IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2019

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The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.P.Nos.6796 to 6799 of 2017

C.Perumal .. Petitioner in W.P.Nos.6796 and 6797 of 2017

J.Sukumaran .. Petitioner in W.P.Nos.6798 and 6799 of 2017

Vs

1.The Union of India
rep. by the Secretary to Government,
Ministry of Finance, Department of Revenue, New Delhi - 110 001.

2.The Secretary,
Central Board of Excise and Customs,
New Delhi.

3.The Chief Commissioner of Central Excise, Chennai Zone,
No.26/1, Mahatma Gandhi Road,
Chennai - 34.

4.The Registrar,
The Central Administrative Tribunal,
Madras Bench,
City Civil Court Buildings,
Chennai - 104. .. Respondents in all W.Ps

W.P.Nos.6796 and 6798 of 2017: Petitions filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records ending with order dated 21.09.2016 in O.A.Nos.833 and 830 of 2013 passed by the fourth respondent and quash the same and direct the respondents 1 to 3 to revise the petitioners' pay by placing them in Pay Band 3 with effect from the date of petitioners' third promotion as Superintendent as per the Modified Assured Career Progression Scheme (MACPS) under Office Memorandum No.35034/3/2008-Estt.(D) dated 19.05.2009 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India and based on the recommendations of the 6th Central Pay Commission.

W.P.Nos.6797 and 6799 of 2017: Petitions filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records ending with order dated 21.09.2016 in O.A.Nos.832 and 831 of 2013 passed by the fourth respondent and quash the same and direct the respondents 1 to 3 to consider the petitioners for promotion to the post of Assistant Commissioner of Central Excise.

For Petitioner .. Mr.S.D.S.Philip in all W.Ps

For Respondents .. Mr.V.Sundareswaran
for R1 to R3 in all W.Ps
R4 - Tribunal in all W.Ps

COMMON ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

W.P.Nos.6796 and 6798 of 2017 have been filed seeking benefits under the Modified Assured Career Progression Scheme. W.P.Nos.6797 and 6799 of 2017 have been filed seeking promotion to the post of Assistant Commissioner of Central Excise. Admittedly, both the petitioners have reached the age of superannuation with effect from 30.06.2013.

2.The Original Applications filed seeking benefit under the Modified Assured Career Progression Scheme were dismissed on the ground that the Scheme has got no application to the past cases.

3.Other two Original Applications have been dismissed on the ground that the DPC was held between 17.10.2014 and 20.10.2014 to the post of Assistant Commissioner of Customs and Central Excise and the petitioners were not even in the zone of consideration.

4. Learned counsel appearing for the petitioners submits that the Scheme is actually proposed for the inclusion of the petitioners and some employees have been given higher salary by applying the Scheme. Reliance has been made on the Office Memorandum dated 04.10.2012. Insofar as other two writ petitions are concerned, it is submitted that rules of reservation have not been followed. Had the DPC been conducted earlier, the petitioners would have got the chance of being considered for promotion to the post of Assistant Commissioner.

5.Learned counsel appearing for respondents 1 to 3 submits that the Scheme is very clear. It does not have an application to the case of the petitioners. The petitioners were promoted three times in the meanwhile. The petitioners were not in the zone of consideration and they have already reached the age of superannuation. Therefore, no interference is required.

6.The object of the Scheme is to help such of those employees who do not have any chance of promotion. That is the reason why the upgradation has been made. Admittedly, the petitioners were promoted three times prior to the coming into force of the Scheme.

7.In such view of the matter, we do not find any error in the order of the Tribunal. The Scheme also reiterates the fact that merely because the person who was a junior at the earlier point of time was drawing higher salary by the inclusion of upgradation, the other seniors would not get the same especially when they were promoted three times within a period of thirty years.

8.In such view of the matter, we do not find any error in the order of the Tribunal. Accordingly, W.P.Nos.6796 and 6798 of 2017 are dismissed. However, the Tribunal has not considered the application of the Office Memorandum dated 04.10.2012. Therefore, notwithstanding the dismissal of the writ petitions and the orders passed by the Tribunal, the petitioners are at liberty to make a fresh request to the concerned respondent placing reliance upon the Office Memorandum. As and when such requests are made, the respondent concerned shall consider it within a period of eight weeks from the date of receipt of a copy of this order. We give this direction, taking note of the fact that the Office Memorandum was not even placed before the Tribunal by either of the parties.

9.W.P.Nos.6797 and 6799 of 2017 are also liable to be dismissed as there is nothing on record to show that the petitioners did come in the purview of consideration. At the time of DPC, the petitioners have reached the age of superannuation. They have also not approached the Court for appropriate relief during their service instead they filed cases three months prior to retirement. Not holding of DPC per se will not give a vested right to an employee. At best, the employee can ask for DPC and if such request is not considered, the remedy is before the Court. Unfortunately, the petitioners have approached the Court at an earlier point of time. They have been working as Superintendent from the year 2002 onwards and thereafter, by the order of the Court with effect from 1997 onwards. Though the said order was passed with retrospective effect from 1997 only in the year 2008, at least, thereafter they could have filed Original Applications before the Tribunal. In such view of the matter, we do not find any error in the order passed by the Tribunal warranting interference.

10.For the reasons stated above, all these writ petitions stand dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To
1.The Secretary to Government,
Ministry of Finance, Department of
Revenue, New Delhi - 110 001.

2.The Secretary,
Central Board of Excise and Customs,
New Delhi.

3.The Chief Commissioner of Central
Excise, Chennai Zone,
No.26/1, Mahatma Gandhi Road,
Chennai - 34.

4.The Registrar,
The Central Administrative Tribunal,
Madras Bench,
City Civil Court Buildings,
Chennai - 104.

+4 cc to M/s.S.D.S.Philip, Advocate Sr.No.2370 & 2371
+1 cc to M/s.V.Sundareswaran, Advocate Sr.No.2035

W.P.Nos.6796 to 6799 of 2017

CP(CO)
CSL/08.02.2019