

67 24.2.2022
Sc

W.P.A. 21892 OF 2016

(Via Video Conference)

Jitendra Prasad Mali

Vs.

Union of India & Ors.

Ms. Pampa Dey (Dhabal)
Mr. Krishna Deo Das.

.... For the Petitioner

Mr. Pramod Drolia
Mr. Santosh Pandey.

.... For the Respondents

The writ petition pertains to sanction of benefits under Assured Career Progression Scheme (ACPS)/Modified Assured Career Progression Scheme (MACPS) in favour of the petitioner who was appointed on substantive basis as Water Carrier on 15th July, 1985 and subsequently he was promoted to the post of Constable being a Group – C post on 8th April, 1992.

Ms. Pampa Dey (Dhabal), learned advocate representing the petitioner submits that under the ACP Scheme 12 years' benefits were conferred upon the petitioner on 8th April, 2004 and subsequently on introduction of MACP Scheme, 20 years' benefits were accorded to the petitioner in the year 2012. Now time has come when the petitioner is entitled to receive benefits for completing 30 years continuous service under the said MACP Scheme.

The petitioner has submitted counting of service period needs to be made with effect from 15th July, 1985 instead of 8th April, 1992 since the petitioner was appointed on substantive basis to the post of Water Carrier being an approved post on 15th July, 1985. Therefore, the concerned respondent authorities are required to calculate the period of service rendered by the petitioner with effect from 15th July, 1985 instead of 8th April, 1992 which has not been done in the case of the petitioner as a result whereof the respondent authorities had decided to grant 30 years' service benefits under the MACP Scheme in 2022 but according to the calculation of the petitioner he is entitled to receive the benefits of 30 years with effect from July, 2015.

It has also been submitted on behalf of the petitioner that the benefits for completion of 12 years' service under the ACP Scheme and 20 years' benefits under MACP Scheme need to be revised taking into account the initial date of appointment of the petitioner on 15th July, 1985.

Per contra, Mr. Drolia, learned advocate appears on behalf of CISF authorities being the principal respondents and has drawn attention of this Court to one Memo dated 30th September, 2004 which is at page 33 of the affidavit-in-opposition wherefrom it appears that the petitioner's name was entered against serial no. 4 and it also appears that the petitioner was appointed initially on 15th July,

1985 and thereafter promoted to the post of Constable on 8th April, 1992. It has been strenuously argued on behalf of the respondent authorities that in terms of Clause 9 of MACP Scheme, the petitioner is entitled to receive benefits on reckoning his service not from 15th July, 1985 but from 8th April, 1992 and has also defended the decision of the respondent authorities communicated to the petitioner vide order dated 28th January, 2016. According to Mr. Drolia, since the petitioner was promoted to the post of Constable from the post of Water Carrier, his period of service needs to be counted on and from 8th April, 1992 not from 1985.

This Court has heard learned advocates representing the parties and also considered the relevant documents available on record wherefrom it appears that Clause 9 under Annexure – I of the MACP Scheme issued vide Memorandum dated 19th May, 2009 is relevant provision in counting the period of service rendered by the employee for sanctioning benefits under MACP Scheme. In fact, said Clause 9 has been reproduced by the respondent authority in its letter dated 28th January, 2016 by which the claim of the petitioner was spurned. This Court finds it is apposite to quote Clause 9 below :

‘Regular service’ for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment

training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.”

On perusal of said Clause 9 it appears that for extending the benefits under MACP Scheme, the counting of period of service is required to be made from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis.

In the present case, it is indisputable that the petitioner was appointed on substantive basis against a sanctioned vacancy on 15th July, 1985 as Water Carrier and subsequently on 8th April, 1992 he was promoted to the post of Constable. Therefore, according to the assessment of this Court, keeping in view of the provisions as contained in Clause 9 Annexure - I of the MACP Scheme as well as nature of appointment of the petitioner on 15th July, 1985 in the post of Water Carrier while sanctioning benefits in terms of ACP Scheme/MACP Scheme, the period of service rendered by the petitioner ought to be counted with effect from 15th July, 1985 instead of 8th April, 1992. The fact of promoting the petitioner from the post of Water Carrier to Constable on

8th April, 1992 does not obliterate the service rendered by the petitioner on substantive basis with effect from 15th July, 1985 in the post of Water Carrier.

In the above conspectus, this Court finds it apposite to direct the concerned respondent authorities to sanction and release benefits under ACP Scheme/MACP Scheme to the petitioner on reckoning service of the petitioner with effect from 15th July, 1985. The decision of the respondent authority as contained in Memo dated 28th January, 2016, at page 17, Annexure – P4 to the writ petition stands set aside.

The respondent authorities are directed to release the benefits in favour of the petitioner upon calculating the tenure of service in terms of the aforesaid direction within a period of twelve weeks from the date of communication of this order.

With the above direction the writ petition stands disposed of

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be furnished expeditiously on usual undertaking.

(Saugata Bhattacharyya, J.)