



W.P.No.28516 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.01.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.28516 of 2011

and

W.M.P.No.13366 of 2017

S.Suganandam

.... Petitioner

vs

1. Director,
Railway Protection Force,
Railway Board, New Delhi
representing Union of India.

2. Chief Security Commissioner,
Railway Protection Force,
6th Floor, M.M.C.,
Chennai - 600 003.

.... Respondents

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to Order No.X/P.11/AA/Vol.II, dated 01.06.2011, passed by the 2nd respondent and quash the same and to direct the respondents to grant 3rd Financial Upgradation under MACP Scheme to the scale of Rs.9300-34800 with grade pay of Rs.4200 w.e.f. 01.09.2008 with arrears of pay and allowances and all other

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consequential benefits.

For Petitioner : Ms.V.Kavitha
For respondents : Mr.M.Vijay Anand
Standing Counsel for R1 & R2.

ORDER

This Writ Petition has filed to call for the records relating to Order No.X/P.11/AA/Vol.II, dated 01.06.2011, passed by the 2nd respondent and quash the same and to direct the respondents to grant 3rd Financial Upgradation under MACP Scheme to the scale of Rs.9300-34800 with grade pay of Rs.4200 w.e.f. 01.09.2008 with arrears of pay and allowances and all other consequential benefits.

2. The learned counsel for the petitioner submitted that the petitioner had entered into the service of the Railway Protection Force as Constable on 24.09.1970 and promoted to the post of Head Constable in the year 1983. By order dated 29.05.2001 w.e.f. 25.04.2001, the petitioner was medically de-categorised. Thereafter, he was posted against the supernumerary post. In spite of de-categorisation, he has not been absorbed in any alternative post despite several representations made by him to the respondents. The petitioner had completed 30 years of service as on 20.05.2000 and therefore, he was entitled for the 3rd Financial Upgradation pay with effect from

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01.09.2008. When all his juniors were given the benefit of the 3rd Financial Upgradation, he was denied on the ground that he was medically de-categorised staff. Thereafter, the petitioner superannuated from service w.e.f. 30.11.2010. Even after superannuation, he was not granted 3rd Financial Upgradation. Therefore, he submitted a representation on 05.05.2011. Subsequently, by order dated 01.06.2011, the second respondent rejected the claim of the petitioner stating that the RPF has been exempted from the purview of Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. According to the petitioner, the said order wholly suffers from illegality and therefore, sought interference of this Court. He would further submit that the Modified Assured Career Progression Scheme (MACP) has extended to all employees under the Respondents and it cannot be denied on the ground that the petitioner is a medically de-categorised staff.

3. Per contra, Mr.M.Vijay Anand, learned standing counsel for the respondents submitted that all efforts were taken by the Security Department for absorption of the medically unfit staff by inducting the petitioner in an alternative post. Persons who are kept in supernumerary posts may also apply for suitable post, if found vacant. But the petitioner did not evince any



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interest. Only when MACP scheme was denied on account of his non absorption, he has filed the present writ petition. As the petitioner was not absorbed in the alternative cadre, he was not extended the benefit of third MACP scheme. According to the respondents, in the meantime, the petitioner appeared before the Screening Committee on 30.09.2010 along with other medically de-categorised employees for absorption in alternative post. Since the petitioner was left with only two months of service before his superannuation, it was decided in his best interest that his settlement towards terminal benefits need not be disturbed on account of absorption which would have be in any department, other than Security department. Thus, the 2nd respondent rejected his claim as he was exempted from the purview of section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The petitioner was not given an alternative post and therefore, he was not entitled to 3rd Upgradation under the MACP scheme. He further stated that as per the Board proceedings vide Circular No.78 of 2005, the petitioner would not be eligible for grant of MACP scheme because as according to the respondents the petitioner should have been working in a regular post. Therefore, he prayed this Court to dismiss the above writ petition.



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4. In reply to the said arguments, the learned counsel for the petitioner drew the attention of this Court about the Modified Assured Career Progression Scheme (MACPS) for Railway Employees which came into effect from 10.06.2009. The said scheme is in supersession of previous ACP Scheme and clarifications issued thereunder. Therefore, the reliance placed by the learned counsel for the respondents to the clarification regarding P.B.Circular No.93/2005 RBE No.78/2005 in respect of the earlier ACP has been superseded and therefore, the impugned orders relied upon itself superseded the circular and is wholly void.

5. Heard both sides and perused the materials available on record.

6. It is an admitted case that the petitioner had been de-categorised medically and he was given a supernumerary post till the date of his superannuation and he was not absorbed in any alternative permanent post. When that being so, it is not the fault of the petitioner in not being absorbed in a permanent post and the contention that the MACP scheme will only be applicable to a permanent employee and not to temporary employee is unfounded, since the petitioner was a permanent employee holding a temporary post, he was not a temporary employee and therefore, the contention of the learned counsel for the respondents is wholly misplaced. Hence, the petitioner



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is entitled for the 3rd Financial Upgradation under the MACP scheme and therefore, the impugned order dated 01.06.2011 is set aside and the respondents are directed to apply the 3rd Financial Upgradation under the MACP scheme to the petitioner when he became eligible and pay all the consequential attendant benefits within a period of 10 weeks from the date of receipt of a copy of the order.

7. With the above observation the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Speaking/Non-speaking order
vsi

To

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J.NISHA BANU,J.

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