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W.P.No.9647 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.9647 of 2016

S.Muthusamay

... Petitioner

Vs.

1. Union of India,
Rep. by its Director General of Posts,
Dak Bhavan, Sansad Marg, New Delhi 110 001.
2. The Chief Postmaster General,
Tamilnadu Circle, Anna Salai, Chennai 600 002.
3. Postmaster General, Western Region (TN),
Coimbatore, PIN 641 002.
4. The Assistant Postmaster General (staff),
O/o the Postmaster General,
Western Region (TN), Coimbatore 641 002.
5. The Senior Superintendent of Post Offices,
Coimbatore Division, Coimbatore 641 001.
6. The Registrar, Central Administrative Tribunal,
Madras Bench, High Court Campus,
Chennai 600 001.

... Respondents



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Prayer: Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the records in O.A.No.884.2011 dated 01.08.2014 on the file of the sixth respondent and quash the same and consequently, direct the respondents 1 to 5 to grant MACP-III benefit and to pay the arrears of difference of pay and allowances to the petitioner and also to revise and re-fix the pensionary benefits and to pay the difference of arrears of pension and connected terminal benefits to the petitioner.

For petitioner : Mr.R.Malaichamy
For Respondents : Mr.AR.L.Sundaresan,
Assistant Solicitor General
for Mr.V.Balasubramanian,
Senior Panel Counsel for R1 to R5
R6 - Tribunal

ORDER

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

This writ petition has been filed challenging the order passed by the Tribunal in O.A.No.884/2011, dated 01.08.2014, in any by which, his prayer to direct the Department to grant third MACP benefit and consequently direct to pay the arrears of difference of pay was declined.

2. The brief facts leading to the filing of the writ petition is as follows.



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The petitioner had entered into service in the Postal Department as Postal Assistant on 25.02.1976. While he was in service, he got two pay benefits, i.e. after completion of 16 years of service, he got the benefit under the scheme of TBOP (Time Bound One Promotion) and after completion of 26 years of service, he got the benefit under the scheme of BCR (Biennial Cadre Review) and both are not promotion, but only upgradation of pay.

2.1. The Central Government had introduced Assured Career Progression (ACP) scheme to deal with the problem of genuine stagnation and hardship faced by the employees, due to lack of adequate promotional avenues during August 1999. As per the above scheme, after completion of 12 years of service, the officials, were entitled first upgradation pay benefit and after completion of 24 years of service, entitled for second upgradation pay benefit. Subsequently, as per the recommendation of the VI Central Pay Commission, the ACP scheme has been replaced with MACP scheme (Modified Assured Career Progression Scheme), thereby, the employees, who completed 10 years of service are entitled to first upgradation and after completion of 20 years of service, entitled to second upgradation and after



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completion of 30 years of service, entitled to third upgradation and this scheme was given effect from 01.09.2008.

2.2. According to the petitioner, already he got two upgradation benefits after completion of 16 years and 26 years of service. Since the petitioner had completed 30 years of service in the year 2003, he is entitled to third upgradation, as per MACP-III. Further, after getting BCR benefits, the petitioner was offered LSG promotion on 02.05.2008, however, he declined to accept the said promotion, due to his personal inconvenience and it was accepted by the Department. Though the MACP scheme has been introduced w.e.f. 01.09.2008, actual order was issued only on 19.05.2009 with retrospective effect. Therefore, the petitioner is entitled to third MACP benefit. Though he had made representations on 11.06.2010 and 16.07.2010, 06.04.2011, to grant III MACP benefit, there was no reply from the respondents. According to the petitioner, the above said declination would operate only for one year or till such time, the next vacancy arises. The LSG promotion was ordered only for filling up of norm based supervisory post, without any pay fixation that too after completion of 33



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years of service and the above said promotion would not give any higher pay, than the pay already drawn by the petitioner.

2.3. Further, in the MACP scheme, it has been mentioned that, 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. But, in the case of the petitioner, he is eligible for third MACP benefit in the year 2006 itself, i.e., before he was offered LSG promotion in the year 2008. Therefore, he filed original application before Tribunal and the same was dismissed, which is impugned herein.

3. The learned counsel for the petitioner submitted that, the MACP scheme came into force only w.e.f. 01.09.2008, but the LSG promotion offered to the petitioner, declined by him was in the year 2008 itself. He further submitted that, the petitioner had completed 30 years of service in the year 2006 itself, i.e. before he was offered LSG promotion and hence, he is eligible for grant of third MACP benefit, as it was given with retrospective effect.



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4. The learned counsel for the respondents/Department submitted that, the petitioner was granted LSG promotion on in the year 200, 2010 and 2011 and the same were declined by him. He further submitted that, since the petitioner had declined the regular promotion of LSG supervisory cadre, he is not entitled to the benefit of MACP-III. As such, the Tribunal has rightly dismissed the claim made by the petitioner and the same does not warrant any interference by this Court.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents/Department and we have also perused the materials on record.

6. It is the admitted facts that the petitioner was appointed as postal Assistant on 25.02.1976 and while he was in service, he got the benefits under TBOP and BCR schemes. Subsequently, ACP scheme was introduced and thereafter, it was modified by replacing MACP scheme, which was came into force w.e.f. 01.09.2008. As per the modified MACP



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scheme, the employees are entitled to get upgradation-I, II and III, after completion of their 10, 20 and 30 years of service respectively. In the meanwhile, the petitioner was offered LSG promotion by the Department in the year 2008, 2010 and 2011 and the same were declined by him.

7. It is to be noted that, when the MACP scheme has been come into operation w.e.f. 01.09.2008, vide letter of the Directorate, New Delhi in No.4-7/MACPS/2009 PCC, dated 18.09.2009, there is a condition at paragraph No.25 of Annexure that "*if a regular promotion has been offered but was refused by the employee before becoming entitled to a 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, untill 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 refusal.*" Therefore, it is the contention of the respondents/Department that, as per the above said rule, the petitioner is not



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entitled to the benefit of MACP-III.

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8. The contention of the petitioner is that, he had completed 30 years of service in the year 2006 itself and while offering LSG promotion in the year 2008, he was drawing higher pay, which is equivalent to the next promotion cadre of HSG-II. Further, it is the contention of the petitioner that, since he had completed 30 years of service before offering LSG promotion, he is entitled to the benefit of third MACP.

9. At this juncture, reliance was placed before this Court in W.P.No.4971 to 4975 and 20488/2018, dated 18.03.2022, in which, at page No.17 and 18, a Division Bench of this Court has held as follows.

d. The act of refusal of promotion occurred prior to introduction of MACPS and the consequence was provided in the orders dated 16.04.2008 and 23.07.2008. Thus, to construe the above act as attracting the restriction under para 25 of MACPS, dated 18.09.2009, would result in the act of refusal of promotion, resulting in two adverse consequences (double jeopardy), one under the earlier orders dated 16.04.2008 and 23.07.2008 and the other under para 25 of MACPS dated 18.09.2009, which we think is



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inequitable, if not obnoxious.

MACPS being a beneficial scheme and a construction that would result in hardship must be eschewed. MACPS is in the nature of incentive scheme, by which, employees unable to avail of adequate promotional opportunities gets some relief from stagnation in the form of financial benefits. MACPS is intended to ensure that the employees are adequately incentivised to work efficiently despite not getting promotion. The offers of promotion were financially detrimental to the respondents and therefore, they had not opted to avail promotion offered prior to introduction of MACPS.

The constructions that the consequences provided under MACPS for refusal to accept promotion even prior to its introduction would take away and defeat the very object of MACPS. More so, the employee, who has been stagnated would now also have to suffer the consequence for his act of refusal, which he was not even aware of, at the time of occurrence of the act of refusal of promotion. In other words, it amounts to changing the rules of the game, after the game is played, inasmuch as the respondents had already suffered the consequence for refusal of promotion in terms of orders dated 16.04.2008 and 23.07.2008, causes serious hardship and produces results that is inequitable and unfair, which is impermissible.

10. Admittedly, before came into force of the above MACP scheme (01.09.2008), the petitioner had denied the LSG promotion in the year 2008, 2010 and 2011. Further, while offering LSG promotion in the year 2008,



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the petitioner was drawing higher pay, than the scale of pay for LSG.

Therefore, since the offer of promotion to the post of LSG was financially detrimental to the petitioner, he had refused the same. As such, as per the ratio laid down by the Division Bench of this Court, in the above said writ petition and also considering the fact that when the MACP scheme was came into force w.e.f. 01.09.2008, the petitioner had completed his 30 years of service in the year 2006 itself, we are of the view that the petitioner is entitled for the benefit of MACP-III scheme and hence, the order passed by the Tribunal is liable to be set aside.

11. Accordingly, the writ petition is allowed and the impugned order passed by the Tribunal is set aside. No costs. The respondent concerned is directed to grant the benefit of MACP -III scheme to the petitioner and also to pay all the consequential arrears of revised pay and pensionary benefits to the petitioner, within twelve week from the date of receipt of a copy of this order.

(D.K.K.J.)

(P.D.B.J.)



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Internet: Yes/No

Index : Yes/No

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