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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2022
PRONOUNCED ON : 28.04.2022

CORAM

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

W.P. NO.22370 OF 2018
AND W.M.P.NO.26202 OF 2018

1. Union of India,
Rep. by the Chief Postmaster General,
Tamil Nadu Circle, Anna Salai,
Chennai-600 002.
2. The Post master General,
Chennai City Region,
Chennai-600 002.
3. Senior Superintendent of Post Offices,
Chennai City South Division,
Chennai-600 017.

...Petitioner

Vs.

1. K.Palanivelu
2. Registrar,
Central Administrative Tribunal, Chennai.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records dated 04.04.2017 and made in O.A.No.20 of 2013 on the file of the 2nd respondent and quash the same, in so far it is against the petitioner.

For Petitioners : M/s.V.Balasubramanian

For Respondents : M/s.R.Malaichamy



O R D E R

S.VAIDYANATHAN, J.
and
MOHAMMED SHAFFIQ, J.

This writ petition is filed challenging the order of the Central Administrative Tribunal (hereinafter referred to as "the Tribunal"), Madras Bench, in O.A.No.20 of 2013 dated 04.04.2017 insofar it has directed the petitioners herein to grant the Modified Assured Career Progression (hereinafter referred to as "MACP" or "MACPS") benefits to the applicant as if the petitioner had not declined promotion and consequentially revise and re-fix the pay in pensionary benefit and pay the arrears flowing out of such re-fixation of the Respondent herein.

2. Schemes framed by Government from time to time:

The Government introduced various incentive schemes from time to time, intended to relieve stagnation in service. The present batch of writ petitions are concerned with the scope of one such scheme viz, MACPS. Prior to the introduction of MACPS, other financial upgradation schemes prevailed viz., Time Bound One Promotion (TBOP) and Biennial Cadre Review (BCR). Thereafter, the government introduced Assured Career Progression Scheme. The ACP scheme was modified by MACPS pursuant to the 6th Pay Commission recommendations and was made effective from 01.09.2008. In terms of the MACPS approved by the government, the Central government employees will be given first financial upgradation after completion of 10 years of service, the second financial upgradation after completion of 20 years of service and the third financial upgradation after 30 years of service.

3. Brief facts:

a. The 1st Respondent was originally recruited as Extra-Department Agent (E.D.A) now known as Gramin Dak Sevak (GDS) and appointed at Thiruvannamiyur P.O. in the year 1981.

b. Thereafter, the 1st Respondent was promoted to the post of Post Man Cadre through competitive examination in the year 1988.

c. The 1st Respondent was transferred to Thiruvannamiyur, S.O. in the year 1989. The 1st Respondent appeared in a Special LGO examination held on 11.12.2005 in Tamil Nadu Circle and was declared as qualified and given promotion as Postal Assistant (P.A.) cadre and underwent training at PTC, Madurai after successful completion of the training was posted at Alagarkoil S.O., Madurai Division.

d. The 1st Respondent, however had to decline the said



Postal Assistant (P.A.) promotion in the year 2000 itself in view of family circumstances. The request of the 1st Respondent was considered and he was posted as Post Man, Thiruvannamiyur, S.O. In other words, the 1st Respondent had not worked in P.A. cadre even for a single day and retired from service as a Post Man on attaining superannuation on 31.05.2011 after putting in nearly 22 years of service.

e. On completion of 16 years of service in Post Man cadre, the 1st Respondent was given financial upgradation under the original TBOP with effect from 30.11.2004. The above was counted towards 1st MACP.

f. The 1st Respondent was denied the benefit of MACP on the premise that in terms of Para 25 of MACP guidelines, he had not stagnated due to lack of opportunities but was in view of the refusal by the 1st Respondent to the offer of promotion. Thus, in terms of Para 25 of MACP, the 1st Respondent stood disentitled to financial upgradation/ benefit under MACP.

g. The 1st Respondent had submitted several representations to the petitioners herein requesting grant of 1st and 2nd MACP. However, there was no proper reply.

h. In the meanwhile, the 1st Respondent retired from service on 31.05.2011 and submitted a representation on 09.01.2012 i.e., subsequent to his retirement, there was no response to that representation either.

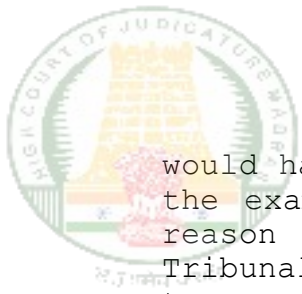
i. The 1st Respondent thus approached the Tribunal praying for a direction to the petitioners herein to grant 1st and 2nd MACP benefits to the Respondent and to pay the arrears of difference of pay and allowances to him and revise and re-fix the pensionary benefits and to pay the difference of arrears of pension and connected terminal benefits to the 1st Respondent.

4. Order of the Tribunal:

a. The Tribunal held that Para 25 of MACP dated 18.09.2009 would get attracted only to a regular promotion. However, in the present case, the 1st Respondent had appeared in the Special LGO Examination held on 11.02.2005 and on being selected in the year 2006 and after completing training, the 1st Respondent had declined the offer of promotion in the year 2006, itself for personal reasons.

b. Admittedly, the 1st Respondent has not worked as Postal Assistant even for a single day in the cadre. Thus, the applicant/ 1st Respondent having been selected to the post of Postal Assistant by appearing in the LGO examination, the petitioners may not be right in denying the 1st Respondent grant of benefit under MACP.

To support the above conclusion, the Tribunal/ 2nd Respondent reasoned that if the 1st Respondent had not participated in the examination or failed in the examination, he



would have been granted MACP, the fact that he was successful in the examination, and refused such promotion may not be a valid reason to deny MACP. After recording the above reasons, the Tribunal/ 2nd Respondent was pleased to direct the petitioners to grant the MACP benefits to the 1st Respondent as if he had not declined promotion and revise and re-fix the pay and pensionary benefits and to pay the difference of pay and arrears flowing out of such revision and re-fixation to the 1st Respondent within a period of eight weeks from the date of receipt of the order.

5. Case of the Petitioners:

Aggrieved by the said order of the Tribunal/ 2nd Respondent, the petitioners herein have challenged the same inter alia on the following ground viz.,

a. That, as per Para 25 of MACP guidelines communicated vide Postal Directorate's letter No.4-7/MACPs/2009-PCC dated 18.09.2009, if a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation is allowed, as such an employee has not been stagnated due to lack of opportunities. Though this was explained in the reply, the Tribunal/ 2nd Respondent failed to consider this.

b. That the Tribunal/ 2nd Respondent failed to consider the submission of the Respondents in reply that as per clarification in DOPT in letter No.4-7(MACPS)/2009-PCC (Pt II) dated 14.08.2012 ACP/MACP Schemes are being operated as safety net to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues and any relaxation in the matter may not therefore be possible in deviation of the provisions of the Scheme. The Tribunal/ 2nd Respondent has not taken into account the instructions issued to the Chief Post Master General in letter No.STA/40-3/MACP/Rlgs/2009 dated 07.09.2012 that the clarification whereby it was clarified that "any relaxation in the matter may not be possible in deviation of the provisions of the scheme" as above applies irrespective of the date of declination of promotion being prior to 01.09.2008 or later.

6. Case of the Respondents:

MACPS being a beneficial scheme, 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 benefits. MACPS is intended to ensure that the employees are adequately incentivised to work efficiently despite not getting promotion.



Two questions arise for consideration:

a. Whether the promotion pursuant to the 1st Respondent having appeared in the Special LGO examination would qualify as "regular promotion" for Para 25 of the MACP to get attracted.

b. Whether the limitation/ restriction contained in Para 25 of MACP would get attracted to acts of denial/ refusal of promotion even prior to the introduction of the scheme.

The Second question came up for consideration on an earlier occasion before this Court in W.P.Nos.4971 to 4975 and 20488 of 2018 wherein it was held as under:

"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. Sharma reported in (1989) Supp 1 SCC 407:

"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 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



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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 Kaushik reported in (2013) 5 SCC 277 :

"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 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)

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



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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. "

7. It is thus clear that acts of refusal of promotion prior to introduction of MACP would not attract the restriction under Para 25 of MACPS. Admittedly, the refusal of the promotion was prior to MACPS and thus the same would not attract the limitation in Para 25 of MACPS.

8. In the light of the above view that we have taken, it may not be necessary to examine the 1st question and the same is left open.

9. In the result, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mka

To:

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2. Senior Superintendent of Post Offices,
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3. Registrar,
Central Administrative Tribunal,
Chennai.

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+2ccs to M/s.V.Balasubramanian, Advocate, S.R.No.29353
+1cc to M/s.R.Malaichamy, Advocate, S.R.No.29843

W.P.No.22370 of 2018
and
W.M.P.No.26202 of 2018

JPII (CO)
PM/27/05/2022