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

Date of decision : 29th August, 2018

\+ W.P.(C) 5348/2012

AMRIT PAHUJA ..... Petitioner

Through : Mr. Arunav Patnaik and Ms. Mahima Sinha, Advs.

versus

MANAGER RASHTRIYA VIRJANAND ANDH KANYA SR.SEC.SCHOOL AND ORS ..... Respondents

Through : Mr. Abhishek Kr. Singh, Adv. for R-2 to 4.

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

% **JUDGMENT (ORAL)**

1. On 1st March, 1968, the petitioner was appointed as librarian in the Rashtriya Virjanand Andh Kanya Senior Secondary School (hereinafter referred to as "the School"). The School is, admittedly, aided. She continued working in the School till her superannuation on 28th February, 2010.

2. During the service of the petitioner in the school, the Assured Career Progression Scheme (hereinafter referred to as "ACP Scheme) was introduced by the Department of Personnel and Training (DoPT) vide Office Order dated 9th August, 1999. Further, vide Office Order dated 19th May, 2009, the Modified Assured Career Progression Scheme (hereinafter referred to as "MACP Scheme") was introduced, in supersession of the then existing ACP Scheme.

3. It is a matter of common knowledge that, under the ACP Scheme, two financial upgradations were available, on the expiry of 12 and 24 years of service whereas, under the MACP Scheme, three financial upgradations, on the expiry of 10, 20 and 30 years of service, were available. These schemes were aimed at ameliorating stagnation of employees who did not secure promotions in due course and had to remain for years in the same pay scale.

4. Vide Circular dated 16th February, 2010, issued by the DoPT, it was clarified that the benefits of the MACP Scheme would be available to employees of aided schools as well.

5. It was as librarian that the petitioner entered the doors of the School in 1968, and as librarian that she left its portals on superannuation, in 2010. The grievance of the petitioner is that, despite her not having secured a single promotion in her entire career, she was illegally denied the benefits of the ACP and the MACP Schemes, to which she was lawfully entitled.

6. It was only vide order dated 4th August, 2011, that the second financial upgradation, due to the petitioner under the ACP Scheme, was released to her. Subsequently, arrears due to the petitioner under the ACP Scheme were also released to her in bits and pieces, with further delay.

7. Learned counsel for the petitioner has placed, on record, a tabular statement, which indicates that there was a delay of 148 months in disbursal of the dues available to the petitioner under the ACP Scheme.

8. The petitioner is also aggrieved by the fact that her pension and other reitral dues, which were due to her on superannuation, were also released to her only seven months thereafter, on 16th November, 2010. Other reitral dues, such as, provident fund, gratuity and commuted pension, were also released to her belatedly.

9. Insofar as the MACP Scheme is concerned, the case of the petitioner is that, though she was entitled to the benefit thereof, no benefits under the MACP Scheme were ever made available to her.

10. It is in these circumstances, that the petitioner has petitioned this court in these proceedings, urging the following prayers:-

> "a) Direct the Respondents herein to pay interest on the delay caused in granting financial up gradation under ACP scheme and consequent arrears of pay due to here since 9.8.1999 but granted only on 22.12.11 vide order dat3ed 4.8.2011 (supra) of Deputy Director of Education (West-B) ;
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> b) Direct the Respondents to further grant 3rd financial up gradation due to the Petitioner under MACP w.e.f. 01.09.2008 and issue directions that the pay of the Petitioner be fixed in Pay Brand-3 in the scale of ₹15600-39100 with grade pay ₹6600/- as per recommendations of the Vith pay Commission report and consequent arrears of pay, along with interest for the delay in the payment;

c) Direct the Respondents to revise the pension and other entitlements of the Petitioner in accordance with the above ACP and MACP upgradations of the petitioner's Pay;

d) Direct the Respondents to pay arrears of pension following revision of the pension as in prayer (c) along with interest for the delay in payment of the said amounts;

e) Direct the Respondents to pay interest @ 18% p.a on the delay in payment of retirement benefits (revised commuted pension, gratuity, provident fund, leave encashment) of the Petitioner from the date these became due i.e. 28.2.2010 (date of retirement of the Petitioner) till the dates of payments of each of these amounts;

f) To award the cost of this litigation and damages in terms of the continued harassment meted out to the Petitioner by the Respondent;

g) Any other order, direction or award which this Hon'ble Court deems fit and proper in circumstances of the case".

11. In its counter affidavit, the school has not chosen to file any response to the writ petition, or enter appearance before this court, at any point of time. Respondents No. 2 to 4, in their counter affidavit, seek to aver that the delay in payment of reitral dues to the petitioner was attributable to the School not having provided complete records and details of the petitioner in time. It is asserted that, on such details being provided, on 4th August, 2011, the benefits available to the petitioner under the second financial upgradation under the ACP Scheme were disbursed to her.

12. Insofar as the petitioner's entitlement to the MACP Scheme is concerned, it is contended, in the said counter affidavit that, as the

petitioner was only graded "average", in her Annual Confidential Reports (ACRs) she was not entitled to the benefits of the said scheme, which requires a grading of "good".

13. In rejoinder, the petitioner has sought to submit that she was never made aware of any such "average" grading. Attention is also invited, in the rejoinder, to the fact that the counter affidavit is silent even as to the year for which such grading was given.

14. Relying on the judgment of the Supreme Court in ***Sukhdev Singh v. Union of India***, ***(2013) 9 SCC 566***, it is sought to be contended by the petitioner that adverse remarks, which were not communicated to her, could not be made the basis for visiting her with civil consequences.

15. Mr. Arunav Patnaik, who appears before me, ventilates the above grounds and has also placed certain written submissions. He emphasises the fact that there were concerted efforts harassing the petitioner, who had to make repeated representations and move from authority to authority, before she could be given her the benefits due to her, which were themselves released to her only after her superannuation.

16. He therefore, prays that the relief prayed for in the writ petition may be allowed.

17. Having heard learned counsel for the parties, I am of the view that there is considerable merit in the case of the petitioner.

18. The retiral benefits payable to the petitioner were due at the time of her retirement and it is an admitted position in the counter affidavit of Respondent Nos.2 to 4 that, though the petitioner retired on 28th February, 2010, provident fund was released to her only on 6th August, 2010, gratuity and commuted pension on 17th September, 2010 and pension on 16th November, 2010. All that is stated, to explain this delay, is that "Respondent No.1 failed to provide complete details of the petitioner along with complete records of the petitioner to the answering respondent" The specifics of the records or details which Respondent No.1 failed to provide, are not forthcoming in the counter affidavit. As such, it is not possible for this Court to accept the said explanation as a basis for delay in disbursal of retiral benefits to the petitioner.

19. Insofar as grant of the benefits under the ACP Scheme to the petitioner is concerned, the said benefits were due to the petitioner in 1999 and the order of Deputy Director of Education for payment of benefits arising from second financial upgradation under the said scheme, was issued only on 4th August, 2011.

20. As has been pointed out by learned counsel for the petitioner, even after issuance of the said "ACP pay fixation order", actual disbursal of benefits took place after considerable delay. There is no

explanation for issuing the "ACP pay fixation order" at such a belated stage on 4th August, 2011, forthcoming in the counter affidavit. All that is stated therein, is that, "the school convened a DPC with regard to grant of ACP, to the petitioner on 10.01.2011". Thereafter, it is sought to be contended that "finally on 04.08.2011, after complete records and details were provided by Respondent No.1 to the Department, the answering respondent passed the order dated 4.8.2011 by which the petitioner was sanctioned second financial upgradation under the ACP Scheme and the petitioner was granted arrears, amounting to Rs.3,13,509/- on 22.12.2011".

21. These averments, to say the least, are grossly insufficient to explain the inordinate delay in disbursal of the benefits payable to the petitioner under the ACP Scheme nearly 12 years after they had become due. They belie the solemn assertion, contained in para 2 of the counter affidavit, to the effect that "answering respondent had always being alive to the issue raised by the petitioner and in view of the same, had supported the petitioner several occasion".

22. As a result, the respondents would necessarily be bound to compensate the petitioner for the delay in disbursal, of the benefits due to her under the ACP Scheme, and be saddled with interest.

23. Insofar as the MACP Scheme is concerned, non-grant of benefits to the petitioner, thereunder, is sought to be justified on the ground that the school had graded the petitioner "average" whereas

MACP could be granted only once she was graded "good". It is sought to be further submitted that the school submitted the file of the petitioner with such observations "only recently (a month back) and accordingly the file is under process".

24. Despite this assertion, learned counsel for the petitioner submits that, till date, no benefits have been granted to the petitioner under the MACP Scheme.

25. The petitioner has, in her rejoinder to the counter affidavit, pointed out that no Confidential Report containing any "average" grading was ever communicated to her. In this regard, the law is well settled, and reference need only be made to ***Sukhdev Singh (supra)*** which clearly holds that *all* remarks in Confidential Reports are required to be communicated to the officer concerned, whether adverse or otherwise.

26. Equally trite is the proposition that no adverse consequences can result from uncommunicated remarks. It is impossible therefore, to understand how the respondents are seeking to justify their delay, in releasing, to the petitioner, her benefits under the ACP Scheme by relying on uncommunicated adverse gradings allegedly contained in her ACRs.

27. Learned counsel for the petitioner, in fact submits that, to his client's knowledge, there was no system of maintaining Confidential

Report and no Confidential Report, containing any grading was communicated to his client by the school at any point of time.

28. In view thereof, as no grading of "Average" was ever communicated to the petitioner, non-disbursal of MACP benefits to her cannot be sought to be justified on that ground.

29. Delayed disbursal, to an employee, of emoluments and payments, due to him under law, necessarily entails, in its wake, liability to interest, as held in ***State of Kerala v. M. Padmanabhan Nair, (1985) 1 SCC 429.***

30. As a result of the above discussion, the present writ petition is allowed. The respondents are directed to disburse, to the petitioner, the benefits available to her under the MACP Scheme within a period of four weeks from today.

31. The respondents shall also be liable to pay interest, @ 12% per annum, for the delay in disbursal of the benefits available to her for the period from 1999 till 4th August, 2011 when the ACP pay fixation order came to be issued by the Directorate of Education. Similarly, interest @ 12% per annum would also liable to be paid by the respondents for the delay in disbursal, to the petitioner, all her retiral benefits from the date of the retirement, till the date when the benefits were actually disbursed to her. The respondents are also liable to pay interest, @ 12% per annum on the MACP benefits due to the

petitioner, from 1.9.2008 when the said benefits were actually due to her, till the date of their disbursal.

32. The writ petition is allowed in the above terms with no orders as to costs.

C.HARI SHANKAR, J

AUGUST 29, 2018
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