners within a period

four weeks thereafter.

25. There shall be no order as to costs.

C.HARI SHANKAR, J

AUGUST 30, 2018
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