



W.P.(MD).No.3521 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.3521 of 2016
and
W.M.P.(MD).No.3122 of 2016**

R.Nallaponnu

... Petitioner

Vs.

- 1.The VO Chidambaranar Port Trust,
Represented by its Chairman,
Tuticorin – 628 004.
Tuticorin District.
- 2.The Secretary,
Ministry of Shipping,
(Port Wing),
No.1, Parliament Street,
Transport Bhavan,
New Delhi – 110 011.
- 3.The Managing Director,
The Indian Port Association,
1st Floor, South Tower,
N.B.C.C.Place, Bhisham Pitamah Marg,
Lodi Road, New Delhi – 110 003.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the second respondent made in I-26/32/2015-PE-I dated 30.09.2015 and the consequential order of the first respondent made in No.S-31/01/2013-E.I/D 3818 dated 16.10.2015 and quash the same and consequently direct the first respondent to implement the 1st Assured Career Progression Scheme with pay scale of Rs.9,100-250-15,100 and 2nd Assured Career Progression Benefit in the pay scale of 10,550-300-16,750 with all other consequential monetary, pensionary benefits.

For Petitioner : Mr.R.Murali

For R-1 : Mr.VR.Shanmuganathan

For R-2 : Mr.P.Paul Pandi

ORDER

This Writ Petition is filed to quash the impugned order dated 30.09.2015 and the consequential order dated 16.10.2015 with a consequential direction to the first respondent to implement the 1st Assured Career Progression Scheme with pay scale of Rs.9,100-250-15,100 and 2nd Assured Career Progression Benefit in the pay scale of 10,550-300-16,750 with all other consequential monetary, pensionary benefits.



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2. The petitioner joined as Librarian in the Respondent port on 31.08.1976 and retired in the same post of Librarian on 30.06.2006. The said post is an isolated post without any promotion and the petitioner has served in the said post for the past 30 years. In view of the persistent demands by the Port Workers Federations and Officers Association of all Major Port Trusts, the second respondent Ministry constituted a Wage Revision Committee and based on the said recommendations, the second respondent introduced CADRE RESTRUCTURING through proceedings in Letter No.A29018/5/99-P.E.I dated 06.02.2004. In the said proceedings, the scheme of Assured Career Progression Scheme was implemented. In the said scheme, for the employees who belonged to C and D cadre were given the benefits of the said scheme. The said scheme simultaneously states if there is any isolated post in the cadre of A, B, C and D, then the said scheme is applicable. The petitioner by relying on the said scheme dated 09.08.1999 is claiming the monetary benefits attached to the scheme. The said scheme was also adopted by the first respondent in proceedings No.S-1/11/2000-E.I dated 18.10.2000, wherein, even for isolated post, the first respondent has accepted and implemented the scheme. Pending ACP, the respondents devised another scheme namely MACP which came into



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effect from 2016 onwards. The petitioner in the meanwhile retired from service in the year 2006. The petitioner persistently claiming the said benefits of ACP. However, through the impugned order, the second respondent has stated that ACP was not implemented in any post. Hence, it was clarified that ACP scheme is not available for Class I and II Officers. However, MACP benefits was extended to Class I and Class II Officers, but the same is applicable from 26.07.2010. Since the petitioner had retired prior to the date, the petitioner is not entitled to. Following the impugned communication, the second respondent also declined the benefits through the impugned order. Aggrieved over the same, the petitioner is before this Court.

3. The second respondent has filed a counter stating that the Recruitment Seniority and Promotion Regulations have stated that ACP scheme was proposed to be implemented in the Port as part of CR order dated 06.02.2004. However, pending finalization of the Recruitment Seniority and Promotion Regulations, ACP scheme is not implemented. Subsequently, MCAP was implemented as part of pay revision order dated 26.07.2010. Hence, those officers who have completed 10, 20 and 30 years were granted MCAP benefits on and after 26.07.2010. Since the petitioner is retired from service on



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30.06.2006 that is prior to 26.07.2010, the petitioner is not eligible for MCAP scheme. It was also considered in the Ministry that the implementation of ACP and MCAP scheme retrospectively involved financial and administrative implications in terms of fixation/re-fixation of pay/pension of serving/retired persons. Besides, all major port trusts are not at equal footing with respect to financial viability. The first respondent has also filed a counter affidavit which are more or less on the same line. Therefore, the respondents prayed to dismiss this Writ Petition.

4. Heard Mr.R.Murali, learned counsel for the petitioner, Mr.VR.Shanmuganathan, learned counsel appearing for the first respondent and Mr.P.Paul Pandi, learned counsel for the second respondent and perused the records.

5. The Government of India vide its proceedings dated 09.08.1999 has granted ACP benefits and which is extracted hereunder:

“3.Group 'B', 'C' and 'D' Services/Posts and Isolated Posts.
in Group 'A', 'B', 'C' and 'D' Categories

*3.1 While in respect of these categories also promotion
shall continue to be duly earned, it is proposed to adopt the*



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ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations (as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM) under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I”.

6. There is no dispute in the facts of the case. The petitioner was holding the post of Librarian and it is an isolated post which is accepted by both the petitioner as well as the respondents. If it is an isolated post as per the Scheme



stated supra, the petitioner is also eligible even though the petitioner belongs to Group 'B'. The said scheme was adopted by the first respondent vide proceedings dated 18.10.2000 which is extracted hereunder:

“(1) Two financial upgradations shall be granted under ACP Scheme to Class III and IV employees on completion of 12 Years and 24 Years of regular service, provided there was no regular promotion during the period of 12 and 24 Years.

(2) The financial upgradation in ACP will be in the next higher grade in accordance with the existing hierarchy in a cadre/group of posts.

(3) In the case of isolated posts, which do not have defined hierarchical cadres, the next higher pay scale as per revised pay structure, will be extended for financial upgradation”.

Even under sub clause (3), the first respondent has specifically stated that for isolated posts which do not have hierarchical cadre, then they are eligible for financial upgradation. When all the respondents have accepted the scheme, now the respondents cannot turn around and say that they are not entitled to the upgradation. Moreso, when the petitioner has completed entire 30 years in the same post without any promotion, then the petitioner is entitled to.



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7. Subsequently, a policy decision was taken by the respondents which is evident in communication dated 06.02.2004, where it is stated as under:

“Assured Career Progression Scheme:

9. In order to deal with the problem of stagnation due to lack of promotion, it has been decided to apply Assured Career Progression Scheme and its attendant conditions, as at present applicable to Central Government Civilian Employees, to the Port and Dock Officers”.

All these scheme would clearly indicates that even though the petitioner belonged to Group 'B' (Group II), then the petitioner is entitled to ACP. The ACP is granted once in 12 years.

8. The petitioner also relied on communication of Chennai Port Trust where the ACP was implemented from 2010 onwards which is extracted hereunder:

“Please refer to the letter cited on the above subject. In this regard, in Chennai Port Trust the Assured Career Progression Scheme (ACP) is implemented for Class I and II Officers from 26.07.2010 based on the Ministry's letter No.A-29018/5/2006-PEI dated 26.07.2010”.



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9. Even though the respondents have not implemented ACP as early as 2006, if the respondents have implemented the same subsequently, then the petitioner is also entitled to the same. It is seen that the petitioner is fighting for his right from the year 1999 onwards. The reason cited for declining it that pending finalization of the Recruitment Seniority and Promotion Regulations, ACP scheme was not implemented and subsequently another scheme namely, MACP was implemented as part of pay revision order dated 26.07.2010. If the respondents have delayed in framing regulations the same cannot be cited as reason. Before formulating subsequent MACP scheme, the respondent ought to have taken into consideration the plight of the who would be affected for not implementing the previous ACP scheme. the respondent ought to have taken into consideration of the persons who would have covered under ACP, before finalization of MCAP. Hence this Court is of the considered opinion that the reason to decline the ACP benefits cannot be sustained, therefore, the impugned order where it declines to grant ACP is liable to be quashed.

10. The next contention that was raised by the petitioner is that the impugned order states that the ACP scheme is not available to Class-1 and



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Class -II officers. But the impugned order failed to take note of the fact that the ACP was granted for isolated post as well, even though it falls under Class-I and Class-II post. On perusing the scheme stated supra, it specifically states that the scheme is applicable to the isolated posts. Therefore, the impugned order is not in consonance with the scheme that was initially formulated. Therefore, that portion of the order where it has been stated that ACP is not applicable to Class I and II Officers is incorrect.

11. The respondents had raised an apprehension that if this scheme is implemented retrospectively, they will incur financial constraint and administrative difficulty. However as early as 15.12.2014, the first respondent has sent a communication to the second respondent where it has been stated that the financial implications will be very meagre, since there are few numbers of Class I and Class II Officers in “isolated category”. The relevant portion is extracted hereunder:

“In the above context, as far as V.O.Chidambaranar Port Trust is concerned, the number of Class I & II Officers to be considered for the grant of financial upgradation under ACP with effect from 01.04.2004 are very few and the financial implication in this regard would be very meager, since the above said Officers will get one increment only.



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Therefore, it is requested that approval of the Ministry for grant of financial upgradation under Assured Career Progression Scheme in respect of Class I and II Officers of this Port w.e.f. 01.04.2004, may be communicated at an early date, since the same is pending for a long time, please”.

Therefore, the financial implications also cannot be accepted. Hence from any angle the petitioner is entitled to relief.

12. It is seen that the petitioner had retired from service in the year 2006 and if the ACP is granted to the petitioner the same might have some financial implications to the respondents. Therefore, this Court is of the considered opinion that the petitioner is not entitled to monetary benefits but the same effect can be granted in the pensionary benefits. In view of the above, the impugned orders are quashed. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.



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13. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

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Tuticorin – 628 004.
Tuticorin District.
- 2.The Secretary,
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(Port Wing),
No.1, Parliament Street,
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S.SRIMATHY, J.

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