

IN THE HIGH COURT OF BOMBAY AT GOA.**WRIT PETITION NO. 653 OF 2018.**

Mr. Saturnino Marcelino Mesquita,
Major of age, Indian National,
Resident of H. No. -402/2, Rich
Residency, Cabesa, St. Cruz Goa. Petitioner.

Versus

- 1) The State of Goa, Represented
through Chief Secretary
Porvorim, Bardez Goa.
- 2) The Principal Chief Engineer,
Public Works Department,
Altinho, Panaji Goa.
- 3) The Executive Engineer, W.D.
III, XVII, XX, P.W.D. St. Inez
Panaji Goa.
- 4) The Director, Directorate of
Accounts, Panaji Goa.
- 5) The Secretary, Department of
Personnel Panaji Goa. Respondents.

Mr. V. Rodrigues and Mr. V. Naik, Advocates for the petitioner.
Mr. P. Faldessai, Additional Government Advocate for the
respondents.

**Coram:- M. S. Sonak &
Prithviraj K. Chavan, JJ.
Date:- 4th January, 2019.**

ORAL JUDGMENT (Per M. S. Sonak, J.)

Heard Mr. V. Rodrigues, learned Counsel appearing for the
petitioner and Mr. P. Faldessai, learned Additional Government

Advocate appearing for the respondents.

2. Rule. With the consent of and at the request of the learned Counsel for the parties, Rule is made returnable forthwith.

3. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner, retiree w.e.f. 30.6.2017, seeks the following reliefs:-

- (a) *For the release of arrears of pay in terms of order dated 30.11.2016 in relation to implementation of Pay Commission recommendations;*
- (b) *For a direction to award the petitioner the benefits of Modified Assured Career Progression Scheme (MACPS for short) w.e.f. 24.5.2013 alongwith all consequential benefits.*

4. In so far as the first relief in relation to arrears of pay is concerned, there is now no dispute that such arrears have, in fact, been paid to the petitioner. The learned Counsel for the petitioner, therefore, states that there is no subsisting grievance in so far as said relief is concerned.

5. In so far as the second relief is concerned, there is no dispute that in terms of the MACPS, the employees, who have completed 30 years of continuous service would be eligible for the benefit of

the next higher grade pay. There is also no serious dispute that the petitioner completed 30 years of continuous service on 24.5.2013. This is because the petitioner was initially appointed as Laboratory Technician, vide order dated 30.4.1983 though w.e.f. 24.5.1983.

6. Smt. Ruhi Redkar, Director of Administration, PWD/respondent no.2 has filed an affidavit in this petition dated 21.11.2018.

7. On the issue of extension of benefits of MACPS to the petitioner, there is following statement at paragraph 7 of the affidavit:-

" With respect to contents at paragraph no.9, I say that complaint in connection with unauthorised and illegal possession of official documents of Works Division III(PHE) is under investigation; hence the benefit of granting 3rd financial upgradation under MACPS was not extended to the petitioner."

8. On the basis of the aforesaid, certainly, benefits of MACPS cannot be denied to the petitioner. As noted earlier, the petitioner, has already retired from service w.e.f. 30.6.2017. Admittedly, prior to his retirement there were no disciplinary proceedings initiated against the petitioner. Taking into

consideration the statement made in paragraph 7 of the affidavit, this also, does not appear to be the case where disciplinary proceedings can be initiated against the petitioner post his retirement. Therefore, merely on the basis that some complaint in connection with unauthorised and illegal possession of certain documents with some third party is pending investigation, the benefits of MACPS cannot be denied to the petitioner.

9. In fact, it is necessary to note that there is no complaint as such against the petitioner, which is pending investigation. The complaint, if any, relates to unauthorised and illegal possession of certain documents by some third person which, were supposed to have been in lawful and actual possession of the petitioner. On such vague basis, benefits of MACPS cannot be denied to the petitioner.

10. Normally, in such a situation, the proper order to make would be to direct the respondents to consider award of MACPS benefits to the petitioner in accordance with the scheme and the law, no doubt by ignoring the reason set out in paragraph 7 of the affidavit in reply as reflected to above. However, the affidavit filed by the respondent no.2 does not state that there is any other

reason or ground to deny the benefits of MACPS to the petitioner. The only stated reason is quite untenable. In such a situation therefore, there is no point in depriving the petitioner the benefits of MACPS, particularly now that he has already retired since 30.6.2017. Accordingly, we direct the respondents to grant the benefits of 3rd financial upgradation and consequential benefits to the petitioner w.e.f. 24.5.2013.

11. The financial benefits under MACPS as well as consequential benefits, to be worked out and paid as expeditiously as possible. In any case such amounts to be paid to the petitioner latest within a period of three months from today. In case, such amount is not actually paid to the petitioner within a period of three months from today, then the same shall carry simple interest @ 8% per annum from the date such amount became due and payable to the petitioner, till the date the actual payment.

12. Rule is accordingly made absolute in the aforesaid terms. There shall be no order as to costs.

PRITHVIRAJ K. CHAVAN,J.

M. S. SONAK, J.