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W.P.Nos. 12213 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P. DHANABAL**

W.P.No. 12213 of 2016

K. Cathavarayane

..Petitioner

Vs

1. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai-600104.

2.Union of India
rep by The Chief Postmaster General
Tamilnadu Circle, Chennai-600002.

3.Postmaster General,
Chennai City Region,
Chennai-600002.

4.The Senior Superintendent of Post Offices,
Pondicherry Division,
Pondicherry-605001.

..Respondents

Prayer : Writ petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorari, calling for the records relating to the order passed by the 1st respondent in O.A.No. 1098 of 2011 and O.A.No. 1466 of 2011, dated 26.08.2014 and direct the respondents 2 to 4 to grant the petitioner MACP-III benefits under MACP scheme introduced by GOI in



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DOPT O.M No. 35034/3/2008-Estt (D) dated 19.05.2009 w.e.f 01.09.2008 along with arrears of pay and allowances and all other consequential benefits.

For Petitioners : Mr.M.S. Velusamy

For Respondents : Mr.V.Balasubramanian, Senior Panel
Counsel – R2 to R4
R1- Tribunal

ORDER

(Order of the Court was made by D.KRISHNAKUMAR, J.)

Challenging the order passed by the tribunal in 1st respondent in O.A.No. 1098 of 2011 and O.A.No. 1466 of 2011, dated 26.08.2014, the present writ petition has been filed.

2. The learned counsel for the petitioner has submitted that the petitioner was regularly appointed as Postal Assistant on 07.02.1973, subsequently, he was regularly promoted to LSG in the 'General Line' on notional basis by Memo No. STA/5-21/2007 dated 20.07.2007 issued by the 2nd respondent in the pre-revised pay scale of Rs. 4500-125-7200 even before the implementation of Sixth CPC and long before the implementation of MACPs. But due to compelling personal reasons, the petitioner declined



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the promotion to LSG cadre . Subsequently, the petitioner was promoted to the cadre of LSG (General Line) on notional basis w.e. 17.05.2010 and retired on superannuation on 28.02.2014.

3. The learned counsel for the petitioner has further submitted that the petitioner declined the promotion to LSG in the 2007, but the MACP scheme was introduced on 19.05.20019 and there was no second offer of promotion after the mandatory period of embargo of one year i.e between 16.08.2008 and 01.09.2008 when the MACP Scheme was implemented with retrospective effect and the petitioner has completed 30 years of regular service as on 01.09.2008. Therefore, the petitioner is eligible for grant of benefits under MACP -III w.e.f 01.09.2008. The tribunal without considering the above facts, dismissed the application filed by the petitioner, hence the same is liable to be set aside.

4. During the course of arguments the learned counsel for the petitioner has brought to the notice of this Court the order of the Division Bench of this Court in W.P.No. 22370 of 2018, dated 28.04.2022, wherein the Division Bench by relying upon the earlier decision of this Court has held that the refusal of the promotion by an employee can get attracted only



in respect of refusal to promotion made after the implementation of the MACPS and not prior thereto. The relevant paragraphs of the said judgment is extracted below:

“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 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)



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(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 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."

5. On facts, the petitioner herein was regularly appointed as Postal Assistant on 07.02.1973 and declined the promotion to LSG in the year 2007. The petitioner has also completed 30 years of regular service on on 01.09.2008, therefore, the petitioner is eligible for grant of benefits under MACP -III w.e.f 01.09.2008. The said decision of the Division Bench of this Court relied by the learned counsel for the petitioner is squarely applies to the facts of the case on hand. The learned senior panel counsel appearing for the respondent-department has not disputed the aforesaid decision of



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the Division Bench of this Court relied by the learned counsel for the petitioner.

6. Considering the facts and circumstances of the case and in light of the decision of the Division Bench of this Court cited supra, we hold that the petitioner herein is eligible for entitlement of benefits under MACP-III w.e.f 01.09.2008 and the impugned order passed by the tribunal is liable to be set aside.

7. In the result, the impugned order passed by the tribunal in respect of petitioner herein in O.A.No. 1098 of 2011, dated 26.08.2014 is set aside. The Writ petition is allowed. The respondent are directed to grant benefits to the petitioner under MACP-III w.e.f 01.09.2008, as early as possible, preferably within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs.

(D.K.K., J.) (P.D.B., J.)

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