

IN THE HIGH COURT OF JUDICATURE AT MADRAS

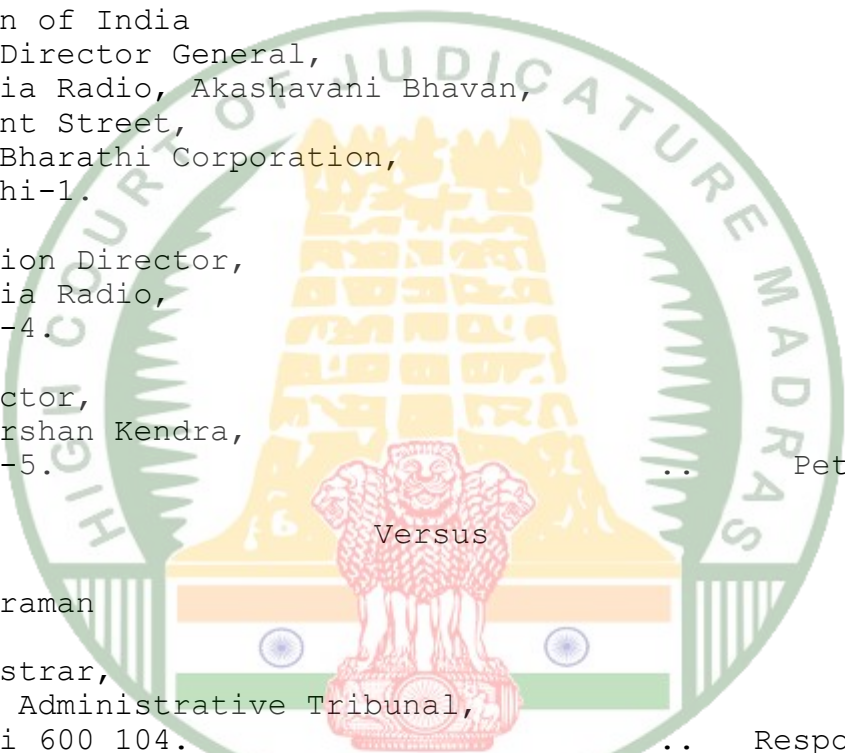
DATED 23.03.2021

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No.7408 of 2021
and W.M.P.No.7923 of 2021

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- 1.The Union of India
rep.by Director General,
All India Radio, Akashvani Bhavan,
Parliament Street,
Prasar Bharathi Corporation,
New Delhi-1.
- 2.The Station Director,
All India Radio,
Chennai-4.
- 3.The Director,
Doordharshan Kendra,
Chennai-5. ... Petitioners
- Versus
- 1.E.S.Jayaraman
- 2.The Registrar,
Central Administrative Tribunal,
Chennani 600 104. .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order dated 03.03.2020 in R.A.No.17 of 2018 and the order dated 26.09.2016 in O.A.No.439 of 2014 passed by the 2nd respondent and quash the same as illegal and contrary to the various judgment passed by the Hon'ble Apex Court.

For Petitioner : Mr.V.Chandrasekaran

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]
The official respondents in O.A.No.439/2014 are the petitioners. The 1st respondent / original applicant filed the

said Original Application, praying for quashment of the proceedings of the 1st petitioner dated 22.03.2010 as well as 02.01.2014, with a consequential direction to direct the petitioners herein to restore his pay in Pay Band 2 of Rs.9,300 to 34,800 with Grade pay of Rs.4,200, with effect from 19.10.2008 with all consequential relief and attendant benefits.

2. The said Original Application was entertained and after contest, the Tribunal found that the similar issue has already been dealt with in O.A.No.1170 of 2012 batch etc., and taking note of the same, directed the petitioners herein to place the case of the respondent / original applicant before the Scrutiny Committee for consideration for grant of 2nd financial upgradation under ACP Scheme, on completion of 24 years of service, provided the applicant had completed this period prior to the issue of DOPT's Office Memorandum dated 19.05.2009, by which MACP Scheme came to be introduced and if based on such consideration by the Committee, it is ordered to grant the said benefits, the benefit of financial upgradation under MACP Scheme, if extended would have to be withdrawn and the said exercise was directed to be completed within a stipulated time. The official respondents, aggrieved by the disposal of the Original Application with the said directions, came forward to file this Writ petition, by making a challenge to the said order.

3. The learned counsel appearing for the petitioners / official respondents in the Original Application would submit that in the light of the fact that the Department has introduced new MACP scheme, which has come into place with effect from 01.09.2008, the existing scheme of ACP cannot be implemented in case of the original applicant / 1st respondent and if it is implemented, it will mean concurrent running of both schemes. It is the further submission that in the light of the clarification issued in paragraph no.11 of the MACP scheme, no past cases would be reopened and further clarification have also been issued by the Department of Personnel and Training in respect of very many doubts raised by different departments in implementing MACP scheme and therefore prays for interference.

4. This Court has carefully considered the rival submissions and also perused the materials placed before it.

5. Similar issue has arose for consideration before the Division Bench of this Court and the said matter has been dealt with in the common order dated 14.02.2017, made in W.P.No.33946, 34602 and 23798 of 2014 (Union of India represented by Engineer-in-Chief, MES, New Delhi 110 011 and 6 others vs. S.Ranjith Samuel and others). The Division Bench has taken note of the submissions and found that the right to get second financial upgradation under the erstwhile ACP scheme got

crystalised and such right cannot sought to be negated by bringing in a new scheme with retrospective effect, especially in the light of the fact that the purpose and spirit of the Career Progression Scheme is only for the benefit of employees and ultimately the Division Bench had concluded that till the introduction of MACP scheme, vide Office Memorandum dated 19.05.2019, the benefit which accrued to the employees under the erstwhile ACP scheme ought to have been made available. The Division Bench also taken note of the fact that the Tribunal had allowed very many similar applications and in the absence of any contra materials, a different view cannot be taken and therefore, ultimately dismissed the Writ Petition, filed by the official respondents, challenging the orders passed in O.A.No.1170 of 2012 etc batch,

6. In the considered opinion of this Court, the above cited common order dated 14.02.2017 made in W.P.No.33946 of 2014, and etc., batch would aptly apply to the facts of the present case also. A perusal of the materials would disclose among other things that the 1st respondent / original applicant is entitled for grant of second ACP scheme, on completion of 24 years of service and he was granted such an upgradation with effect from 19.10.2008 and placed in Pay Band 2 of Rs.9,200-Rs.34,800 with Grade Pay of Rs.4,200 and however, vide order dated 22.03.2010, the 2nd petitioner had cancelled the grant of second ACP to the 1st respondent and instead, was granted second MACP with effect from 01.09.2008 in the Pay Band of Rs.5,200-Rs.20,200 with Grade Pay of Rs.2,800 and as a consequence his pay has been revised and reduced and however no recoveries were made.

7. The Tribunal has taken note of the orders on similar issue and rightly reached the conclusion to dispose of the application with a positive direction. The similar kind of orders were put to challenge before this Court in W.P.No.33946 of 2014 batch etc., and the Division Bench of this Court, on a thorough consideration of the materials placed and arguments advanced, has reached the conclusion to dismiss the Writ Petition.

8. It is also brought to the knowledge of this Court that no further challenge has been made to the said common order. This Court is of the considered view that in the light of the said settled legal position, there is no error or infirmity in the impugned order passed by the Tribunal and finds no merits in this Writ Petition.

9. In the result, the Writ Petition is dismissed, confirming the order dated 26.09.2016, passed in O.A.No.439/2014 and this Court directs the Writ Petitioners / official respondents in O.A.No.439 of 2014, to comply with the order dated 26.09.2016,

as confirmed, vide order passed in this Writ Petition, within a period of 12 weeks from the date of receipt of a copy of this order / uploading of the order in the Website and communicate the decision taken to the 1st respondent / original applicant. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
The Registrar,
Central Administrative Tribunal,
Chennai 600 104.

+1 CC to Mr.v.Chandrasekaran, Advocate Sr No.18866

W.P.No.7408 of 2021

PCH(CO)
RG.20.04.2021



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