

IN THE HIGH COURT OF BOMBAY AT GOA.**WRIT PETITION NO. 759 OF 2019.**

1 Mr. Martin Alphonso, Traffic
Controller, MACP-III, Kadamba
Transport Corporation Limited,
Panaji Depot, Panaji-Goa.

..... Petitioner.

Versus

1 State of Goa, Through Chief
Secretary, Porvorim, Bardez, Goa.

2 Kadamba Transport Corporation
Limited, Through its General
Manager KTC Bus Depot, Panaji-
Goa.

3 Deputy Labour Commissioner
Shram Shakti Bhavan, Patto,
Panaji, Goa.

..... Respondents.

Mr. S. Gaonkar, Advocate for the petitioner.

Mr. D. Pangam, Advocate General with Mr. P. Arolkar, Additional
Government Advocate for the respondent nos.1 and 3.

Mr. S. Desai, Advocate for respondent no.2.

**Coram:- M. S. Sonak &
Prithviraj K. Chavan, JJ.**

Date:- 25th November, 2019.

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

Heard Mr. S. Gaonkar, learned Counsel for the Petitioners, Mr. D. Pangam, learned Advocate General for the respondent nos.1 and 3 and Mr. S. Desai, learned Counsel for respondent no.2.

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

3. Mr. P. Arolkar, learned Additional Government Advocate waives notice on behalf of the respondent nos.1 and 3 and Mr. S. Desai, learned Counsel waives notice on behalf of respondent no.2.

4. In this petition, petitioner has basically made following grievances:-

- (a) *The delay on the part of the respondent no.3 to forward failure report dated 15.3.2019 to the State Government.*
- (b) *Failure on the part of the respondent no.2 to extend the benefit of recommendations of 7th Pay*

commission to the petitioner w.e.f. 29.11.2018.

5. So far as first grievance is concerned, as recorded in our order dated 3.10.2019, learned Advocate General has made a statement that the failure report will be forwarded to the appropriate government within two weeks. Now that the conciliation proceedings have failed, consistent with the settlement failure report has been forwarded to the appropriate government. We now direct appropriate government to take action in accordance with law on this failure report as expeditiously as possible in any case within two months from today. This according to us, takes care of first issue raised in this petition.

6. So far as second issue is concerned, Mr. Desai learned Counsel for the respondent no.2 points out that State Government has issued circular dated 27.11.2017 and clause 2(iv) thereof reads thus:-

“(iv) Administrative Departments are advised that no recommendations for implementing revised pay structure shall be received by the Finance Department, in the event the staff and employees of the PSE's/ Corporations/ Autonomous Bodies and Agencies concerned, have resorted for wage dispute

redressal or any other redressal before the Office of the Labour Commissioner or any other Court of Law, under the provisions of the Industrial Dispute Act, 1947 or the Workmen's Compensation Act, 1923 or any other law in force.”

7. Mr. Desai submits that in the present case, petitioner has raised the dispute with regards to grant of Modified Assured Career Progression Scheme(MACP Scheme). He points out that it is in fact this dispute which was referred to conciliation and the conciliation has ended in failure. He submits that in view of the aforesaid clause 2 (iv) of the circular dated 27.11.2017, it is not possible to extend the benefits of recommendation of 7th Pay commission in case of petitioner.

8. Mr. Desai points out that on the aforesaid basis respondent no.2 has issued order dated 29.11.2018 which is subject matter of challenge in the present petition.

9. Mr. Gaonkar, learned Counsel for the petitioner submits

that merely because petitioner is agitating the issue of his entitlement before the appropriate forum, the petitioner, cannot be deprived of benefits of recommendation of 7th Pay commission which benefits have been extended to all the employees of respondent no.2. He points out that some what in similar circumstance, this Court in its order dated 3.10.2019 in Writ Petition No.114 of 2019 had recorded the statement made by the learned Advocate General that clause 2(iv) of the Circular dated 27.11.2017 will not apply and on the said basis directed the respondent no. 2 to extend the benefits of recommendation of 7th Pay commission.

10. Having considered the rival contentions, we are satisfied that similar directions are required to be issued to respondent no.2 in the present matter as well. The purpose for introducing clause 2(iv) in circular dated 27.11.2017 is perhaps to see that there is no confusion or contradiction when it comes to extension of the benefits of recommendation of 7th Pay commission to the employees, *inter alia* to all PSE's Corporations/Autonomous Bodies. Thus in a case where the

employees are agitating on the issue of recommendation of 7th Pay commission, perhaps, clause 2(iv) of the circular might apply. In the present case, petitioner was only agitating the issue of applicability of benefits of MACP Scheme to him. Accordingly, there is no good reason to deprive the petitioner of the benefits of the recommendation of 7th Pay commission. Such benefit no doubt, will have to be extended on the basis of present pay scale as may be applicable to the petitioner in this case. There is no question of taking into consideration the issue of MACP Scheme benefits, which issue, the petitioner, can always agitate separately.

11. Accordingly, we are satisfied that in the facts of the present case clause 2(iv) of the circular dated 27.11.2017 cannot come in the way of the petitioner receiving the benefits of recommendation of 7th Pay commission.

12. Accordingly, we direct the respondent no. 2 to process the case of the petitioner for receipt of the benefits of recommendation of

7th Pay commission. This exercise to be completed within two months from today. In case any approval is necessary from the State Government, even the same be issued within one month from the date of receipt of the necessary proposal from the respondent no.2.

13. Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

14. All concerned to act on the basis of the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

M. S. SONAK, J.