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W.P.Nos.5981, 7675, 7676 and 7677 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:04.08.2023

Delivered on: 31.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.Nos.5981 of 2018, 7675 of 2018, 7676 of 2018 and 7677 of 2018

and

W.M.P.Nos.7362 of 2018, 9579 of 2018, 9580 of 2018 and 9581 of 2018

W.P.No.5981 of 2018

1. Union of India,
represented by the Central Provident Fund Commissioner,
Employees Provident Fund Organisation,
No.14, Bhikaji Cama Place,
New Delhi – 110 066.

2. The Additional Central Provident Fund Commissioner,
Regional Provident Fund Organisation,
No.14, Bhikaji Cama Place,
New Delhi – 110 066.

3. The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organisation,
Regional Office, Tambaram,
No.3, Rajaji Street, Chennai-600 045.



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4. The Assistant Provident Fund Commissioner (Adm),
Employees Provident Fund Organisation,
Regional Office, Tambaram,
No.3, Rajaji Street, Chennai-600 045.

5. The Additional Central Provident Fund Commissioner,
(Tamilnadu and Kerala),
Employees Provident Fund Organisation,
Zonal Office, No.37, Royapettah High Road,
Chennai-600 014.

... Petitioners

Vs.

1. Central Administrative Tribunal,
represented by its Registrar,
Chennai Bench,
City Civil Court Building,
High Court Complex, Chennai.

2. D. Ebenezer Rajkumar
3. Sumathi Survesh Kumar
4. P. Rajaram
5. K. Sumathy
6. C. Kalyanasundram
7. J. Sriram
8. V. Ganapathy Subramaniam
9. S. Mathuravalli
10. K. Premavathi
11. A. Abarnam
12. K. Muthulakshmi
13. S. Saraswathi
14. T. Ravi
15. M. Nageswaran
16. S. Thilakavathi
17. M.V. Saradha
18. G. Premkumar
19. V. Shankar



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20. R. Ravikumar

21. V. Venugopal Raju

22. G. Sowmya

23. V. Vijayalakshmi

24. S. Srinivasan

25. P. Gopinath

26. M. Subadhra

27. S. Jagadeesh

... Respondents

W.P. Nos.7675 of 2018, 7676 of 2018 and 7677 of 2018

1. The Union of India

represented by the Central Provident Fund Commissioner,
Employees Provident Fund Organisation, Head Office,
No.14, Bhikaji Cama Place,
New Delhi – 110 066.

2. The Additional Central Provident Fund Commissioner,
Employees Provident Fund Organisation, Head Office,
No.14, Bhikaji Cama Place,
New Delhi – 110 066.

3. The Additional Central Provident Fund Commissioner,
(Tamilnadu and Kerala),
Employees Provident Fund Organisation,
Zonal Office, No.37, Royapettah High Road,
Chennai-600 014.

4. The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organisation, Regional Office,
37, Royapettah High Road,
Chennai-600 014.

..... Petitioners in three W.P. Nos.7675
of 2018, 7676 of 2018 and 7677 of

2018

vs.



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1. The Central Administrative Tribunal

Chennai Bench,

represented by its Registrar, City Civil Court Buildings,

High Court, Complex, Chennai. Respondent in three W.P. Nos.7675
of 2018, 7676 of 2018 and 7677 of

2018

2. V. Mohan Dass

Senior Social Security Assistant,

Employees Provident Fund Organisation,

Regional Office, 37, Royapettah High Road,

Chennai-600 014.2nd Respondent in W.P. No.7675 of 2018

2. K. Muthukumaran,

Senior Social Security Assistant,

Employees Provident Fund Organisation,

Regional Office, 37, Royapettah High Road,

Chennai-600 014.2nd Respondent in W.P. No.7676 of 2018

2. P.N.Dharmaraj,

Senior Social Security Assistant,

Employees Provident Fund Organisation,

Regional Office, 37, Royapettah High Road,

Chennai-600 014.2nd Respondent in W.P. No.7677 of 2018

PRAYER in W.P. No.5981 of 2018: Writ Petition filed under Article 226

of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent viz., Central Administrative Tribunal, Chennai in O.A. No.310/00730/2016 dated 27.06.2017 and quash the same.

PRAYER in W.P. No.7675 of 2018: Writ Petition filed under Article 226



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of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent viz., Central Administrative Tribunal, Chennai in O.A. No.310/00708/2016 dated 24.07.2017 and quash the same.

PRAYER in W.P. No.7676 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent viz., Central Administrative Tribunal, Chennai in O.A. No.310/00710/2016 dated 24.07.2017 and quash the same.

PRAYER in W.P. No.7677 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent viz., Central Administrative Tribunal, Chennai in O.A. No.310/00709/2016 dated 24.07.2017 and quash the same.

For Petitioners in
all four W.P. Nos.

Mr. V. Vijay Shankar
:

For Respondents

: Tribunal [for R1] in all four Wps.

In W.P. Nos.7675 of 2018, 7676
of 2018 and 7677 of 2018]
Mr. L. Chandrakumar [for R2]



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In W.P. No.5981 of 2018

Mr. Menon Karthik Mukundan
Neelakandan

[for R2 to R13, R15 to R17 and
R19 to R26]

No appearance [for R14, R18 and
R27]

COMMON JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The Writ Petition in **W.P.No.5981 of 2018** is filed challenging the order of the Central Administrative Tribunal in OA No.310/00730/2016 dated 27.06.2017. The Writ Petition in **W.P.No.7675 of 2018** is filed challenging the order of the Central Administrative Tribunal in OA.No.310/00708/2016 dated 24.07.2017. The Writ Petition in **W.P.No.7676 of 2018** is filed challenging the order of the Central Administrative Tribunal in OA.No.310/00710/2016 dated 24.07.2017. The Writ Petition in **W.P.No.7677 of 2018** is filed challenging the order of the Central Administrative Tribunal in OA.No.310/00709/2016 dated 24.07.2017.

2. The Central Provident Fund Commissioner, EPFO, aggrieved by the order of the Tribunal is the petitioner before us. The admitted case of



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the parties is that the applicants (Respondents herein) before the Tribunal joined the petitioner's organization as Lower Division Clerk (LDC), thereafter they were promoted as Upper Division Clerk (UDC). In 2007, the petitioner introduced Employer Provident Fund (EPF) scheme with effect from 01.09.2007, replacing the time bound promotion scheme giving effect to it from 01.04.2004. In view of the introduction of the said scheme the applicant before the Tribunal was redesignated as a Social Security Assistant on 01.04.2004 and on completion of 4 years he was granted financial upgradation to the scale of Rs. 4500-7000. This financial upgradation corresponds with Grade pay of Rs.2800/-. It is also seen that 60% of the Social Security Assistants were thereafter promoted as Senior Social Security Assistants which post came with a higher scale of Rs.5000 - 8000. This promotion cum financial upgradation corresponds to Grade pay of Rs.4200/- in PB-2 as per 6th CPC Pay structure.

3. In the meantime, the Central Government brought about 'The Modified Assured Career Progression Scheme' (MACP) replacing the earlier 'The Assured Career Progression Scheme' (ACP), with effect from 01.09.2008. Finding that the petitioners had erroneously granted the



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benefits of the MACP scheme to the applicants before the Tribunal, passed a fixation order fixing claiming that the applicants before the Tribunal had already benefited from three financial upgradations and therefore the MACP scheme would not apply to the applicants before the Tribunal.

4. The Tribunal rejected the said contention of the petitioners and directed the petitioners to restore the benefits of the 3rd financial upgradation under MACP scheme to the applicants before the Tribunal, with a further direction to refund any amount that may have been recovered from the applicants.

5. A counter affidavit has been filed on behalf of the applicants before the Tribunal stating that there was no infirmity in the order passed by the Tribunal and the placement from Upper Division Clerk to Social Security Assistant cannot be treated as a promotion and therefore the applicants were entitled to the 3rd financial upgradation and consequently the fixation order dated 22.03.2016 had been rightly quashed by the Tribunal.

6. Heard Mr.Vijayshankar, learned counsel for the writ petitioners and Mr.L.Chandrakumar, learned counsel for the 2nd respondent in W.P.Nos.7675,7676,7677 of 2018 and Mr.Menon Karthik Mukundan



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Neelakantan, learned counsel for the respondents 2-13, 15-17 and 19-26 in W.P.No.5981 of 2018. We have perused the records and also various decisions that have been placed before us in support of the order of the Tribunal.

7. Mr. Vijayashankar, Counsel for the petitioner would submit that the applicants had derived 3 promotions/financial upgradations and were not entitled to any further financial upgradation under MACP scheme, which contains a cap of 3 upgradations only. He would also submit that the applicants cannot have the benefit of two concurrent schemes, namely the MACP scheme and the department's financial upgradation scheme and that the same goes to the root of the subject matter as the very purpose of granting financial upgradation under MACP scheme would stand defeated if the applicant is given benefit of the both the schemes.

8. Per contra, the counsel for the applicants/contesting respondents in the writ petition would submit that there was no promotion from the post of Upper Division Clerk to Social Security Assistant as it was only a re-designation in the same pay scale and if this re-designation is not counted as one financial upgradation, then the fixation order passed by the



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petitioner would necessarily have to go and the order of the Tribunal upheld. He would also submit that the petitioner had rightly conferred the benefits under MACP scheme to the contesting respondents with effect from 01.04.2014 and thereafter for reasons best known to the petitioner, the fixation order came to be passed only in March 2016, alleging excess payment having been made and consequently recovery being sought for such excess payment.

9. The counsel would also place reliance on the following judgments:

- i. The Division Bench of the Kerala High Court (Ernakulam Bench) in ***Union of India & Others vs Allath Sundaran in OP(CAT)No.919 of 2013***, where the Kerala High Court in identical circumstances held that non- functional scale granted to the employee would not amount to a promotion under ACP/MACP scheme. It is seen that the said decisions of the Division Bench of the Kerala High Court was challenged before the Hon'ble Supreme Court in Civil Appeal No.2941/2942 of 2014 and the Hon'ble Supreme Court finding no merit in the appeals, confirmed the order of the Division Bench of the High Court in and by order dated 15.02.2018.
- ii. In ***Union of India & Ors Vs. Indian Railway Pharmacists Association & Ors***, the Division Bench of Karnataka High



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Court (Dharwad Bench), by order dated 20.11.2017, also held that an automatic revision of pay would not amount to a promotion especially when such grade pay was consequent upon completion of a particular period.

iii. In ***Union of India & Ors Vs. Shaira A Khan***, The Division of Bench of Delhi High Court also considered a similar issue and held that a non -functional upgradation would not be liable to be treated as promotion/upgradation under MACP scheme, in order to deny benefits to the employee.

10. The judgments mentioned hereinabove would also squarely apply to the facts of the present case. In the instant case also, the post of Social Security Assistant was newly introduced by the petitioners with effect from 01.04.2004, by merging the post of Lower Division Clerk and Upper Division Clerk. Further, revision of pay scale was introduced by the new scale of placement for such Social Security Assistant on completion of 4 years of regular service and that such financial benefit would be available from 01.09.2007 for employees who have been in regular service on 01.04.2004. We have also noticed that placement and posting of Social Security Assistant was purely on the basis of the employee having completed 4 years of service. Such placement cannot be equated to a promotion or a consequent financial upgradation as the said post did not



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carry any different duties or responsibilities of the employee, leave alone higher role to be played by such employee in the discharge of his service and such placement was also neither on account of any separate or independent selection process nor based on any meritorious assessment. Therefore, merely because the employee had completed a particular term of service and he is placed in a post, such a posting, as rightly pointed by the counsel for the contesting respondents, would only amount to a re-designation of the post and not a promotional post or a post that carries financial upgradation.

11. In so far as the other contention of the counsel for the petitioner that two parallel schemes cannot be available to the employee, one under the MACP scheme and other under the departmental promotional scheme, at the outset, we find that such a contention had never raised before the Tribunal. We have also heard the counsel for the contesting respondents with regard to this objection of the petitioner. It is pointed out by the counsel for the respondents 1 and 2, that the only ground on which the 3rd financial upgradation was recalled was that the contesting respondents had already seen three promotions in their career and it was never the case of



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the petitioners ever that the scheme itself would not apply to the contesting respondents.

12. We have also perused the records and we have satisfied ourselves with regard to the stand of the petitioners. Throughout the proceedings, the petitioner only challenged the eligibility of the contesting respondents under the scheme and it was never the contention of the petitioners that the scheme itself was inapplicable to them. Therefore, we are unable to accept the arguments of the counsel for petitioner in this regard.

13. For all the above reasons, these Writ Petitions fail and are accordingly dismissed. Costs made easy. The connected miscellaneous petitions are closed.

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

.....08.2023

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

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To
Central Administrative Tribunal,
represented by its Registrar,
Chennai Bench,
City Civil Court Building,
High Court Complex, Chennai.

D.KRISHNAKUMAR, J.,
and



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P.B.BALAJI,J

(mjs)

Pre-delivery judgment in
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7676 of 2018 and 7677 of 2018
and
W.M.P.Nos.7362 of 2018, 9579 of 2018,
9580 of 2018 and 9581 of 2018

31.08.2023