



W.P. No.4287 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 03.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR. JUSTICE P.DHANABAL

W.P. No.4287 of 2018
and WMP.Nos.5275 and 5276 of 2018

1. The Union of India
Rep. by The Principal Chief Postmaster General,
Tamil Nadu Circle,
Chennai 600 002.
2. The Director of Postal Services,
Office of the Postmaster General,
Chennai City Region,
Chennai 600 002.
3. Superintendent of Post Offices,
Chengalpattu Division,
Chengalpattu 603 001.

.. Petitioners

Versus

1. S.Chandrasekaran
2. The Registrar,
Central Administrative Tribunal,
High Court Complex,
Chennai 104.

.. Respondents



W.P. No.4287 of 2018

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari to call for the records dated 15.11.2016 and made in OA.No.941 of 2013 on the file of the 2nd respondent and quash the same in so far it is against the petitioners.

For petitioner : Mr.V.Balasubramanian

ORDER

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

This petition has been filed to quash the order passed by the Tribunal in OA.No.941 of 2013, dated 15.11.2016.

2. It is the case of the first respondent that he joined the petitioner Department as LDC/SBCO in the year 1974 and he was given financial upgradation under the TBOP and BCR Scheme on 01.08.1991 and 01.07.1992 respectively. On 04.03.2008, he was offered with promotion as LSG Supervisor (SBCO Cadre) and the same was refused by him. While so, on 19.05.2009, MACP Scheme was introduced which was effective from



W.P. No.4287 of 2018

01.09.2008. The first respondent was granted MACP-III promotion on 29.04.2011 and he retired from service on 30.04.2012 as BCR Postal Assistant. The grievance of the first respondent is that without any notice to him, the petitioners cancelled the MACP promotion given to him and also issued proceedings for recovery. Therefore, the first respondent made representation to the petitioners. As there was no reply, he filed OA.No.342/2012 and the Tribunal, vide its order dated 14.03.2013, directed the petitioners to consider and dispose of the representation within a period of eight weeks from the date of receipt of a copy of the order. Pursuant to the said order of the Tribunal, the first petitioner passed the order dated 24.07.2013, rejecting the claim of the first respondent for grant of MACP III. Aggrieved by the same, the first respondent filed OA.No.941 of 2013 seeking to quash the order of the first petitioner, rejecting his claim for the grant of MACP III. The Tribunal allowed the OA granting third MACP benefits to him. Challenging the same, the present appeal is filed by the petitioner Department.



W.P. No.4287 of 2018

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3. It is the contention of the learned counsel for the petitioners that the order of the Tribunal is contrary to MACP guidelines. As per para 25 of the guidelines of MACP, if a regular promotion offered was refused by an employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed. He further submitted that ACP/MACP Scheme 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. It is his further contention that though the petitioner Department, inadvertently granted MACP-III benefit to the first respondent, after audit objection, they cancelled the same and an order of recovery was issued.

4. Heard the learned counsel for the petitioners and perused the materials available on record.

5. It is to be seen that the first respondent has completed 30 years of service in the year 2006. Therefore, he should be deemed to have qualified



W.P. No.4287 of 2018

for the MACP Scheme on the said date. As per para 25 of MACP Scheme, the refusal of promotion on a subsequent date in 2008, could not come in the way of what he was already eligible on notional basis. Further, in the event of refusal of promotion, upgradation already granted shall not be withdrawn. Therefore, the order passed by the Tribunal is in accordance with law, which needs no interference of this Court. The relevant para of MACP Scheme/Annexure I to the letter of the Department of Posts No.4-7/(MACPS)/ 2009-PCC dated 18.9.2009 reads as follows:

"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 stagnated 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."



6. Further, it is to be seen that though the first respondent comes under Group D service, the petitioner Department issued a recovery proceedings to recover the excess payment made by the Department mistakenly. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court in ***State of Punjab v. Rafiq Masih (White Washer and Others) reported in (2015) 4 SCC 334***, wherein it has been held as follows:

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.



W.P. No.4287 of 2018

WEB COPY

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

7.The above said decision squarely applies to the case on hand.

As per the said decision, the petitioner Department cannot recover the amount from the first respondent, as he comes under Group D service. Therefore, we are not inclined to interfere with the order of the Tribunal. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J] [P.D.B., J]
03.11.2023

Speaking order: Yes/No
Index : Yes/No
pvs

Page No.7 / 9



W.P. No.4287 of 2018

To
The Registrar,
Central Administrative Tribunal,
High Court Complex, Chennai 104.



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W.P. No.4287 of 2018

D.KRISHNAKUMAR, J.
and
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W.P. No.4287 of 2018

03.11.2023