

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NOS.31, 32 and 33 OF 2015.

WRIT PETITION NO. 31 OF 2015

1) Shri Arvind N. Phadte
Junior Engineer,
Sub-Division I,
Works Division XVIII,
Public Works Department,
Ponda-Goa (Major Age)

....Petitioner.

VERSUS

1) THE PRINCIPAL CHIEF ENGINEER,
Government of Goa, Public Works
Department, having Office at Altinho,
Panaji,Goa.

2) STATE OF GOA, through its
Chief Secretary, having Office at
Secretariat, Porvorim, Bardez-Goa.

... Respondents

Mr. P. Sawant, Advocate for the petitioner.

Mr. M. Salkar, Govt. Advocate for the respondents.

WITH

WRIT PETITION NO. 32 OF 2015

1) SHRI PREMAKANT D. RANE,
son of Shri D. S. Rane, of major age,
Indian National, resident of F-S-6,
Agali Estate, Agali, Fatorda,

Margao-Goa-403 602.

2) SHRI DEEPAK R. METRI,
son of Shri R. K. Metri,
of major age, Indian National,
resident of D-10-E, Government
Quarters, Altinho, Panaji, Goa.

... Petitioners

VERSUS

1) THE PRINCIPAL CHIEF ENGINEER,
Government of Goa, Public Works
Department, having Office at Altinho,
Panaji,Goa.

2) STATE OF GOA, through its
Chief Secretary, having Office at
Secretariat, Porvorim, Bardez-Goa.

... Respondents

Mr. P. Sawant, Advocate for the petitioner.

Mr. M. Salkar, Govt. Advocate for the respondents.

WITH

WRIT PETITION NO. 33 OF 2015

1) SHRI SHRIPAD B. NAIK,
of major age, Indian National,
presently working as Junior Engineer,
Sub-Division III, Works Division
V (B-N), Public Works Department,
Mapusa, Bardez-Goa and resident of
H.No.-1274/4, Auchitwada, Tivim,

Bardez, Goa.

2) SHRI KRISHNANATH S. SALGAONKAR,
of major age, Indian National, present
working as Junior Engineer, resident of
H.No. 1468/107, Faj Housing Colony,
Madel, Thivim, Bardez, Goa.

... Petitioners

VERSUS

1) THE PRINCIPAL CHIEF ENGINEER,
Government of Goa, Public Works
Department, having Office at Altinho,
Panaji, Goa.

2) STATE OF GOA, through its
Chief Secretary, having Office at
Secretariat, Porvorim, Bardez-Goa.

... Respondents

Mr. P. Sawant, Advocate for the petitioner.

Mr. D Shirodkar, Addl. Govt. Advocate for the respondents.

**Coram:- *DIPANKAR DATTA, CJ., &
M. S. SONAK, J.***

Date:- 23rd March, 2021.

ORAL JUDGMENT (PER DIPANKAR DATTA, CJ.)

Having regard to the commonality of issues involved in these three writ petitions, the same shall stand disposed of by this common order.

2. W.P. No.31 of 2015 is at the instance of a petitioner, whereas W.P. Nos.32 and 33 of 2015 are at the instance of two petitioners each. All the five petitioners were appointed as Junior Engineer (Civil) in the Public Works Department, vide order dated 31.7.1984.

3. The petitioners were not promoted despite having discharged service as Junior Engineer for nearly 24 years. As such, they were granted benefits under the Assured Career Progression Scheme (hereinafter “the ACPS”, for short) twice, i.e., benefits of the 1st financial upgradation on completion of 12 years’ service and of the 2nd financial upgradation on completion of 24 years’ service. The latter benefits, at the end of 24 years, were granted to the petitioners on 1.9.2008.

4. By an Office Memorandum dated 19.5.2009, the Modified Assured Career Progression Scheme (hereinafter “the MACPS”, for short) was introduced w.e.f. 1.9.2008 in supersession of the previous ACPS by the Government of India, Ministry of Personnel, Public Grievances and Pensions for the Central Government Civilian Employees. Consequently, as on 1.9.2008, the ACPS ceased to operate having been superseded by the

MACPS, which contemplated three financial upgradations at intervals of 10, 20 and 30 years of continuous regular service. The Under Secretary to the Government of Goa, Department of Personnel by a circular dated 6.8.2009 forwarded a copy of Office Memorandum dated 19.5.2009 to all the Heads of Department/Offices and all Departments in the Secretariat for information and necessary action.

5. Nearly four years after the benefits under the ACPS were granted to the petitioners, it was in 2012 that the respondents detected erroneous conferment of the 2nd financial upgradation benefits of the ACPS in favour of the petitioners on 1.9.2008. As such, by an order dated 25.7.2012, it was conveyed to the petitioners that they were not entitled to the benefits of the 2nd financial upgradation under the ACPS but entitled to the benefits of the 2nd financial upgradation under the MACPS, leading to an order of withdrawal of benefits under the ACPS which were granted to them on 1.9.2008. This was followed by an order dated 27.8.2014 whereby the petitioners, except the first petitioner in W.P. No.32 of 2015, were granted the benefits of the 2nd financial upgradation under the MACPS.

6. Such grant of benefits of 2nd financial upgradation under the MACPS was less than the benefits that the petitioner received under the 2nd financial upgradation under the ACPS. Aggrieved thereby, the petitioners approached this Court challenging the orders dated 25.7.2012 and 27.8.2014, whereupon a coordinate Bench by its order dated 23.6.2015 issued Rule and expedited hearing. No interim order was passed but liberty was granted to the petitioners to apply for interim relief.

7. All these three writ petitions have now been placed before us for final disposal.

8. The contention urged by Mr. P. Sawant, learned Counsel for the petitioners is that withdrawal of benefits of the 2nd financial upgradation under the ACPS was effected without granting any opportunity of hearing. Further, introduction of the MACPS with retrospective effect from 1.9.2008 by circular dated 6.8.2009 is impermissible and improper and not binding on the petitioners, as held by a coordinate Bench of this Court in its decision dated 26.4.2017 in *Writ Petition No.668 of 2014 (Ashok Kashinath Naik and others Vs State of Goa and others)*.

9. It is, accordingly, prayed by Mr. Sawant that the respondents be directed to restore the benefits of the 2nd financial upgradation under the ACPS in favour of the petitioners and not to proceed for recovery of any sum allegedly paid in excess.

10. Mr. Shirodkar, learned Addl. Govt. Advocate for the respondents has not disputed that withdrawal of the 2nd financial upgradation under the ACPS was effected without granting opportunity of hearing to the petitioners. He has, however, disputed the contention of Mr. Sawant that the decision in ***Ashok Kashinath Naik*** (supra) is applicable in the present case. According to him, the petitioners there had been granted the benefits of the 2nd financial upgradation under the ACPS prior to 1.9.2008 and, thus, such decision would have no relevance here. He has placed reliance on the decision of the Supreme Court reported in ***(2020) 5 SCC 421 (Union of India and others Vs M. V. Mohanan Nair)*** in support of his contention that the respondents did not commit any irregularity, far less illegality, in withdrawing the benefits of the 2nd financial upgradation under the ACPS on the ground as indicated in the order dated 25.7.2012.

11. We have heard the learned counsel for the parties.

12. At the outset, we record that the decision in ***M. V Mohanan Nair*** (supra) dealt with issues which are totally dissimilar to the issue that we are required to decide; hence, reliance placed thereon by Mr. D. Shirodkar is not quite apt.

13. The decision in ***Ashok Kashinath Naik*** (supra) has been perused. The petitioners there were Upper Division Clerks and not Junior Engineers (Civil) like the petitioners. Nothing turns on the posts that the two set of petitioners hold. Also, from the factual narration of events, it does appear that such Upper Division Clerks and the Junior Engineers (Civil), who are before us, were given the financial benefits under the ACPS at/or about the same time. Indeed, the coordinate Bench, relying upon the decision dated 14.2.2017 of the Madras High Court in ***Writ Petition Nos.33946, 34602 and 27798 of 2014 (Union of India and others Vs. S. Ranjit Samuel and others)*** overruled the contentions of the learned Advocate General that as the MACPS came into force with retrospective effect from 1.9.2008, the petitioners would not be entitled to the benefits of the ACPS any further.

14. So far so good. However, we find from a decision of the Supreme Court reported in *(2018) 11 SCC 99 (Union of India vs. Balbir Singh Turn)* that the Court was required to decide whether the MACPS for armed forces personnel would be applicable from 1.1.2006 or 1.9.2008. The Court, for the reasons assigned in the decision, held that benefits under the MACPS would be available from 1.1.2006 and accordingly, dismissed the appeal. It is interesting to note the following two observations made in paragraph 2 of the decision:

“The 6th Central Pay Commission was set up by the Government of India to make recommendations in matters relating to emoluments, allowances and conditions of service amongst other things”;

“On 30.8.2008, the Central Government resolved by a resolution of that date to accept the recommendation of the 6th Central Pay Commission.”

15. We are inclined to believe that Office Memorandum dated 19.5.2009 on the subject of the MACPS for the Central Government Civilian Employees was issued consequent thereto, and the Government of Goa

circulated such office memorandum by circular dated 6.8.2009 for necessary action thereafter.

16. This aspect of the matter, i.e., the resolution of the Government of India dated 30.8.3008 accepting the recommendation of the 6th Central Pay Commission does not appear to have been brought to the notice of the coordinate Bench that decided ***Ashok Kashinath Naik*** (supra). The date of reckoning of applicability of the MACPS assumes relevance, having regard to the fact that once a decision is taken by the Government it takes some time for notifying such decision. Therefore, on facts and in the circumstances, a question would obviously arise as to whether the MACPS is being sought to be given retrospective effect for depriving a class of Government employees. We are not inclined, rather disabled, to answer this question for lack of relevant pleadings and particulars. At this stage, we also do not wish to either agree or disagree with the conclusions recorded by the coordinate Bench in ***Ashok Kashinath Naik*** (supra) in the absence of the necessary data before us. It would, therefore, be open to the petitioners to persuade the respondents to hold in their favour upon placing all materials

relevant and material in this regard once they are called for hearing in terms of this order, for the reason that follows.

17. That withdrawal of the benefits of the 2nd financial upgradation under the ACPS granted with effect from 1.9.2008 by the order dated 25.7.2012 was effected without granting opportunity of hearing to the petitioners not being disputed, there has indeed been an infirmity in the decision making process. This has resulted in reduction in the pay scale of the petitioners as well as terminal benefits in respect of a couple of them who have since retired, amounting to civil consequences. Having regard to the decision of the Supreme Court reported in *AIR 1994 SC 2480 (Bhagwan Shukla Vs Union of India and others)*, the pay ought not to have been reduced without granting opportunity of hearing. It is only on this short ground that we are inclined to interfere by suspending the order dated 25.7.2012 and the consequential order dated 27.8.2014, and order such suspension till the time as indicated hereafter. The Principal Chief Engineer of the Public Works Department is directed to hear the petitioners and pass an appropriate reasoned decision on their claims. If the order dated 25.7.2012

is sought to be maintained, reasons shall be recorded in support thereof upon considering the contentions of the petitioners. If the Principal Chief Engineer accepts the contentions of the petitioners, he shall revoke the order dated 25.7.2012 and also the order dated 27.8.2014, and pass a fresh order. All contentions are expressly kept open, subject to observations as made above.

18. The writ petitions are disposed of accordingly. There shall be no order as to costs.

19. Proceedings, if any, initiated to recover any sum from any or all the petitioners shall not be given any further effect for a period of three weeks until the decision of the Principal Chief Engineer, in terms of this order, is communicated to the petitioners. Needless to observe, receipt of benefits by the petitioners under the MACPS shall be subject to and abide by the decision of the Principal Chief Engineer.

M. S. SONAK, J.

CHIEF JUSTICE

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