IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:05.03.2019

Delivered on:19.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.11363 of 2018

V. Kumar ...... Petitioner

vs

1. The Director General,
   All India Radio Akashbhavan,
   SI, B Section,
   Parliament Street,
   New Delhi - 110001

2. The Chief Executive Officer,
   Prasar Bharathi Secretariat,
   (Broadcasting Corporation of India),
   2nd Floor, Pin Building,
   Sansad Marg,
   New Delhi - 110 001

3. The Station Director,
   All India Radio, Chennai - 600 004

4. Pay & Accounts Officer,
   Pay & Accounts Office,
   All India Radio,
   Chennai - 600 004

5. The Registrar,
   Central Administrative Tribunal,
   Madras Bench, Chennai

(R.5 impleaded vide Order dated
26.02.2019, made in WMP No.
6122/2019 in WP No.11363/18)

.... Respondents

Writ Petition file under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records in O.A.No.329 of 2012 order dated 12.02.2015 passed by the Central Administrative Tribunal, Chennai Branch, quash the same directing the Respondents to pay the Petitioner the grade pay of Rs.6,600/- with effect from 01.09.2008 under the Modified Assured Career Progression Scheme for the Central Government Employees Estt (D) dated 19.05.2009, Ministry of Personnel Public Grievance Pension (Department of Personnel and training) and pay the consequential benefits of pension etc., in accordance with the revised grade pay of Rs.6600/- and fix the pension accordingly.

For Petitioner : Mr.K. Shanmuga Kani

For R.1 to R.4 : Mr.Venkataswamy Babu
Senior Panel Counsel

For.R.5 : Tribunal

ORDER

M. VENUGOPAL,J.,

Heard both sides.

2. The Petitioner, in the instant Writ Petition, while challenging the Order in O.A.No.329 of 2012 dated 12.02.2015 passed by the Fifth Respondent/Tribunal and to quash the same, has prayed for passing of an Order by this Court directing the Respondents to pay him the 'Grade Pay' of Rs.6,600/- with effect from 01.09.2008 under 'Modified Assured Career Progression Scheme' for the Central Government Employees Estt (D) dated

19.05.2009, Ministry of Personnel Public Grievance Pension (Department of Personnel and training) and pay the consequential benefits of pension etc., in accordance with the revised grade pay of Rs.6600/- and fix the pension.

3. Earlier, the Fifth Respondent/Central Administrative Tribunal in O.A.No.329 of 2012, filed by the Petitioner, on 12.02.2015, at Paragraph Nos.7 and 8, observed as under:

> " 7. It is an admitted position tht the applicant as well as C. Kamalakannan did not complete 30 years regular of service from the date of joining as P.Ex under direct recruitment and therefore they are not eligible for grant of 3rd MACP. It is submitted by the respondents in the reply that C. Kamalakkannan was granted Grade Pay of Rs.6600/- by mistake and they have submitted that steps are being taken to rectify the above mistake.
>
> 8. As the Respondents themselves submitted that steps are being taken to rectify the mistake in granting Rs.6600/- as Grade Pay to Kamalakkannan, we see no merit in the contention of the applicant that since his junior C. Kamalakannan has been granted the 3rd MACP i.e., Grade Pay of Rs 6600/- and his pension has to be refixed on that basis."

and resultantly dismissed the Original Application without costs.

4. The Petitioner joined Services as Clerk Grade II at Press Information Bureau, Ministry of Information and Broadcastings, Chennai. His initial pay was Rs.260/- per month. His services were deputed as Sub Editor, Thittam, Ministry of Information and Broadcasting, Chennai on the basic pay of Rs.425/-per month. The Petitioner applied for the post of 'Production Assistant'

and was appointed in that capacity at Doordarshan Kendra, Chennai, Ministry of Information and Broadcasting in the basic pay of Rs.425/-per month.

5. When the Union Public Service Commission called for applications for the post of 'Programme Executive' for All India Radio Doordarshan, under the Recruitment Board of the First Respondent, the Petitioner was selected for the said post and posted at All India Radio, Pondicherry on 29.09.1989 as 'Programme Executive' on the basic pay of Rs.2000/- per month. He attained superannuation on 31.05.2011 in the post of 'Programme Executive' in All India Radio after rendering 39 years one month and 7 days of continuous service.

6. The plea of the Petitioner is that one C. Kamalakannan joined the service as Clerk Grade II in All India Radio on 07.05.1974 in the basic pay of Rs.260/- per month. Later, he was selected as 'Announcer' to All India Radio. Subsequently, the Union Public Service Commission called for applications for the post of 'Programme Executive' in All India Radio and the said C. Kamalakannan was appointed as 'Programme Executive' in All India Radio, Coimbatore on 30.09.1989 in the pay scale of Rs.2000/- per month. He attained superannuation on 30.07.2011 as 'Programme Executive', All India Radio, Chennai after putting 37 years of service.

7. The Learned Counsel for the Petitioner proceeds to point out that 'Grade pay' was offered to C. Kamalakannan as Rs.6600/-, although he is junior to the Petitioner in all respects. However, the Petitioner was offered with 'Grade pay' of Rs.5400/-. In a similar manner, the 'Grade pay' of Rs.6600/- ought to have been given to the Petitioner with effect from 01.09.2008 and further that, the person should have been calculated on the conferment of 'Grade pay' of Rs.6600/- with effect from 01.09.2008.

8. It is represented on behalf of the Petitioner that Petitioner's seniority is No.290 and C. Kamalakannam's seniority is No.291. In this connection, the Learned Counsel for the Petitioner contends that the Petitioner should have been granted First MACP on completion of 10 years of service 'Grade pay' to be

granted at Rs.5400/-; Second MACP on completion of 20 years of service 'Grade pay' to be granted at Rs.5400/- and the Third MACP on completion of 30 years of service the 'Grade pay' to be granted at Rs.6600/-.

9. The categorical stand of the Petitioner is that the Respondents have arbitrarily and illegally granted lesser 'Grade pay' of Rs.5400/- to him and in short, the First Respondent had not granted 'Grade pay' to him on par with that of C. Kamalakannan. Also that, the Petitioner made a numerous representations to the Respondents on 14.10.2011, 30.05.2011, which were not attended to by them. Hence he filed O.A.No.329 of 2012 before the Fifth Respondent/Tribunal and on 12.02.2015 the Tribunal dismissed the Original Application.

10. The Learned Counsel for the Petitioner contends that the Impugned Order of the Fifth Respondent/Central Administrative Tribunal dated 12.02.2015 in O.A.No.329 of 2012 is an illegal, erroneous one besides the same being contrary to the ' Modified Assured Career Progression Scheme'

11. The Learned Counsel for the Petitioner points out that the Fifth Respondent/Central Administrative Tribunal had failed to appreciate Clause-11 of 'Modified Assured Career Progression Scheme', wherein, it was specified that 'Regular Service' shall include all periods spent on deputation/foreign service, study leave and all other kind of leave, duly sanctioned by the competent authority.

12. The Learned Counsel for the Petitioner comes out with an argument that the Fifth Respondent/Central Administrative Tribunal had failed to note Clause-9 of 'Modified Assured Career Progression Scheme' which speaks of ' Regular service' for the purpose of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appiontment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a

new Department, without a break, shall also be counted towards qualifying regular service for the purpose of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.

13. The Learned Counsel for the Petitioner submits that the Fifth Respondent / Tribunal committed an error in holding that C. Kamalakannan was granted 'Grade pay' of RS.6600/- by mistake and steps are being taken to rectify the mistake in granting Rs.6600/- as 'Grade pay' to C. Kamalakannan. Further, it is the contention of the Petitioner that there shall be three Financial Upgradations under MACPs counted from the Direct Entry Grade on completion of 10, 20 and 30 years of service respectively.

14. Lastly, it is the submission of the Learned Counsel for the Petitioner that the Fifth Respondent/Central Administrative Tribunal came to an erroneous conclusion that the Petitioner's junior C. Kamalakannan was granted the Third MACP i.e., 'Grade pay' of Rs.6600/- and his pension was to be Re-fixed.

15. The Learned Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court of India in Krishan Singh v Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana) reported in (2010) 3 SCC 637 at Special Page 641, wherein, at Paragraph No.21, it is observed as under:

> 21. In the present case, the respondent has not taken any stand before the Labour Court in his objection that the post in which the workman was working was not sanctioned or that his engagement was contrary to statutory rules or that he was employed elsewhere or that there was no vacancy. In the absence of any pleadings, evidence or findings on any of these aspects, the High Court should not have modified the award of the Labour Court directing reinstatement of the appellant with 50% back wages and instead directed payment of

compensation of Rs.50,000/- to the appellant.

16. The Learned Counsel for the Petitioner brings it to the notice of this Court on the decision of the Hon'ble Supreme Court of India in Harjinder Singh v Pujab State Warehousing Corporation at Page 192, wherein it is observed that ' there was no justification in entertaining new plea raised by the corporation for the first time before it regarding illegality of an initial appointment'.

17. The Learned Counsel for the Petitioner brings it to the notice of this Court on the decision of the Hon'ble Supreme Court of India in Commissioner of Income Tax (Central)-I, New Delhi v Vatika Township Private Limited reported in (2015) 1 SCC 1 at Special Pages 21 and 22, wherein, at Paragraph Nos.27 and 27, it is held as under:

> General Principles concerning retrospectivity
>
> 27. "A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction / non-fiction or even in a judgment of a Court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statutes". Vis-a-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the mater thereof.
>
> 28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary

intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is know as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

18. In Response, it is the submission of the Respondents 1 to 4 that the Ministry of Information and Broadcasting vide Order No.310/173/97-B(D) dated 25.02.1999 had upgraded the pay scales of 11 categories of employees working in Prasar Bharati subject to certain conditions which included that the upgraded scales would be allowed not as Government Employees per se but as Government employees currently in service of Prasar Bharati (Broadcasting Corporation of India) provided they exercise an option to opt for Prasar Bharati.

19. In this regard, the Respondents take a stand that it is quite clear that 'Employees' who had not opted to join Prasar Bharati would be reverted as Government servants and would no longer be entitled to the upgraded scales and in fact, the pay scale of 'Programme Executives' was upgraded from Rs.6500-10,500/- to Rs.7500-12,000/- with effect from 01.01.1996.

20. The Learned Counsel for the Respondents brings it to the notice of this Court that the pay scale of 'Programme Executives' was upgraded as 'Employees ' on deemed deputation of Prasar Bharati and as such, the benefits of ACP which was for the Government Employees were not extended to 'Programme Executives' and later, the Programme Staff Association of All India Radio and Doordarshan and Others projected O.A.No.2293 of 2001 before the Central Administrative Tribunal/Principal Bench, New Delhi for grant of ACP to ' Programme Executives' and the Central Administrative Tribunal allowed the Petition on 05.12.2002 in favour of the Petitioners therein. As against the said Order dated 05.12.2002 in O.A.No.2293/2001, the Department filed a Writ Petition in WP No.4151 of 2003 and the Hon'ble High Court of Delhi stayed the Operation of the Order dated 05.12.2002 of the Central Administrative Tribunal, Principal Bench, New Delhi, but later vacated the Stay on 22.02.2007.

21. As against this Order, the Department filed Special Leave Petition before the Hon'ble Supreme Court of India and on 16.04.2008, the Hon'ble Supreme Court of India set aside the Order dated 22.02.2007 passed by the High Court of Delhi.

22. The Learned Counsel for the Respondents forcefully contends that the Financial Upgradation under ACP Scheme was not granted earlier to the 'Programme Executives' due to the fact that the matter of ACP was pending before the High Court of Delhi and that the Director General of All India Radio, New Delhi had granted the benefit of first and second financial upgradation to the 'Programme Executives' under MACP Scheme with effect from 01.09.2008 and with effect from later dates.

23. The Learned Counsel for the Respondents come out with a plea that earlier, the 'Directorate' had not counted upgraded pay scales granted by the Ministry vide Order dated 25.02.1999 as one financial upgradation under

MACP Scheme and sine the matter of ACP is subjudice in the High Court of Delhi, ACP was not granted to 'Programme Executives' as per the following Tabular Details:

MACP Granted earlier

Direct Recruit Programme Executives (Pre-revised Grade Pay Rs.4,600/- upgraded to Grade Pay Rs.4,800/-)	1st MACP in Grade Pay of Rs.5,400/- (PB-II) on completion of 10 years of service	2nd MACP in Grade Pay of Rs.5,400/- (PB-III) on completion of 20 years of service	3rd MACP in Grade Pay of Rs.6,600/- (PB-III) on completion of 30 years of service
Promotee Programme Executives	1st MACP in Grade Pay of Rs.4,800/- (PB-II) on completion of 10 years of service (in case TREXs / Production Assistants not promoted to the post of PEX)	2nd MACP in Grade Pay of Rs.5,400/- (PB-II) on completion of 20 years of service	3rd MACP in Grade Pay of Rs.5,400/- (PB-III) on completion of 30 years of service

24. The Learned Counsel for the Respondents submits that the Petitioner's earlier appointment in the Department prior to his appointment as 'Programme Executive' with effect from 29.09.1989 was on a Lower scale and it was to be ignored for financial upgradation under MACP Scheme. Moreover, his appointment on Direct Recruitment basis as 'Programme Executive' was in the pay scale of Rs.2000-3500/-(pre-revised) with effect from 29.09.1989 and he was granted First MACP (G.P-5400/-_(PB-2) on 01.09.2008 and Second MACP (G.P-5400/-) (PB-3) on

29.09.2009 on completion of 10 and 20 years of qualifying service from his date of direct entry into Government Service i.e., 29.09.1989 by th Directorate Order dated 21.04.2010.

25. The Learned Counsel for the Respondents 1 to 4 draws the attention of this Court to the fact that as per DOPT's Official Memorandum No.35034/3/2008-Estt(D), dated 19.05.09 'Regular Service' for the purposes of the MACP shall commence from the date of joining of a post in direct entry grade on a regular basis either on the direct recruitment basis or an absorption/re-employment basis.

26. Further, it is the stand of the Respondents 1 to 4 that C. Kamalakannan was wrongly granted three upgradations under MACP as per Order dated 16.04.10 and that apart, service is to be counted from the date of appointment in a post of 'Direct Recruitment' and in fact, his earlier appointment in the Department prior to his appointment as 'Programme Executive' with effect from 30.09.1989, were on a lower scale which was to be ignored for the purpose of financial upgradation under MACP Scheme. However, in his case, previous service was counted which was wrong and his appointment on 'Direct Recruitment' basis as 'Programme Executives' was in the pay scale of Rs.2000-3500/- (pre-revised) with effect from 30.09.1989 and as such, he was not eligible for Third MACP, he was granted in the Grade Pay of Rs.6600/-.

27. Added further, it is pointed out on the side of the Respondents No.1 to 4 that the Petitioner filed O.A.No.329/2012 on earlier occasion before Fifth Respondent/Central Administrative Tribunal praying for passing of an Order in directing the Respondents therein to grant him 'Grade pay' of Rs.6,600/- as given to his junior C. Kamalakannan, 'Programme Executive' (Retired.) and the Tribunal was informed by the Department that 'upgradations' granted to C.Kamalakannan, 'Programme Executive' (Retired.) were wrong and the same was liable to be revised and accordingly the Original Application was disposed of by the Central Administrative Tribunal on 12.02.2015.

28. The Learned Counsel for the Respondents No.1 to 4 submits that the Third Respondent/All India Radio, Chennai, through Order dated 17/18.06.2015 had re-fixed the pay after withdrawing excess Third MACP of Rs.6600/- and accordingly, reduced the pension of C. Kamalakannan, which was challenged before the Fifth Respondent/Central Administrative Tribunal and that the Tribunal in O.A.No.885/2016 dated 25.05.2016 had stayed the order of recovery of amount and presently, the matter is sub-judice.

29. At this stage, the Learned Counsel for the Respondents No.1 to 4 points out that the Ministry of Information and Broadcasting through Letter dated 08.09.2014 had informed that in another case referred to DOPT for seeking advice as to whether the benefits under the MACP are allowed in the 'Grade pay' Hierarchy and any upgradation availed during the career of an employees would be counted against the three upgradation permissible under the MACP or not. The DOPT through its I.D.No.47539/13/CR dated 10.07.2013 had opined that 'as the benefits under the MACP are allowed the in Grade pay hierarchy, any upgradation availed during their career would be counted against the three upgradation permissible under MACP.

30. The Learned Counsel for the Respondents No.1 to 4 projects an argument that the Ministry of Information and Broadcasting through letter No.503/05/2014 BA(E) dated 31.01.2018 had reiterated that the issue regarding treatment of MIB's Order dated 25.02.1999 granting one scale above the scale recommended by V CPC to 11 categories of employees belonging to subordinate cadres of Programme and Engineering Employees, as one upgradation against three upgradation under MACP Scheme or otherwise was referred to DOOP&T and Department of Expenditure from time to time. DOPT through its last advice dated 04.03.2016 has advised that:

> "The DOPT has already given its advice. Since, now there are no

> new facts in this case, our earlier advice holds goods. As such it is stated that upgraded scales granted to 11 categories of employees of subordinate Engineering & Programme cadre of Prasar Bharati is to be treated as one upgradation against the three upgradation allowed under MACP Scheme.

31. In fact , the views of DOPT were been endorsed by the Department of Expenditure Ministry of Finance and that the Ministry of Information and Broadcasting had issued directions that the upgraded scale granted by the Ministry as per Order dated 25.02.1999 is to be treated as one upgradation against the three ugradations allowed under MACP Scheme.

32. The Learned Counsel for the Respondents No.1 to 4 brings it to the notice of this Court that the Writ Petition No.4151 of 2003 filed by the Union of India and others was disposed of by High Court of Delhi on 13.07.2017, wherein and whereunder, a direction

to grant ACP as per instructions of DOPT to the Respondents within a period of six months, was issued and the same was implemented and MACP granted earlier to the 'Programme Executives' are to be Revised.

33. In the case of Petitioner, it is the stand of the Respondents No.1 to 4 that he is entitled for First MACP in the pre-revised scale of Rs.8000-13,500/- with effect from 30.09.2001 and the Second MACP absorbed on upgradation of scale granted by the Ministry as per Order dated 25.02.1999.

34. In short, it is the crystalline stand of the Respondents No.1 to 4 that the Petitioner as well as C. Kamalakannan are not eligible for 'Third MACP' in the 'Grade pay' of Rs.6600/- and that the Petitioner (V. Kumar) was drawing one 'Extra Increment' due to grant of

MACP in the 'Grade pay of Rs.5,400/-(PB-2) and C.Kamalakannan was drawing Two Extra increments due to grant of MACP in 'Grade pay' of Rs.5,400/- (PB-2) and in 'Grade pay' of Rs.6,600/- and as a matter of fact, both are drawing excess pension and retirement benefits.

35. While winding up, it is the plea of the Respondents No.1 to 4 that the Petitioner is not entitled for 'Third MACP' in the 'Grade pay' of Rs.6600/- and under the impugned order of the Fifth Respondent/Central Administrative Tribunal dated 12.02.2015 in O.A.No.329 of 2012 is valid one in law.

36. By way of Reply, the Learned Counsel for the Petitioner submits that in 'MACP Scheme' nowhere mentions to ignore the earlier service of the Writ Petition based on the reason of 'Lower Scale' and before this Court, the Respondents cannot take a contrary stand than that of the stand taken by them before the Fifth Respondent/Tribunal in its counter, wherein, they had stated at Paragraph Nos.5 and 6 as under:-

> 5. " The respondents denies the averments in Para 4(5) and 4(6). The respondent submits that as per instructions of Department of personnel & Training, Government of India, "Regular Service" for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption / reemployment basis. It is humbly submitted that the Applicant directly entered into Government Service as Programme Executive as on 29.09.1989 and he was entitled for 1st MACP (Grade Pay Rs.5,400/-) (Pay Band-2) on 01.09.2008 and 2nd MCAP (Grade Pay Rs.5,400/-) (Pay Band-3) on 29.09.2009 on completion of 10 & 20 years of qualifying Service from his date of direct entry into Government

> Service i.e. 29.09.1989. Hence, the applicant has been rightly granted two up gradation. The applicant was not entitled for third MACP with Grade Pay Rs.6,600/- as he retired before completion of 30 years of qualifying service. The date of retirement was 31.05.2011."
>
> 6. "The applicant has claimed that he is entitled of third MACP with Grade Pay of Rs.6,600/- under the MACP scheme as given to his junior Shri C.Kamalakannan by this Directorate. In case of Shri C.Kamalakannan, his direct entry into Government Service as Programme Executive was 30.09.1989, he was eligible for 1st MACP with Grade Pay Rs.5,400 (Pay Band-2) on 01.09.2008 & 2nd MACP with Grade of Rs.5,400/- (Pay Band-3) on 30.09.2009. Shri C.Kamalakannan was not entitled for 3rd MACP with Grade Pay of Rs.6,600/- as he retired before completion of 30 years of qualifying service. The date of retirement was 30.06.2011. The Directorate had by mistake given third MACP with Grade Pay of Rs.6,600/- to Shri C.Kamalakannan."

37. The Learned Counsel for the Petitioner contends that C. Kamalakannan is drawing pension as per VII Pay Commission corresponding to the Grade pay of Rs.6600/- and that the Respondents had not initiated any constructive action in the matter.

38. The Learned Counsel for the Petitioner strenuously submits that the grant of First MACP on 01.09.2008 and Second MACP on 29.09.2009 on completion of 10 and 20 years of qualifying service from the date of direct entry in to Government Service viz., 29.09.1989 is unsustainable.

39. It is to be noted that the Ministry of Information and Broadcasting, Government of India, New Delhi had issued a Communication in Ref No.310/173/97-B (D) daetd 25.02.1999 wherein and where under, certain directions were issued. In the aforesaid communication dated 25.02.1999 at Paragraph No.4 it is mentioned as under:

> :4. The benefit of the upgraded pay scales will be available to existing incumbents only and those new direct recruits who join after issuance of these orders will not be entitled to these scales, but will be governed by pay scales recommended by the Vth Pay Commission. However, all promotions of existing incumbents shall be made in upgraded scales only.

40. It may not be out of place of this Court to make a relevant mention of the Hon'ble High Court of Delhi's order in W.P.(C) No.4151 of 2003 daed 13.07.2017 between Union of India and Others vs Programme Staff Association and Others, wherein, at Paragraph Nos. 2 to 5, it is observed as under:

> " 2. Learned counsel for the Petitioners further clarifies that Condition No.13 annexed to OM dated 9.8.1999 and Clarification No.35 issued in respect of OM DATED 18.7.2000, as mentioned in the impugned judgment, shall be given effect to quo the respondents.
>
> 3. Counsels for the respondents states that they are satisfied with the aforesaid submission. They however requests that the payments towards the grant of ACPs may be released in favour of the respondents in a time-bound manner.

> 4. Counsel for the petitioners states that it shall take six months for the payments towards grant of ACPs to be released to the respondents.
>
> 5.On an undertaking given by the Petitioners that they shall abide by the timeline noted above or release of the payments due and payable to the respondents towards grant of ACPs in terms of the impugned judgment the present petition is disposed of. File be consigned to the record room.

41. It is more importantly pointed out by this Court that the Principle of 'Unjust Enrichment' is founded on 'Equity'. Undoubtedly, there is an implied obligation on a person to repay the money which is characterised as 'Unjust Benefit'.

42. Besides this, no individual is to grow rich at other person's loss. Equally, it is unfair to permit a person to retain a benefit received at the acceptance of another. Strictly speaking, no 'Contract' is required between the 'Obligor and Obligee' to make a claim for 'Reimbursement', as opined by this Court.

43. Be that as it may, on the facts and circumstances of the present case, it is latently and patently evident that the Petitioner as well as C. Kamalakannan are not eligible for Third MACP in the 'Grade pay of Rs.6600/- and as per the stand of the Respondents No.1 to 4 that both of them are drawing excess pension and retirement benefits. It cannot be brushed aside that reduced pension of C. Kamalakannan was revised by Pay & Accounts Officer. In fact, the All India Radio, Chennai had Re-fixed the pay of the said C. Kamalakannan (after drawal of an excess Third MACP of Rs.6600/- (as per Order dated

17/18.06.2015). It is to be borne in mind that the reduced pension of C. Kamalakannan is the subject matter of challenge before the Tribunal.

44. In the instant case, even though the Writ Petitioner has come out with a plea that his Junior C. Kamalakannan was granted 'Grade pay of Rs.6600/- and as such, he should have been granted the said 'Grade pay' and his pension and other benefits ought to have been modified, this Court pertinently points out that in view of the stand taken by the Department before the Tribunal that upgradation granted to the aforesaid two persons were wrong and they are liable to be revised and recovered and on that score only, the Fifth Respondent/Tribunal, finding no merit, had dismissed O.A.No.329 of 2012 on 12.2.2015, in the considered opinion of this Court, does not suffer from any material irregularities and patent illegalities, in the eye of Law. Resultantly, the Writ Petition fails.

45. In fine, the Writ Petition is dismissed leaving the parties to bear their own costs. The Order dated 12.02.2015 in O.A.No.329 of 2012 passed by the Fifth Respondent/Tribunal is affirmed by this Court for the reasons assigned in this present Writ Petition.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sr

To

1. The Director General,
All India Radio Akashbhavan,
SI, B Section,
Parliament Street,
New Delhi - 110001

2. The Chief Executive Officer,
Prasar Bharathi Secretariat,
(Broadcasting Corporation of India),
2nd Floor, Pin Building,
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3. The Station Director,
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4. The Pay & Accounts Officer,
Pay & Accounts Office,
All India Radio,
Chennai - 600 004

5. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai

+1cc to Mr.K. Shanmuga Kani , Advocate SR.No. 26890
+1cc to Mr. Venkataswamy Babu, Advocate SR.No. 25859

W.P.No.11363 of 2018

A.SK(15/04/2019)