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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 12.10.2022

\+ W.P.(C) 5106/2016

S.K. SARASWAT & ORS ….. Petitioners

versus

CHIEF SECRETARY, GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI & ORS …..Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Vinay Garg, Senior Advocate with Mr. Ankur Chhibber, Mr. K.S.Rekhi, Mr. Parv Garg, Mr. Pawas Kulshrestha and Mr. Nikunj Arora, Advocates.

For the Respondent: Mr. Satyakam, ASC for R-1 & 2.
Ms. Bharthi Raju, Senior Panel Counsel for R-3 & 4 (through VC)

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners are aggrieved by order dated 27.02.2015 of the Central Administrative Tribunal to the limited extent that the Tribunal has directed that the petitioners be granted first financial upgradation under the Modified Assured Career Progression Scheme (MACPS) from the date of their entitlement, however, they would draw salary in the new grade pay from the date of the order of the Tribunal i.e. 27.02.2015.

2. Petitioners are also aggrieved by the order dated 06.05.2016 of the Tribunal whereby the review application filed by the petitioners has been dismissed holding that there is no rule or law that would make it obligatory on the Tribunal to grant the upgraded pay scale with retrospective effect along with arrears and interest thereon.

3. Learned senior counsel appearing for the petitioners submits that since the MACP scheme is in the nature of an incentive scheme, petitioners would be entitled to the benefits from the date they become eligible or the date as notified by the Government for the implementation of the scheme, whichever is later.

4. Per contra Mr. Satyakam, learned standing counsel appearing for the respondent submits that there was a doubt as to whether the petitioners would be covered under the scheme or not and the department was bonafidely pursuing the issue with the competent authority.

5. He submits that the subject order dated 27.02.2015 was also challenged by the respondents by way of a writ petition being W.P(C) 9266/2015. Said writ petition was dismissed by a coordinate bench of this Court on 09.05.2016. He submits that a further challenge was raised before the Supreme Court by way of a Special Leave Petition being SLP (Civil) No.6860/2017 which has been dismissed on 03.08.2022.

6. Learned counsel fairly states that the challenge of the department impugning the order dated 27.02.2015 to the extent held the petitioners as eligible under the MACP Scheme was unsuccessful upto the Supreme Court and accordingly the department has decided to implement the order.

7. Learned counsel further submits that since the respondents had impugned the order dated 27.02.2015 and the order has been upheld upto the Supreme Court, the order of the Tribunal merges with the order of the coordinate bench of this Court and the Supreme Court and consequently the finding that the petitioners are not entitled to the arrears and interest thereon for the period 01.09.2008 (i.e. the date on which the Government has made the scheme effective) till the date of the order dated 27.02.2015, has also attained finality.

8. Learned senior counsel appearing for the petitioners submits that the petitioners had not impugned the said order earlier and the challenge of the respondents was to the entitlement of the petitioners and the question as to whether the same would be payable from 01.09.2008 or a later date was never an issue in those proceedings nor was it ever urged by the respondents that it is payable from a later date.

9. In so far as the entitlement of the petitioners is concerned to the benefits under the MACP Scheme, since the challenge of the respondents has been negated upto the Supreme Court, there is no

doubt on the same. Petitioners are covered under the MACP Scheme.

10. Further we may note that by order dated 22.03.2012 the respondents had held that petitioners are not entitled to the benefits of the MACP Scheme w.e.f 01.09.2008 or from due dates with arrears under the MACP Scheme. Said decision was taken, not in respect of a date of application of the scheme, but with regard to the very entitlement of the petitioners. It was this order which was challenged by the petitioners in the original application before the Tribunal wherein the Tribunal held that petitioners were covered under the scheme.

11. It was never the case of the respondents that the scheme is applicable from a later date. In fact the respondents, for other eligible employees, have made the scheme applicable from 01.09.2008. The only dispute was with regard to the entitlement of the petitioners and not with regard to the date of implementation of the scheme.

12. The entitlement of the petitioners having been upheld upto the Supreme Court, respondents cannot refuse to implement the scheme w.e.f the date notified by the respondents themselves.

13. Tribunal in its order dated 27.02.2015 has not given any reason as to why the Tribunal has made the scheme applicable only w.e.f the date of the order and not from the date notified by the Government itself.

14. Reference may be had to the judgment of the Supreme Court in *Union of India vs. Ex HC/GD Virender Singh, 2022 SCC online SC 1058* as also the judgment of the Supreme Court in *Union of India vs. S.Ranjit Samuel, 2022 SCC online SC 368* wherein the subject MACP scheme was also under consideration and the Supreme Court has noticed that the scheme has been introduced w.e.f 01.09.2008.

15. In all cases where the employees were eligible, the scheme has been made applicable from 01.09.2008. There is no rationale placed on behalf of the respondents to justify as to why a different date be taken for the petitioners for implementation of the MACP Scheme.

16. No such basis is also apparent from the impugned order which in a passing reference merely states that the petitioners would draw salary in the new grade pay from the date of the order without arrears.

17. Since the Tribunal has not given any rationale or justification for postponing the date of the implementation of the scheme, particularly when it was never the case of the respondents that the scheme should be implemented from a later date, the impugned order cannot be sustained to that limited extent.

18. The contention of learned counsel for the respondents that since respondents had impugned the same order and order has been upheld upto the Supreme Court and as such the petition is not maintainable, is also not sustainable for the reason that the petitioners had filed a

review application before the Tribunal on 29.05.2015 by which time the order had not yet been upheld by the coordinate bench of the High Court. The review petition filed by the petitioners was disposed of on 06.05.2016 and the decision on the petition filed by the respondents impugning the subject order was rendered by the Coordinate bench of this Court on 09.05.2016.

19. First of all, petitioners in the other petition, which was filed by the respondents, were merely arrayed as respondents and secondly petitioners had already filed a review application before the Tribunal prior to the order being passed by a coordinate bench of this Court confirming the earlier order. Since the petitioners had not assailed the order, filing of a writ petition by the respondents, would not preclude the petitioners from challenging the finding or observation of the Tribunal which is adverse to them. Merely because the respondents chose to challenge the subject order would not foreclose the right of the petitioners to impugn the subject order to the extent that the same is prejudicial to the petitioners.

20. Further, in view of the fact that the respondents themselves have implemented the MACP Scheme w.e.f 01.09.2008 (vide order dated 13.08.2012) and the consistent view of the Supreme Court is also that the said scheme is applicable w.e.f 01.09.2008, we are of the view that the impugned order dated 27.02.2015 to the limited extent that it holds that the petitioners would draw salary in the new grade pay from the date of the said order without arrears is not sustainable.

21. Accordingly, the same is set aside. It is directed that the petitioners would be entitled to draw salary in the new grade pay from the date of the implementation of the scheme or their respective entitlement whichever is later, along with arrears and interest as admissible in law.

22. The exercise of computation and disbursal of arrears be completed within a period of eight weeks from today.

23. Petition is allowed in the above terms.

SANJEEV SACHDEVA, J.

TUSHAR RAO GEDELA, J.

OCTOBER 12, 2022/rk