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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.03.2022

Pronounced on : 18.03.2022

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.4971 to 4975 and 20488 of 2018
and
C.M.P. Nos.6123, 6125, 6127, 6129, 6131 and 24072 of 2018

1. Union of India
Rep. by the Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai-600 002.
2. The Postmaster General,
Western Region (TN), Coimbatore-641 002.
3. Superintendent of Post Offices,
Namakkal Division,
Namakkal-637 001.

...Petitioners in all WPs

Vs.

1. C.Ramasamy ...Respondent in WP.No.4971 of 2018
S.Mani ...Respondent in WP.No.4972 of 2018
K.M.Boopathy ...Respondent in WP.No.4973 of 2018
R.Nagarathinam ...Respondent in WP.No.4974 of 2018
M.Subbarayan ...Respondent in WP.No.4975 of 2018
V.Chinnusamy ...Respondent in WP.No.24088 of 2018
2. The Registrar,
Central Administrative Tribunal,
High Court Complex, Chennai-104.

... Respondent No.2 in all WPs



Prayer in W.P.No.4971 of 2018: Writ Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari, calling for the records dated 18.08.2016 and made in O.A.No.620 of 2014 on the file of the 2nd respondent and quash

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Prayer in WP No.4972 of 2018: Writ Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari, to call for the records dated 18.08.2016 and made in O.A. No.624/2014 on the file of the 2nd respondent and quash the same in so far it is against the petitioners

Prayer in WP No.4973 of 2018: Writ Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari, to call for the records dated 18.08.2016 and made in O.A. No.623/2014 on the file of the 2nd respondent and quash the same in so far it is against the petitioners

Prayer in WP No.4974 of 2018: Writ Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari, to call for the records dated 18.08.2016 and made in O.A. No.621/2014 on the file of the 2nd respondent and quash the same in so far it is against the petitioners

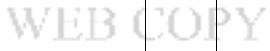
Prayer in WP No.4975 of 2018: Writ Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari, to call for the records dated 18.08.2016 and made in O.A. No.622/2014 on the file of the 2nd respondent and quash the same in so far it is against the petitioners

Prayer in WP No.20488 of 2018: Writ Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari, to call for the records dated 12.09.2016 and made in O.A.No. 310/00574/ 2014 on the file of the Central Administrative Tribunal, Chennai Bench and quash the same in so far it is against the petitioners

For Petitioners : Mr.V.Balasubramanian
SPC

For Respondent 1 : Mr.R.Malaichamy

For Respondent 2 : Tribunal



S. No.	W.P.No.	Name of the applicant	Date of entering into service	Upgradation in TBOP scheme	BCR	Promotion to LSG	Retirement from service
1	4971 of 2018	C.Ramasamy	08.12.1973	13.12.1989	01.01.2000	Declined during 2007	30.09.2014
2	4972 of 2018	S. Mani	23.11.1973	23.11.1989	01.01.1995	Declined during 2007	30.06.2011
3	4973 of 2018	K.M. Boopathy	31.10.1974	18.12.1989	01.10.1974	Declined during 2007	31.02.2015
4	4974 of 2018	R. Nagarathinam	08.12.1973	11.12.1989	01.01.2000	Declined during 2007	31.10.2013
5	4975 of 2018	M.Subbarayan	21.09.1975	22.09.1991	01.01.2002	Declined during 2008	31.03.2015
6	20488 of 2018	V.Chinnusamy	22.04.1974	25.04.1990	01.07.2000	Declined during 2007	31.05.2010

B. Case of the Petitioners:

a. The petitioners have challenged the order of the Tribunal primarily on the ground that Para 25 of Annexure-I to the letter of the Department of Posts, dated 18.09.2009 provided that, if a regular promotion was offered but refused by the employee, then no financial upgradation shall be allowed inasmuch as the employee cannot be stated to have stagnated due to lack of opportunities.

b. That the restriction/ embargo contained in Para 25 of MACPS is a policy decision of the Government with regard to the effect of refusal to accept promotion under the said scheme. That any relaxation of the conditions contained in MACPS is impermissible.



c. That under the MACPS, the benefit is calculated by taking into account the past services rendered by the officials right from the date of their appointment, even though, the same is prior to commencement of the MACPS i.e., 18.09.2009. Thus, when the previous service is taken into account to reckon the period of continuous service of 10/20/30 years to determine benefit under MACPS, as a logical corollary, if the respondents declined to accept the promotion, though, prior to introduction of MACPS the same ought to be taken into account to determine the validity of their claim of benefit under MACPS.

C. Case of the Respondents:

The petitioners submitted that the order of the Tribunal is in consonance with the object and spirit of MACPS, which is beneficial in nature. That the submission of the petitioners to deny the benefit under MACPS on the basis of acts anterior to the very introduction of MACPS is unsustainable and needs to be rejected. That MACPS and the conditions therein is prospective.

D. Analysis:

Before proceeding to examine the legality/ correctness or otherwise of the order of the Tribunal, it may be relevant to refer to certain portions of the communication/order dated 16.04.2008 and 23.07.2008 of the Post Master General notifying the list of officials who declined promotion to LSG cadre, the names of the respondents figure in the said list. The above orders state that the said officials will not be eligible for promotion to LSG cadre on regular basis or in local arrangement for a period of one year. The relevant portions of the order are extracted hereunder:

Order dated 16.04.2008:

"In accordance with orders of Chief PMG, Tamil Nadu Circle, Chennai-600 002 vide memo. no.STA/5-21/2007 dated 10/04/2008, the following officials who have declined their promotion to LSG cadre will not be eligible for promotion to LSG cadre on regular basis or in local arrangement for a period of one year with effect from the date noted against each."

Order dated 23.07.2008:

"In accordance with orders of Chief PMG, Tamil Nadu Circle, Chennai-600 002 vide memo.no.STA/5-21/2008 dated 18.07.2000, the following officials who have declined their promotion to LSG cadre will not be eligible for promotion to LSG cadre on regular basis or in local arrangement for a period one year or till the arise of next vacancy in the cadre whichever is later. Their declinations are accepted by the Competent Authority with immediate effect."



On a reading of the orders dated 16.04.2008 and 23.07.2008, it appears to us that the consequence for refusing to accept promotion is provided in those orders viz., a bar from being promoted for a year or until vacancy arises whichever is later. We are referring to those orders only to show that the executive was conscious of the fact that there may be cases of refusal to accept promotion and thus provided for the consequence for such refusal. Importantly, the refusal of promotion in all these cases were notified by the above orders, thus the consequence ought to be in terms of what is provided therein.

Having said that, it is necessary to refer to Para 25 of MACPS dated 18.09.2009, which provides that if a regular promotion offered is refused, then no financial upgradation shall be allowed. The sheet anchor and thrust of the case of the petitioners is the first part of the said Para 25 of MACPS, which reads as under:

"25. If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been due to lack of opportunities. If however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second and the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal."
(emphasis supplied)

There is no doubt that Para 25 of MACPS does provide for the consequence of refusal of promotion viz., denial of financial upgradation until promotion is accepted and it proceeds to state that the subsequent upgradation shall also stand postponed. However, the Tribunal on examining the question had proceeded to allow the Original Application holding that the respondents were entitled to the third MACPS benefits primarily on the premise that MACPS itself came into effect only from 01.09.2008 i.e., after the respondents declined the LSG promotion and thus the fact that the respondents have declined promotion prior to introduction of MACPS cannot be a bar to claim the benefit under the said scheme.

Against the above background, the common question that arises for consideration in these batch of writ petitions is as to whether the fact that the respondents have declined LSG promotion prior to the introduction of MACPS, which came into



operation with effect from 01.09.2008 would attract the bar/ embargo/ restrictions imposed under the said scheme, in particular, under Para 25 of Annexure-I to the letter of the Department of Posts (Establishment Division) No.4-7/(MACPS)/ 2009-PCC dated 18.09.2009.

It may be relevant to note the following undisputed facts:

i) Admittedly, in all these cases, the respondents have completed 30 years of service.

ii) Secondly, the refusal of LSG promotion was prior to 01.09.2008 i.e., date of implementation of MACPS.

iii) The consequence for the refusal to accept the promotion in terms of the orders dated 16.04.2008 and 02.05.2008 would only debar promotion for a year, which period has admittedly expired in all these cases.

iv) Admittedly, at the time when LSG promotion was offered, the respondents were drawing higher pay, whereas, the pay scale for LSG promotion post was lesser than the pay that was being drawn by the respondents at that point of time.

We agree with the conclusion of the Tribunal for the following reasons:

Before we set-out the reasons, we intend to make it clear that we are conscious of the fact that an instrument, be it legislative or executive will not be held to be retrospective, merely because it draws upon past events for its future operation. However, we do not intend to examine whether MACPS is retrospective in operation, though, retrospectivity may possibly be beyond the scope of the executive power in drafting a scheme in the nature of MACPS. However, as we find that there are other reasons which are fatal to the argument that the restriction in Para 25 of MACPS would apply even to refusal of promotion prior to the introduction of MACPS, we do not propose to examine the said question.

a. The above offer of promotion in the present case may not satisfy the requirements for promotion in Service Law Jurisprudence, for a post with a lower pay cannot be normally considered as promotion, thus, the consequence to follow an act of refusal of promotion may not get attracted to the present case either under the orders dated 16.04.2008 and 23.07.2008 or in terms of Para 25 of MACPS. In this regard, it may be useful to refer to the decision of the Hon'ble Supreme Court in the case of Tarsem Singh vs. State of Punjab¹, it is held, in Para 9, at page 432:

¹ (1994) 2 LLN 430



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"...Promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher position, grade or honour. Opting to come to a lower pay-scale or to a lower post cannot be considered a promotion, it is rather a demotion. ..."

Thus, normally a promotion is understood to cover advancement to a higher pay scale, admittedly, in the instant case, the LSG promotion offered to the respondents carried a lower pay scale. It appears doubtful that a refusal in the peculiar circumstances can be stated to be an opportunity against stagnation to attract the restriction under Para 25 of MACPS. There may be exceptions where a promotion can be to a higher post but not pay, we do not think that "promotion" in Para 25 of MACPS dated 18.09.2009 was meant to cover promotions of that nature, but it appears to us that it intended to cover promotion in the normal sense i.e., carrying a higher scale of pay.

b. The expression "has been" employed in Para 25 of MACPS dated 18.09.2009 is possibly capable of two meanings viz., one which would cover the act of refusal anterior to the introduction of MACPS, the other is to treat as covering refusal of promotion after introduction of MACPS. The above expression viz., "has been" has come up for consideration before the Hon'ble Supreme Court in the following judgments:

i) Secretary, Regional Transport Authority v. D.P. Sharma²:

"15. The High Court seems to think that if any special permit had not been granted to a public service vehicle when the Act came into force, such a vehicle will not come within the meaning of the definition of "contract carriage" under Section 3(g). This view of the High Court is not correct. In clauses (i) and (ii) of Section 3(g), the expression "has been issued" occurs. It is submitted by the learned Advocate General of Karnataka that in view of the expression "has been issued", clauses (i) and (ii) contemplate the issuance of a special permit or a temporary permit after the coming into force of the Act. It does not include the issuance of a special permit or a temporary permit earlier than the date of the commencement of the Act. The learned Advocate General has placed reliance on an English decision In re Athlumney Ex parte Wilson [(1898) 2 QB 547 : 79 LT 303]. In that case, the words "where a debt has been proved under the Principal Act" came to be construed and it was observed: "But this form of words is often

2 (1989)Supp 1 SCC 407



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used to refer, not to a past time which preceded the enactment, but to a time which is made past by anticipation—a time which will have become a past time only when the event occurs on which the statute is to operate."In our opinion, whether the expression "has been"occurring in a provision of a statute denotes transaction prior to the enactment of the statute in question or a transaction after the coming into force of the statute will depend upon the intention of the legislature to be gathered from the provision in which the said expression occurs or from the other provisions of the statute.

16. In the instant case, the words "has been"contemplate the issuance of a special permit or a temporary permit as referred to in clauses (i) and (n) of Section 3(g) of the Act after the enactment of the Act which is clear from the exclusion clause (ii) of Section 3(g) which excludes a stage carriage from the definition of "contract carriage", if special permits issued under Section 62(1) or Section 63(6) of the Motor Vehicles Act were in force on 30-1-1976. It is difficult to interpret clauses (i) and (ii) of Section 3(g) as contemplating the issuance of a temporary permit or a special permit, as referred to therein before the coming into force of the Act. Merely because of the use of the words "has been"in clauses (i) and (ii) of Section 3(g), such an interpretation is not possible to be made, particularly in view of the legislative intent apparent from the exclusion clause (ii), namely, that the legislature only excluded a stage carriage in respect of which a temporary contract carriage or a special permit issued under Section 62(1) or 63(6) of the Motor Vehicles Act was in force on 30-1-1976. "

(emphasis supplied)

ii) Deepak Aggarwal v. Keshav Kaushik³ :

"102. As regards construction of the expression, "if he has been for not less than seven years an advocate"in Article 233(2) of the Constitution, we think Mr Prashant Bhushan was right in his submission that this expression means seven years as an advocate immediately preceding the application and not seven years any time in the past. This is clear by use of "has been". The present perfect continuous tense is used for a position which began at sometime in the past and is still continuing. Therefore, one of the essential requirements articulated by the above

3 (2013)5 SCC 277



expression in Article 233(2) is that such person must with requisite period be continuing as an advocate on the date of application ."

(emphasis supplied)

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A reading of the above judgments would show that the expression "has been" is capable of being understood to cover events after the operation of the statute and that it is a present perfect continuous tense and thus looks to a present event. Thus, by employing the expression "has been" in Para 25 of MACPS, the executive only intended to cover acts of refusal of promotion after the introduction of MACPS.

c. A reading of Para 25 of MACPS dated 18.09.2009 as a whole, would also suggest that it intended to cover only acts of refusal of promotion post introduction of MACPS, for while providing the consequence for refusal it not only provides that refusal would result in denial until promotion is accepted but also, provides that the second and third upgradation would be deferred. Thus, the refusal is intended to cast its shadow on all three upgradations which again appears to be indicative of the fact that Para 25 of MACPS was only intended to cover refusal of promotion post introduction of MACPS.

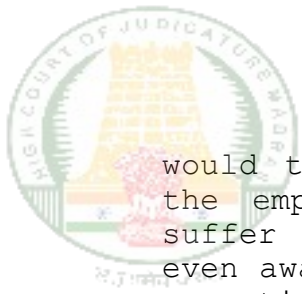
d. The act of refusal of promotion occurred prior to introduction of MACPS and the consequence was provided in the orders dated 16.04.2008 and 23.07.2008. Thus, to construe the above act as attracting the restriction under Para 25 of MACPS dated 18.09.2009 would result in the act of refusal of promotion resulting in two adverse consequences (double jeopardy), one under the earlier orders dated 16.04.2008 and 23.07.2008 and the other under Para 25 of MACPS dated 18.09.2009, which we think is inequitable, if not obnoxious.

e. MACPS being a beneficial scheme and a construction that would result in hardship must be eschewed. MACPS is in the nature of incentive scheme, by which, employees unable to avail of adequate promotional opportunities gets some relief from stagnation in the form of financial benefits⁴. MACPS is intended to ensure that the employees are adequately incentivised to work efficiently despite not getting promotion⁵. The offers of promotion were financially detrimental to the respondents and therefore they had not opted to avail the promotion offered prior to introduction of MACPS.

The construction that the consequences provided under MACPS for refusal to accept promotion even prior to its introduction

⁴ *Union of India vs. M.V.Mohanan Nair*, (2020) 5 SCC 421

⁵ *Punjab State Power Corporation ltd., vs. Bal Krishan Sharma*



would take away and defeat the very object of MACPS. More so, the employee who has been stagnated would now also have to suffer the consequence for his act of refusal which he was not even aware of at the time of occurrence of the act of refusal of promotion. In other words, it amounts to changing the rules of the game, after the game is played, inasmuch as the respondents had already suffered the consequence for refusal of promotion in terms of orders dated 16.04.2008 and 23.07.2008, causes serious hardship and produces results that is inequitable and unfair, which is impermissible. (Shishir Realty Private Limited reported in (2021) SCC Online SC 1141)

It is trite law that if the language used is capable of bearing more than one construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute/ order/ scheme purports to regulate has to be rejected and preference should be given to that construction which avoids such results. It may be relevant to refer to the following judgments of the Hon'ble Supreme Court:

"The court will interpret a statute, as far as possible, agreeable to justice and reason and that in case of two or more interpretations, one which is more reasonable and just will be adopted, for there is always a presumption against the law-maker intending injustice and unreason.⁶"

"Court to lean in favour of such interpretation which conforms to justice and fair play and prevents potentiality to injustice.⁷"

"That meaning which produces an unreasonable result is to be rejected in favour of that which does not.⁸"

"When there is a choice of meanings, there is a presumption that one which produces an unjust or inconvenient result was not intended.⁹"

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the

6 *Madhav Rao Jinvajirao vs. Union of India*, (1971)1 SCC 85

7 *Union of India vs. B.S. Agarwal*, (1977)8 SCC 89

8 *Debenhams Plc. vs. Westminster City Council*, (1986)3 WLR 1063

9 *Paradise Printers vs. Union Territory of Chandigarh*, (1988)1 SCC 440



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enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."¹⁰

G. Conclusion:

The MACPS having been brought into force from 01.09.2008, the consequence for a refusal which is provided therein can get attracted only in respect of refusal to promotion made after the implementation of the MACPS and not prior thereto.

For all the above reasons, we see no reason to interfere with the order of the Tribunal. The writ petitions stand dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To :

1. The Registrar,
Central Administrative Tribunal,
High Court Complex,
Chennai-104.
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Union of India,
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Anna Salai,
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4. The Superintendent of Post Offices,
Namakkal Division,
Namakkal-637 001.

¹⁰ Tirath Singh vs. Bachittar Singh, AIR 1959 SC 422



+6cc to Mr.R.Malaichamy, Advocate, S.R.No.18422
+7cc to Mr.V.Balasubramanian, Advocate, S.R.No.18354

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