

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.Nos.17054 and 34216 of 2013

and
MP Nos.1 and 1 of 2013

M.Philomin Raj
U.Venkatachalam

... Petitioner in W.P. No.17054 of 2013
Petitioner in W.P. No.34216 of 2013

Vs

1. Union of India rep. by
The General Manager,
Southern Railway,
Chennai - 3.

2. The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Chennai - 3.

3. The Financial Advisor
and Chief Accounts Officer,
Southern Railway,
Chennai - 3.

4. The Senior Divisional Security Commissioner,
Chennai Division,
Railway Protection Force,
Southern Railway,
Chennai - 3.

5. The Staff Officer,
O/o. The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,

Chennai - 3.

...Respondents in both petitions

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the second respondent to extend the already granted second financial upgradation to PB-II of Rs.9300-34,800 + Grade pay of Rs.4,200/- on completion of 20 years from the date of appointment as per MACP scheme and to extend all consequential financial benefits arising thereto.

For Petitioner in both petitions : Mr.L.Chandrakumar

For Respondents in both petitions: Mr.Vijay Anand

COMMON ORDER

As the issue involved in both these cases is one and the same, the Writ Petitions are taken up for disposal by a common order.

2. Petitioners herein have come up with the present Writ Petitions seeking a direction to the second respondent to extend the already granted second financial upgradation to PB-II of Rs.9300-34,800 + Grade pay of Rs.4,200/- on completion of 20 years of service from the date of appointment as per MACP scheme and to extend all consequential financial benefits arising thereto.

3. According to the Petitioners, they joined the cadre of Railway Protection in the year 1990 as 'Constables', carrying the scale of pay of Rs.825-1200, which was revised as Rs.3050-4590 on implementation of the recommendations of the 5th Pay Commission. Thereafter, they were subjected to Limited Departmental Competitive Examination (LDCE) in terms of Rule 72 r/w

Rules 70 and 71 except Rule 71(3) of the Railway Protection Force Rules, 1987 for being appointed as Assistant Sub-Inspector Protection Force with reference to the Recruitment Rule 49(1) of the Railway Protection Force Rules, 1987 and as a result of the selection proceedings, they were declared to have qualified for being appointed as Assistant Sub Inspector Protection Force carrying the scale of pay of Rs.4000-6000 vide Memo dated 07.11.2006.

4. Thereafter, Petitioners were upgraded to the Grade Pay of Rs.4,200/- vide order dated 28.12.2011 with the Pay band of Rs.9300-34,800/-. Further, the Railway Board vide PC-V/2009/ACP/2, dated 12.09.2012, stipulates that, on induction through LDCE/GDCE to a post for which the Recruitment Rules prescribe promotion through LDCE/GDCE, the services preceding such as promotional appointment should be reckoned as service for the purpose of grant of financial upgradation under MACP scheme and paragraph 9 in the Annexure and paragraph 2 of the MACP Scheme introduced vide Railway Board's Letter No.101/2009, pursuant to the implementation of the recommendation by the Sixth Central Pay Commission.

5. The 2nd Respondent, vide Letter dated 18.01.2013, issued directions to verify and regulate such grant of MACP to the Petitioners. While so, without issuing any order for revision and re-fixation of pay and without any notice to the Petitioners, the second MACP granted to the Petitioners, was withdrawn as reflected in the pay slip issued for November 2013, resulting in considerable reduction of their monthly emoluments.

6. Learned counsel for the Petitioners contended that, the act of the Respondents in reducing the pay of the Petitioners and re-fixing lower pay with reference to the intra-departmental communication between the 2nd and 3rd Respondents, without any notice to the Petitioners is in gross violation of the provisions of reasons enshrined in Article 311(2) of the Constitution of India. Hence, learned counsel pleaded that, a direction may be issued to the 2nd Respondent to extend the already granted second financial upgradation from the date of appointment of the Petitioners as per the MACP Scheme.

7. Learned counsel appearing for the Respondents fairly conceded that, till date no order is passed by the Respondents, in spite of counter Affidavit being filed by them.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. Admittedly, Petitioners herein joined the services of the Respondent as 'Constable' and were appointed as Assistant Sub-Inspector Protection Force after due process of selection through LDCE. Modified Assured Career Progression Scheme (MACP) envisages a total of three financial upgradations in the hierarchy of scales, if one is not promoted within subsequent 10/20/30 years. The Railway Board's Letter No.101 of 2009 categorically stipulates that, financial upgradation under the MACP Scheme will be admissible whenever a person stays in the same grade for over ten years continuously.

It is seen that, only on such recommendations, Petitioners herein were extended the benefit of financial upgradation with reference to their appointment as Assistant Sub-Inspector Protection Force.

10. On a perusal of the communication dated 18.01.2013 of the 2nd Respondent, it is seen that, there has been intra-Officers communication among the 2nd and 3rd Respondents as regards re-consideration of the grant of second MACP to the Petitioners. In such circumstances, Respondents ought to have issued an order to the Petitioners for revision and re-fixation of pay. Without doing so, the act of the 2nd Respondent in withdrawing the second MACP granted to them without any intimation is certainly *non est* in the eye of law.

11. Hence, this Court directs the 2nd Respondent to extend the already granted second financial upgradation to PB-II of Rs.9300-34,800 + Grade pay of Rs.4,200/- to the Petitioners herein from the date of their appointment as per MACP scheme and extend all consequential financial benefits, thereto.

These Writ Petitions are allowed with the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

30.11.2020

Index : Yes / No
Speaking Order : Yes / No

(aeb/vsi2)

To:

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Union of India

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Chennai - 3.

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M.DHANDAPANI, J.

vsi2



Common order in
W.P.Nos.17054 and 34216 of 2013

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