

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.06.2019

DELIVERED ON: 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.8868 of 2019 &
W.M.P.Nos.16295, 9420 to 9422 of 2019

1. Tamil Nadu Atomic Power
Employees Union,
DAE Township,
Kalpakkam,
Kancipuram District.

2. V.Sundararajan ...Petitioners

Versus

1. The Secretary,
Department of Atomic Energy,
Anushakthi Bhavan,
CSM Marg,
Mumbai-400 001.

2. The Under Secretary (Services Unit Section),
Department of Atomic Energy,
Anushakthi Bhavan,
CMS Marg, Mumbai-400 001.

3. The Director, GSO,
Department of Atomic Energy,
Kalpakkam-603 102.

4. Nuclear Power Corporation of India Ltd.,
rep. by its Director-HR,
6th Floor,
Vikram, Sarabhhai Bhavan,
Anushakthi Nagar,
Mumbai-400 094.

5. The Additional General Manager-HRP,
Nuclear Power Corporation of India Ltd.,
6th Floor,
Vikram, Sarabhhai Bhavan,
Anushakthi Nagar,
Mumbai-400 094.

6. The Station Director,
Madras Atomic Power Station,
Nuclear Power Corporation of India Ltd.,
Kalpakkam-603 102.

7. Administrative Officer-III/
Estate Officer,
Department of Atomic Energy,
General Services Organization,
Estate Management Section,
Kalpakkam-603 102.

8. Senior Manager (HR),
Madras Atomic Power Station,
Nuclear Power Corporation of India Ltd.,
Kalpakkam-603 102.

9. The Senior Manager (HR)
Madras Atomic Power Station,
Nuclear Power Corporation of India Ltd.,
Kalpakkam - 603102.

...Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the orders in No.16/7(1)/2018-SUS/573, Ref: GSO/A(3)/2019/EMS/192, No.MAPS/Head/(H&R)/2019 and No.Nil, dated 14.01.2019, 28.01.2019, 27.02.2019 and 26.02.2019 passed by the respondents 2, 7, 8 and 9 respectively, quash the same and consequently, direct the respondents to allot houses which were allotted to the employees of MAPS, Kalpakkam, NPCIL, by keeping them as separate and independent pool and by maintaining a separate and independent seniority and priority list exclusively for the employees of MAPS as it was already in force from 01.05.1988 as per the DAE OM No.3/10(16)/87-PP dated 30.05.1988 and as per the minutes of meeting recorded in the proceedings of the 6th respondent in No.MAPS/IRO/Housing/88 dated 15.07.1988 and forbear the respondents from clubbing the houses earmarked and given exclusively to the employees of MAPS with the houses belonging to the employees of other units of DAE and from allotting houses to the employees of MAPS under the common pool and common seniority list of the employees of DAE units and MAPs.

For petitioners: Mr.V.Ajay Khose for
M/s.R.Krishnaswamy

For respondents: Mr.K.S.Jayaganeshan for
R1 to R3 & R7

Mr.V.Vijayshankar for
R4 to R6, R8 & R9

ORDER

This Writ Petition has been filed, praying for the issuance of a Writ of Writ of Certiorarified Mandamus, to call for the records pertaining to the orders in No.16/7(1)/2018-SUS/573, Ref: GSO/A(3)/2019/EMS/192, No.MAPS/ Head/(H&R)/2019 and No.Nil, dated 14.01.2019, 28.01.2019, 27.02.2019 and 26.02.2019 passed by the respondents 2, 7, 8 and 9 respectively, quash the same and consequently, direct the respondents to allot houses which were allotted to the employees of MAPS, Kalpakkam, NPCIL, by keeping them as separate and independent pool and by maintaining a separate and independent seniority and priority list exclusively for the employees of MAPS as it was already in force from 01.05.1988 as per the DAE OM No.3/10(16)/87-PP dated 30.05.1988 and as per the minutes of meeting recorded in the proceedings of the 6th respondent in No.MAPS/IRO/Housing/88 dated 15.07.1988 and forbear the respondents from clubbing the houses earmarked and given exclusively to the employees of MAPS with the houses belonging to the employees of other units of DAE and from allotting houses to the employees of MAPS under the common pool and common seniority list of the employees of DAE units and MAPS.

2. The petitioner is a registered Trade Union and it is the only Union functioning at Kalpakkam, representing the interests of the employees of Madras Atomic Power Station (in short, 'MAPS'). It is a Member of Joint Consultative Council and represents the workmen category. Originally, MAPS and Nuclear Power Corporation of India Limited were directly functioning under the control of the Department of Atomic Energy (in short, 'DAE'). The Government of India took a policy decision to create a new Corporation by name, 'Nuclear Power Corporation of India Ltd.', ((in short, 'NPCIL') to vest all the Nuclear Power projects and Nuclear Power stations which were hitherto functioning under the control of DAE with NPCIL and all the employees employed in various projects and power stations were transferred to the service of NPCIL initially on deputation basis, later absorbed in NPCIL. At the time when the employees were originally brought to NPCIL, the quarters occupied by the employees of MAPS were exclusively earmarked for them in respect of various type quarters. Initially, there was a common pool maintained in respect of other units which were under the control of DAE and the allotment was being made among the employees of various units by DAE or NPCIL. This was the practice till 1987. However, the situation was changed in 1988 when an Official Memorandum (OM) was issued on 30.05.1988 stating that the houses occupied by MAPS employees as on 01.05.1988 will be frozen for MAPS employees only. This was followed by the understanding reached between the Management and the Union representatives by reducing the same in Minutes recorded on 14.7.1988 providing exclusive accommodation for MAPS

employees. At the time when the employees were absorbed, the terms and conditions of service were specifically mentioned that the accommodation policy would be as per NPCIL scheme, i.e. O.M. dated 30.05.1988. Thus the employees of MAPS were assured of exclusive accommodation in various type of quarters and the same has been in vogue since 1988 till 2018-19 for over a period of 30 years.

3. While matters stood thus, in 2018, 19 of MAPS employees were sought to be accommodated in higher type quarters more than their entitlement and eligibility, for which, orders were sought by Kalpakkam unit of MAPS. Such practice of granting higher type of accommodation was in vogue in MAPS since many quarters belonging to C type were lying vacant and the employees who were actually entitled to B type quarters were accommodated in C type quarters since the Administration did not want the houses to be kept locked for number of years. In the said circumstances, when an order was sought for in 2018 accommodating 19 employees in the higher type of quarters, there arose the problem which is the subject matter of the dispute in the Writ Petition.

4. The second respondent in response to the request made by MAPS for grant of higher type of quarters for 19 members, has passed orders on 14.1.2019 refusing to grant approval and further directed for allotment of houses in Kalpakkam both belonging to MAPS and other units of DAE at Kalpakkam by maintaining a common pool as per para 3.7(a) of DAE OM dated 4.9.1987. Subsequently, consequential orders have been issued for common pool accommodation for the employees of various unites located in and around Kalpakkam including MAPS. These orders have been put to challenge in the present Writ Petition.

5. Shri Ajay Khose, learned counsel appearing for the petitioners would strenuously contend that the orders passed on 14.01.2019 by the second respondent is per se illegal, unjust and contrary to the OM dated 30.05.1988 and also the Minutes of understanding dated 14/15.7.1988 and also the conditions of service incorporated in the appointment letters issued to the employees of MAPS. He would further submit that any change in the service conditions of the employees, a prior notice is required to be issued which is mandatory under Section 9A of the Industrial Disputes Act. The learned counsel would further submit that MAPS is an industry as defined in the Industrial Disputes Act, 1947 and the employees/workmen come within the definition of Section 2(s) of the Act. He would also submit that the change of policy by the Government, cannot be introduced unless it is preceded by a proper notice under the provisions of the Act, particularly when such change is introduced in violation of the Clauses provided in Fourth Schedule of the I.D. Act.

6. The learned counsel would submit that the reliance placed by the DAE on Clause 3.7(a) of OM dated 4.9.1987 cannot be made applicable to the MAPS employees in view of the subsequent Memorandum issued on 30.05.1988. He would submit that OM dated 04.09.1987 would be applicable only to the deputationists and after absorption, the said OM cannot be made applicable. He would submit that unless the OM dated 30.5.1988 is cancelled or replaced in the manner known to law, there cannot be any change of conditions of service detrimental to the interest of the employees of MAPS.

7. In support of his contentions, the learned counsel for the petitioners would draw the attention of this Court to OM dated 04.09.1987 and subsequent OM dated 30.5.1988 and also the Minutes of the understanding reached between the employees' representatives and the Management representatives. These materials would disclose the fact that the earmarked quarters were exclusively enjoyed by MAPS employees on the basis of OM 30.5.1988 till the impugned letter issued on 14.01.2019 and the same was in practice and usage. Therefore, he would submit that the impugned letter was passed without application of mind when OM dated 30.05.1988 is still holding the field. He would submit that it is open to the Management of MAPS to bring in change, but such change can be brought in only after complying with the mandatory provisions of the Industrial Disputes Act. According to the learned counsel, nothing prevented the Management from calling the Union for negotiation in this regard and the Management could also come to an understanding on the basis of the present requirement and development, after such negotiations. However, it is not open to the Management to bring any unilateral change in regard to allotment of quarters to the employees of MAPS. He would therefore, submit that the letter dated 14.01.2019 which is the basis for other consequential orders adverse to the employees of MAPS, is liable to be interfered with as being illegal and contrary to the specific provisions of the Industrial Disputes Act.

8. In response to the notice, Mr.V.Vijay Shankar, learned counsel entered appearance for respondents 4 to 6, 8 and 9 and a detailed counter affidavit has been on their behalf. On behalf of respondents 1 to 3 and 7, Mr.K.S.Jeyaganeshan entered appearance and a detailed counter affidavit has been filed.

9. As regards the counter affidavit filed on behalf of the respondents 1 to 3 and 7, the formation of NCPIIL and other units and also General Services Organization, which is nodal agency, as stated in paragraphs 1 to 6, is extracted hereunder in order to understand how the issue of grant of accommodation is being handled and administered.

"1. The Department of Atomic Energy (DAE) is a Central Government Department which came into being

on August 3, 1954 under the direct charge of the Prime Minister, DAE has been engaged in the development of nuclear power technology, applications of radiation technologies in the fields of agriculture, medicine, industry and basic research.

2. Department of Atomic Energy (DAE) has its own executive powers and has framed its own policy for allotment of accommodation and maintenance of quarters for all its constituent Units under Allocation of Business Rules. DAE is exempted from the purview of Ministry Urban Development in the matter.

3. General Services Organization (GSO) is one of the constituent units of the Department of Atomic Energy, Government of India, and was set up in the year 1979, located at Kalpakkam. General Services Organization is mandated to provide the common facilities to the various units located at Kalpakkam, such as Housing Medical, Transport, water supply, civil, Electrical, Mechanical and Telecommunication in the two Atomic Energy Townships at Kalpakkam and Anupuram.

General Services Organization (GS) is a nodal agency for allotment of Government accommodation for other DAE establishments also located at Kalpakkam viz., Indira Gandhi Centre for Atomic Research (IGCAR), Bhabha Atomic Research Centre Facilities (BARCF), Madras Atomic Power Station (MAPS)/NPCIL and supporting Government of India institutions at Kalpakkam, such as Atomic Energy Central School (in short, 'AECS')/Kendriya Vidyalaya (in short, 'KV') and Central Industrial Security Force (in short, 'CISF') by maintaining the common seniority pool.

4. It is submitted that Nuclear Power Corporation of India Limited (in short, 'NPCIL') is a wholly owned Government of India Enterprises which has come into existence out of Section 2(b) of Atomic Energy Act, 1962 and registered under the Companies Act, 1956, on 17.09.1987 engaged in the generation of electricity through Atomic Energy. MAPS is one station of NPCIL located in Kalpakkam.

5. Department vide OM dated 30.5.1988 has formulated a housing policy for maintaining a separate pool for Madras Atomic Power Station/NPCIL a PSU under Department of Atomic Energy. MAPS had allotted flats one step above to its employees which had led to disparity among the other participating units which resulted in maintaining different policy in allotment of accommodation at

single place of Kalpakkam.

6. On a review conducted by the Department, it was decided in the Department vide letter dated 14.1.2019 to maintain a common pool for allotment of houses including MAPS/NPCIL. Therefore, the executive decision is in order and does not suffer from any illegality."

10. According to the learned counsel appearing for the respondents, General Services Organization (in short, 'GSO') is the nodal agency which makes allotment to various units at NPCIL and even for MAPS also, only GSO makes allotment to its employees. According to the learned counsel, in order to remove disparity in the matter of allotting the quarters, a change has been brought in and by this change, all the employees of various units of NPCIL would become beneficiaries. According to him, there are 5976 houses which are open for being allotted to various categories of workmen/employees and in fact, it would be beneficial to MAPS employees also if they were brought under common pool.

11. Shri Vijay Shankar learned counsel appearing for the respondents 4 to 6, 8 and 9 would submit that the land and the houses which are used as quarters are belonging to Government of India and they are maintained by the Government of India. Ultimately, according to him, the allotment is made only by GSO which is a nodal agency for allotment not only to the employees of MAPS, but also to all other units which are under the control of NPCIL/DAE. In fact, the learned counsel would draw the attention of this Court to OM 30.5.1988 which was heavily relied upon by the learned counsel for the petitioners, wherein paragraph 2 states that the allotment of flats will however continue to be made by the Director of GSO. He would also draw the attention of this Court to paragraph 5 of OM dated 30.5.1988, which reads as under:

"5. The number of houses frozen for MAPS employees will also continue to be the property of Government and maintained by GSO. The payments towards rent and maintenance and other charges etc. for such flats, will however, be made by NPCIL as per the principles laid down at the time of formation of the Company."

12. Therefore, the learned counsel would submit that the employees of MAPS cannot claim exclusivity when the land and houses belonging to the Government and allotment is made actually by the GSO which is the nodal agency, in-charge of allotment of quarters for all units of NPCIL/DAE. He would further submit that because of the employees of MAPS having additional benefit of being granted higher type of accommodation more than their eligibility, as a matter of concession, they

want to hold on such concession for ever to the exclusion of their counter parts working in other units of NPCIL and units of DAE. He would submit that as many as 164 times, the employees of NPCIL have been granted higher type of quarters. Therefore, they have vested interest for claiming exclusivity, in complete exclusion of right of the similarly placed DAE employees.

13. The learned counsel would further submit that even in MAPS, superior officers were not able to get accommodation in type D and E categories due to non-availability of quarters. Likewise, the employees of other units were not able to get accommodation in C type quarters due to non-availability of the same in view of higher accommodation being granted to MAPS employees. Therefore, he would submit that it works hardship both ways and if a common pool is maintained, such hardship can be removed and parity can be achieved. As regards NPCIL scheme, he would submit that such scheme is made applicable only in places where GSO units are not located unlike Kalpakkam where several other units are located as stated in the counter affidavit filed on behalf of the Government, which is extracted above.

14. As regards the legal submission submitted on behalf of the petitioners in not issuing prior notice under Section 9A of the Act, the learned counsel would submit that the grant of accommodation/quarters is not a condition of service and therefore, such requirement need not be complied with. In any case, he would submit that the employees of MAPS are not denied any accommodation, but the procedure for grant of accommodation is only being streamlined. Therefore, it cannot be said that there is a change in terms and conditions of service, which warrants the issuance of notice under Section 9A of the I.D.Act.

15. In reply, Shri Ajay Khose, learned counsel for the petitioners would submit that as far as GSO is concerned, it is only a formal authority for making allotment, but the recommendation is made only by MAPS. He would deny the contention put forth on behalf of the respondents that it is a matter of concession given to the employees stating that it is a condition of service incorporated in the absorption letter. He would further submit that even in Kalpakkam, some of the units have independent and separate pool for themselves and therefore, the impugned action by the second respondent, per se was discriminatory and therefore, it is liable to be interfered with on this count also.

16. The learned counsel for the petitioners would rely upon the following decisions, in support of his contentions, particularly in regard to issuance of notice under Section 9A of the Act, viz.,

a) "(1999) 6 SCC 275 (Lokmat Newspapers Pvt.Ltd. Versus Shankarprasad), wherein, the learned counsel would draw the

attention of this Court to paragraphs 31 and 32, which are extracted as under:

"31. So far as this point is concerned, we have to turn to Section 9- A of the I.D. Act. The relevant provision thereof reads as under : "Notice of change.-No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,- (a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected ; or (b) within twenty-one days of giving such notice". A mere look at the aforesaid provision shows that if an employer proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, such change has to be preceded by the procedure laid down in the said section.

'32. When we turn to the Fourth Schedule of the I.D. Act, we find mentioned therein various conditions of service of workmen. The said schedule with all of its items reads as follows :

"CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN

1. Wages, including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;
3. Compensatory and other allowances;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Withdrawal of any customary concession or privilege or change in usage;
9. Introduction of new rules of discipline, or alteration of existing rules except insofar as they are provided in standing orders;
10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;
11. Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift [not occasioned by circumstances over which the employer has no control]"

So far as item nos.1-9 and 11 are concerned, it becomes obvious that before any such change in conditions of service of the workmen is to be effected, as a pre-condition for such proposed change, notice under Section 9-A has to be issued; without complying with such a pre-condition of notice, proposed change would not legally come into operation. We are directly concerned with item no. 10 of this Schedule. It, therefore, becomes obvious that before any rationalisation, standardisation or improvement of plant or technique is to be resorted to by any management if by such an exercise retrenchment of workmen is likely to result, then before introducing such rationalisation, standardisation or improvement of plant or technique, as the case may be, a prior notice under Section 9-A is to be issued to the workmen who can get an opportunity to show that they may not be retrenched because of the new scheme of rationalisation etc. which is in the offing and can suggest ways and means available to the management to avoid such proposed retrenchment of the workmen despite such introduction of a new scheme. Consequently, it must be held on the very wordings of Section 9-A read with item no.10 of Fourth Schedule "that any management which seeks to introduce a new working pattern for its existing work force by any future scheme of rationalisation, standardisation or improvement of plant or technique which has a tendency to lead to future retrenchment of workmen" has to give prior notice of proposed change. Therefore, it must be held that notice under Section 9-A must precede the introduction of rationalisation concerned, it cannot follow the introduction of such a rationalisation. In the present case, it is not in dispute between the parties that in the composing department of the appellant where the respondent was working, composing work was earlier being done by hand i.e. manually. That was the existing condition of service of the respondent. By substitution of that type of work by mechanical work having resort to photo type composition through machine, the then existing service condition of the respondent was bound to be affected adversely. Consequently, before introducing such a change in the condition of service of the respondent by installing photo type composing machine, introduction of which was directly likely to lead to retrenchment of the respondent, a notice under Section 9-A was a must

before commissioning such a photo type machine at the work place of the appellant. It is not in dispute between the parties that such a photo type machine was already installed by the appellant in January 1981. Learned counsel for the appellant seeks to contend that it was installed on an experimental basis. Even granting that, the evidence on record clearly established that by November, 1981 because of the successful working of the photo type composing machine it was felt by the appellant that respondent and other compositors working in the hand composing department were rendered surplus."

The learned counsel would particularly rely on Clause 8 of Schedule IV which denotes the conditions of service and for change of which, notice is to be given, viz., withdrawal of any customary concession or privilege or change in usage and he would also rely on Clause 9, which deals with introduction of new rules of discipline or alteration of existing rules, etc.

b) Order in C.A.Nos.928-928/1999, etc. dated 18.2.1999 (Management of Karnataka State Road Transport Corporation versus KSRTC Staff and Workers' Federation & Another)" passed by the Hon'ble Supreme Court, wherein, it has been held that validity of change of policy in violation of settlement, which according to the Hon'ble Supreme Court, cannot be done.

c) "1988 (2) CLR 677 (The Management of Agnigundala Lead Project, Hindustan Zinc Ltd. and others versus Hindustan Zinc Workers Union and another)". This case also deals with violation of settlement. In any case, this Court does not deal with this decision in depth for the proposed order to be passed.

17. Finally, Shri Vijay Shankar, learned counsel would draw reference to the Circular dated 17.08.1988, wherein, it is stated as under:

सत्यमेव जयते
CIRCULAR NO.21/88

Sub: Housing policy and the allotment of residential quarters at Kalpakkm.

As the staff members of the various Units stationed at Kalpakkm are aware, the Department of Atomic Energy have decided (vide O.M.No.3/10(16)/87-P dated 30.5.1988) that houses occupied by MAPS employees as on 1.5.1988 will be frozen for MAPS employees only. This decision of the Department will be implemented w.e.f. 1.5.88 in accordance with the consensus arrived at during discussions

among the various Associations/Unions.

As is known, priority lists are being prepared as on 1st January and as on 1st July of each year. In keeping with this policy and the above decision of the Department, two fresh priority lists for each category of accommodation will be prepared, one for MAPS (including HPU & ESL) employees and the other for all the other DAE employees stationed at Kalpakkam.

Priority lists for change of accommodation in respect of applications received upto 31.7.88 will also be prepared and published separately.

The quarters vacated by MAPS employees will be allotted only to MAPS employees based on the separate priority list maintained for the purpose, on the recommendations of the Chief Superintendent, MAPS. The rest of the houses at Kalpakkam will form a common pool and the same will be allotted by GSO as per the existing procedure.

In implementing the above, it will be ensured that gross disparities between the staff members of MAPS and staff members of other Units being allotted various categories of houses do not crop up.

In view of the bifurcation of quarters between MAPS and other Units, mutual exchange of accommodation or sharing of accommodation between MAPS employees and others will not be permitted.

Sd/- Estate Officer"

18. Therefore, the learned would emphasize that any policy is being implemented, it must ensure that the disparities do not crop up. Therefore, he would submit that only to remove disparity which had surfaced over a period of time, it was finally decided by the 2nd respondent to have a common pool.

19. Heard the rival submissions of the learned counsels appearing for the parties and perused the entire materials available on record.

20. No doubt that way back on 30.5.1988, an Office Memorandum was issued by freezing the houses for MAPS only and the said arrangement was in place for over 30 years and the employees of MAPS enjoyed exclusive privilege of being allotted quarters for themselves which are ear-marked for them excluding

other employees of other units of Kalpakkam. Nevertheless, the Department, after noticing certain disparities in such exclusive enjoyment by one set of employees alone while exclusion of similarly placed employees of other units, has decided to streamline the process of allotment of quarters by maintaining a common pool. Now whether the present action initiated by the 2nd respondent can stand the test of judicial scrutiny or not is the moot question.

21. In view of the above narrative, this Court is called upon to address the following crucial issues, viz.,

a) Whether the employees of MAPS are entitled to prior notice before the present change being brought in as per Section 9A of the Industrial Disputes Act? and

b) Whether it is open to the Department to bring in change when OM dated 30.5.1988 is still being operated and in force?

22. As far as the first issue is concerned, though the arguments advanced on behalf of the petitioners appears to be attractive with some force at a first blush, but yet when the issue is analyzed little more carefully and critically, it would emerge that change of service condition can be complained of only if the right to be allotted quarters as per the procedure is taken away. In this case, the employees of MAPS can continue to have quarters allotted to them, but what is sought to be removed is not the right to be allotted quarters, but the right of exclusivity. Therefore, by no stretch of legal standards, it can be construed that the condition of service sought to be violated by streamlining the procedure. In fact, such exclusivity enjoyed by the MAPS employees of over 30 years, cannot be termed as condition of service as that would offend Article 14 of the Constitution of India.

23. This is more so when the employees of other units of DAE are awaiting to be allotted quarters, such exclusive privilege conferred on MAPS employees at a particular point of time, cannot be continued by causing heart burn among the similarly placed set of employees. Therefore, in order to remove heart burn and disparity, the Department has initiated action by issuing letter dated 14.01.2019 by not taking away the right of the employees of MAPS of their allotment of quarters, but the Government only brought in parity in allotment of quarters among all the employees of various units functioning under DAE.

24. As rightly contended by the learned counsel, Shri Vijay Shankar that in view of the the exclusivity enjoyed by the employees of MAPS, several staff of their establishment, namely, MAPS could not get accommodation in type D and E quarters and other employees of other units who were counterparts of MAPS unit, could not be accommodated in type C quarters due to non-

availability at both ends. Such a situation would not advance the industrial peace as one set of employees are given exclusive privilege to the exclusion of other employees, which arrangement is directly in violation of Article 14 of the Constitution of India. Therefore, this Court is of the considered view that Section 9A of the Industrial Disputes Act is not required to be resorted to as there was no change in service condition of the employees of MAPS as there was only a streamlining of the procedure for grant of allotment of quarters of MAPS employees along with other employees of various other units of DAE. Moreover, when the Memorandum was issued in 1988, the situation prevailing at that time was taken into consideration and a concession was given to the employees of MAPS, such concession cannot be converted into inviolable right for all the years to come even in the change of circumstances after a passage of 30 years. Hands of the Department cannot be tied forever to streamline the procedure for allotment of quarters to its employees in view of certain concession extended to one set of employees at a particular point of time. After all the Department has to take care of all its employees uniformly and equally and cannot be seen to be providing concession only one set of employees to the exclusion of others.

25. The contention put forth on behalf of the petitioners that when OM dated 30.5.1988 was holding the field without cancelling the same, the change of policy cannot be brought in vide Letter dated 14.01.2019 is unacceptable for the reason that what was envisaged in 1988 providing concession to the employees of MAPS cannot remain the same for ever even after a passage of 30 years. In fact, as rightly contended by the learned counsel for the respondents that even in the Office Memorandum, dated 30.05.1988, the allotment of quarters is made only by GSO and the houses frozen for MAPS employees would also continue to be the property of the Government and maintained by GSO, while the employees of MAPS alone cannot have a better right to hold on to the property belonging to the Government in exclusion of other government servants. Their right to have allotment of quarters is determined equally along with the rights of the other employees of various other units of the 2nd respondent. Therefore, it cannot be gain said that the concession as provided in OM dated 30.05.1988 will remain for ever, notwithstanding the developments and increase in requirements over a period of 30 years. Even otherwise, as rightly relied upon the Circular dated 17.8.1988 by the learned counsel for MAPS, wherein, it has been specifically stated that the in implementing the policy, it must be ensured that gross disparities ought not to exist. Therefore, such concession granted under OM 30.5.1988 was circumscribed by a policy Circular issued as above.

26. In any event, when a common pool is sought to be maintained under the impugned orders, the employees of MAPS would also be the beneficiaries of such maintenance of common pool particularly when the learned standing counsel for the Government has submitted that there are 5976 houses are available for allotment. May be there is some force in the contention put forth on behalf of the respondents that because the employees of MAPS enjoyed special privilege of being granted higher type of accommodation than what they were actually eligible, they would not like to lose that special privilege when the common pool is created and the employees are treated as equals along with other employees of various units of the 2nd respondent. Such expectation of special privilege being conferred on MAPS employees, cannot be expected to continue for ever as such special privilege does not confer any inviolable right on the employees of MAPS for all the times to come. Even otherwise, this Court is of the view that the claim of exclusivity of few hundred of houses by MAPS employees, is without any justification in the teeth of demand for accommodation by other similarly placed employees from other units. This is particularly so when the GSO is the nodal agency for allotment of quarters to various units in Kalpakkam and other places including MAPS. Moreover, NCIL scheme can be exclusively made available only when no other units are available only. When other units are available as in the present case, there cannot be exclusive application of NCIL scheme. After all, the endeavor of the Government is only to ensure that there is parity of treatment in respect of its employees and that would alone satisfy the test of Article 14 of the Constitution of India. In this case, this is what the Government attempted to bring and this Court does not find any infirmity in the orders passed by the respondents.

27. Therefore, for the above said reasons, this Court finds that the impugned orders are passed with avowed object of streamlining the procedure by bringing all the employees of DAE at par and this Court does not see any infirmity in such parity being achieved by the Department.

28. For the above said reasons, this Court does not find any merit in the Writ Petition. Accordingly, the Writ Petition fails and it is dismissed as devoid of merits. The interim order of status quo granted on 02.04.2019 in WMP 9422 of 2019 is hereby vacated. Consequently, connected WMPs are closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Suk

To

1. The Secretary,
Department of Atomic Energy,
Anushakthi Bhavan,
CSM Marg,
Mumbai-400 001.

2. The Under Secretary (Services Unit Section),
Department of Atomic Energy,
Anushakthi Bhavan,
CMS Marg,
Mumbai-400 001.

3. The Director, GSO,
Department of Atomic Energy,
Kalpakkam-603 102.

4. Nuclear Power Corporation of India Ltd.,
rep. by its Director-HR,
6th Floor,
Vikram, Sarabhhai Bhavan,
Anushakthi Nagar,
Mumbai-400 094.

5. The Additional General Manager-HRP,
Nuclear Power Corporation of India Ltd.,
6th Floor,
Vikram, Sarabhhai Bhavan,
Anushakthi Nagar,
Mumbai-400 094.

6. The Station Director,
Madras Atomic Power Station,
Nuclear Power Corporation of India Ltd.,
Kalpakkam-603 102.

7. Administrative Officer-III/
Estate Officer,
Department of Atomic Energy,
General Services Organization,
Estate Management Section,
Kalpakkam-603 102.

8. Senior Manager (HR),
Madras Atomic Power Station,
Nuclear Power Corporation of India Ltd.,
Kalpakkam-603 102.

9.The Senior Manager(HR),
Madras Atomic Power Station,
Nuclear Power Corporation of India,
Chennai-603 102.

+1cc to Mr.K.S.Jayaganeshan, Advocate, S.R.No.56858
+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.56772
+1cc to Mr.V.Ajay Khose, Advocate, S.R.No.56652

W.P.No.8868 of 2019

BP (CO)

RRS (27/08/2019)



WEB COPY