



W.P.Nos.11097 to 11106 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 14.09.2023

Orders Pronounced on : 01.11.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.11097 to 11106 of 2015

and

M.P.Nos. 1 to 1 of 2015

W.P.No.11097 of 2015

M.Annamalai

... Petitioner

Vs

1. The Chairman-cum-Managing Director,
Nuclear Power Corporation of India Ltd.,
(A Government of India Enterprise)
Nabhikiya Urja Bhavan,
Anusakhthi Nagar,
Mumbai – 400094.
2. The Station Director,
Madras Atomic Power Station,
Nuclear Power Corporation of India Ltd.,
(A Government of India Enterprise)
Kalpakkam, Kanchipuram District,
Tamil Nadu – 603102.



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3. The Manager (HR),
Madras Atomic Power Station,
Nuclear Power Corporation of India Ltd.,
(A Government of India Enterprise),
Kalpakkam, Kanchipuram District,
Tamil Nadu – 603102.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the record of the third respondent order No.NPCIL/MAPS/HRM/10(49)/2012 dated 17th March 2012, so far granting ACP from the date of 26.09.1983 instead of date of initial appointment and quash the same and consequently to direct the second respondent to extend the benefit of Assured Career Progression Scheme (ACP) and Modified Assured Career Progression Scheme (MACP) to the petitioner from the date of appointment.

For Petitioner
in all W.Ps : Mr.S.T.Varadarajulu

For Respondents
in all W.Ps : Mr.V.Vijay Shankar,
Standing Counsel



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COMMON ORDER

These Writ Petitions have been filed challenging the order of the third respondent dated 17.03.2012, granting Assured Career Progression Scheme (hereinafter referred to as 'the ACP Scheme' for short) from the date of 26.09.1983, instead of their initial appointment.

2. There are about 2000 employees employed by the Atomic Power Station at Kalpakkam. The Power Station produces electrical energy and it is a factory as defined under Section 2(m) of the Factories Act, 1948 (hereinafter referred to as 'the Act' for short). Therefore, the respondents established a canteen under Section 46 of the Act to supply food and eatables to its employees. The canteen is managed by a Managing Committee as envisaged by Rule 70 of the Tamil Nadu Factories Rules, 1970. The second respondent is the Chairman of the Managing Committee and he nominates members to its Committee from the names recommended by the recognized union. The petitioners are employed as Bearer, Water Boy, Counter Clerk, Asst.Halwai respectively in the canteen on various dates and



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thereafter, they were re-deployed to various sections and their designation also changed as Tradesman/C, Technician/B, Tradesman/D and Attendant-B, however, without changing their scale of pay.

3. The respondents had introduced up-gradation scheme by notification dated 15.06.1999 and accordingly, the petitioners were given up-gradation as Junior Canteen Assistant “B”. The Ministry of Personnel, Public Grievances and Pensions, vide letter dated 09.08.1999, recommended for the ACP Scheme to the Central Government employees. In General Services Organisation, one of the units of the Department of Atomic Energy implemented the ACP Scheme, by an order dated 10.10.2000 to their employees. Though the Senior Manager, by its letter dated 26.11.2004, recommended for up-gradation under the ACP Scheme to the petitioners, the respondents did not grant any up-gradation and they were not considered under the ACP Scheme. Therefore, the petitioners approached this Court by way of Writ Petitions in W.P. Nos. 3343 and 1735 of 2007 and 20433 of 2009. This Court disposed of those Writ Petitions by order dated 06.01.2012, thereby directed to decide their fixation as extended to others.



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Thereafter, the ACP Scheme was granted to the petitioners and however, their entire services were not taken into account while implementing the ACP Scheme. For non-compliance of the said direction, the petitioners filed contempt petition and the same was closed with liberty to challenge the order passed by the respondents, thereby determining the eligibility under the ACP Scheme and the service rendered by the canteen employees will be reckoned from 26.09.1983 or the actual date of appointment in regular pay scale, whichever is later. Therefore, it is under challenge in these Writ Petitions.

4. The learned counsel for the petitioners would submit that the impugned order was for employees of Non-Statutory Canteen, whereas the petitioners had worked in Statutory Canteen. In fact, the services of the canteen employees were concluded based on the judgement of the Hon'ble Supreme Court of India. Therefore, the respondents cannot rely the order dated 25.07.2000 to deny the benefits from the date of initial regular employment. The petitioners had put in nearly 39 years of continuous service and their juniors were given financial up-gradation under the ACP



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Scheme on completion of 12 years of service with effect from initial appointment. Accordingly, the petitioners are entitled for 2 ACP pay scales from their initial date of appointment. In fact, the Ministry of Personnel & Public Grievances and Pension, by its letter dated 19.05.2009, recommended for Modifying ACP (MACP) to the Central Government Employees. Accordingly, every 10 years, one up-gradation is offered and as such, the petitioners are entitled for 2 ACP pay scales.

5. In support of his contentions, the learned counsel for the petitioner relied upon the judgement of the Hon'ble Supreme Court of India in CDJ 1988 SC 170 (***Kanpur Suraksha Karamchari Union (Regd.) -vs- Union of India***), in which the Hon'ble Supreme Court of India held that it therefore, is difficult to hold that the employees working in such canteens were not employees of the factories in which the canteen had been established. If they are employees of the factories in which the canteen had been established, the service rendered by them in these factories should be counted as part of the qualifying service for pension. Hence, the plea of the Union Government that the service rendered by the workers in canteens



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established under Section 46 of the Act on and after 22.10.1980 alone can be included in the qualifying service for pension, cannot be accepted. The period prior to 22.10.1980 also should be counted for purposes of pension.

6. On a perusal of the counter-affidavits, it reveals that the Madras Atomic Power Project (MAPP) formed a canteen initially during the year 1972 as a welfare measure to cater food for its employees. The canteen was registered as a Co-operative Society, viz., 'The Madras Atomic Power Project Employees Co-operative Canteen Ltd.,' on 16.03.1973 under the Tami Nadu Co-operative Societies Act, 1983. The said project was re-named as Nuclear Power Board (NPB) and subsequently, it was converted into a wholly owned Government Company, viz., Nuclear Power Corporation of India Limited (NPCIL), a Public Sector Undertaking under the Department of Atomic Energy. The employees working in the canteen made request for their regularization. Thereafter, their services were regularized on condition that the employees, who are in the rolls of respective canteens will only be eligible for regularization with effect from 05.06.1991, subject to the condition that the employees are medically found fit and their character,



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antecedent and special verification report should be verified. The petitioners were appointed by the respondents in the canteen prior to Nuclear Power Corporation of India Ltd. The terms and conditions of their services were issued by letter dated 01.07.1995, thereby, they were appointed as Bearer (Canteen) with effect from 05.06.1991. As a policy measure, the respondents notified an up-gradation scheme for Group-C Canteen employees, vide Circular dated 04.04.2000 and order dated 26.09.2002. Accordingly, the petitioners were up-graded to the next higher post. They were given the post of Technician-B and Trades Man-B. Thereafter, some of the petitioners were promoted to the post of Technician- C with effect from 01.07.2011 and again they were promoted to the post of Technician – D and Trades Man -D with effect from 01.07.2015 and they were promoted to the post of Technician – F and Trades Man -F with effect from 01.07.2018. Thereafter, the petitioners retired from service.

7. The ACP Scheme was introduced by the Government of India, Ministry of Personnel, Department of Public Grievances & Pensions, vide Office Memorandum dated 09.08.1999, for the benefit of Central



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Government Civilian Employees, who were stagnating due to lack of adequate promotional avenues. It was approved by the Board of Directors for its implementation for the respondents from 09.08.1999 and the same was notified, vide letter dated 10.04.2001. The ACP Scheme is to provide promotion opportunities to those who do not get any promotion during first years/24years of their service. Further, it provides that if other schemes for financial up-gradation are already operational, the same may be continued to be followed and the ACP Scheme need not be applicable. After grant of 2nd financial up-gradation under the ACP Scheme and MACP Scheme by the order impugned in these Writ Petitions dated 17.03.2012, they were promoted on regular basis to the next higher grade in their promotional hierarchy after redeployment and re-designation as Technician/B Trades Man-B. Further, in the year 2006, the respondents decided to run the canteen by engaging a contractor and to re-deploy the existing canteen employees to other sections by re-designating them.

8. In compliance of the same, the canteen is being run through a contractor and its employees have been re-designated and re-deployed to



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different sections by order dated 13.11.2008. They are now governed by the respective promotion scheme applicable to their posts. The petitioners were the employees of the respondents, which is a public sector enterprise under the Department of Atomic Energy and enjoyed the benefits of up-gradation scheme of the respondents from 1999. They enjoyed better service conditions and benefits like Performance Linked Incentive Scheme (PLIS), Site location allowance, canteen subsidy, cable TV reimbursement, newspaper reimbursement etc. Now, they are claiming benefits available to canteen employees working in Government Departments relating to promotion under the ACP Scheme.

9. Heard both sides and perused the materials placed on record.

10. Admittedly, the Madras Atomic Power Project Employees Co-operative Canteen Limited was registered under the Tamil Nadu Co-operative Societies Act, 1983 on 16.03.1973 with its own by-laws and service conditions and it was a non-statutory canteen. Based on the judgement of the Hon'ble Supreme Court of India in W.P. © Nos.6189-7044



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of 1983 and 8246-55 of 1983 (*C.K.Jha -vs- Union of India and V.N.Sharma -vs- Union of India*), the Government of India decided to regularize the services including pensionary benefits of canteen employees all over India. It is relevant to the employees of the Non-Statutory Departmental Canteens/Co-operative Canteens/Tiffin Rooms, which has been made applicable to the petitioners and the benefits have been granted accordingly including the pension, after considering their services rendered in the canteen with effect from their initial appointments. Therefore, the judgement cited by the learned counsel for the petitioners relating to pensionary benefits, as such, is not applicable to the case on hand.

11. A section of the Canteen employees had filed Writ Petitions before the Hon'ble Supreme Court of India seeking parity with the Central Government employees in W.P (C) Nos.6189-7044 of 1983, in which the Hon'ble Supreme Court India, by order dated 26.09.1983 observed that the employees of the Non-Statutory Departmental canteens/Co-operative canteens located in the Central Government Offices are being at the same rate and on par with the Central Government employees of the equal status.



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Consequent upon the said judgement of the Hon'ble Supreme Court of India, it has been decided that the employees of the Non-Statutory Departmental/Co-operative canteens/tiffin rooms located in the Central Government Offices should be treated as Government Servants with effect from 01.10.1991. The employees of these canteens may, therefore, be extended all benefits as are available to other Central Government employees of comparable status from 01.10.1991, except GPF, Pension and Group Insurance Scheme. Accordingly, the petitioners were granted benefits including pension after considering the service rendered in Madras Atomic Power Project Canteen with effect from 26.09.1983, vide order dated 08.04.2013. Hence, the date of service reckonable for all purposes in case of canteen employees, have been fixed as 26.09.1983 and thereafter, by order dated 25.07.2000 relating to the ACP Scheme. As per their respective services including the Government service, they have been considered and granted the ACP Scheme as per the guidelines.

12. In the above context, it is relevant to extract Section 46 of the Factories Act, 1948, which reads as follows:-



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“46. Canteens.—*(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.*

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the date by which such canteen shall be provided;

(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) the foodstuffs to be served therein and the charges which may be made therefor;

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;

(dd) the items of expenditure in the running of



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the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;

(e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).”

13. The learned counsel for the respondents relied upon the judgement of the Hon'ble Supreme Court of India in (2014) 9 SCC 407 (**Balwant Rai Saluja -vs- Air India limited**), in which the Hon'ble Supreme Court of India held that the Factories Act,1948 is a social legislation and it provides for the health, safety, welfare, working hours, leave and other benefits for workers employed in factories and it also provides for the improvement of working conditions within the factory premises. Section 46 of the Factories Act,1948 statutorily places an obligation on the occupier of a factory to provide and maintain a canteen in the factory, where more than two hundred and fifty workers are employed. There is nothing in the said provision which provides for the mode in which the factory must set up a



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canteen. It appears to be left to the discretion of the factory concerned to either discharge the said obligation of setting up a canteen either by way of direct involvement or through a contractor or any other third party. Further, the Hon'ble Supreme Court of India held that the workmen of a statutory canteen would be the workmen of the principal establishment for the purpose of the Act only and not for all other purposes. The statutory obligation created under Section 46 of the Act, although establishes certain liability of the principal employer towards the workers employed in the given canteen facility, this must be restricted only to the Act and it does not govern the rights of employees with reference to appointment, seniority, promotion, dismissal, disciplinary actions, retirement benefits, etc., which are the subject-matter of various other legislations, policies, etc.

14. As far as the petitioners are concerned, even assuming that their canteen is under the purview of statutory canteen, it does not govern the rights of the petitioners such as the benefits sought for in these Writ Petitions. That apart, after getting placed under higher grade under one scheme, the petitioners cannot claim benefits on another scheme. Therefore,



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they are not entitled to the relief sought for in these Writ Petitions and the Writ Petitions are devoid of merits.

15. In the result, these Writ Petitions are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No
Neutral Citation: Yes/No
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G.K.ILANTHIRAIYAN, J.

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Order in
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