

04.09.2024
Item No.04
Court No.11
Avijit Mitra

WP.CT 39 of 2024

In re: An application under Article 226 of the Constitution of India;

And

Union of India & ors.

-Versus-

Nikhil Kumar Nath

Mr. Moti Sargar Tiwari,

Mr. Ashique Mondal

...for the Union of India

Ms. Soma Kar Ghosh,

Mr. Arabinda Pathak,

Ms. Suyparna Paul

...for the respondent

The present writ petition has been preferred by the Union of India and its functionaries challenging an order dated 3rd August, 2023 passed by the learned Tribunal in the original application (in short, OA), being OA 1453 of 2021. The operative part of the said order runs as follows:

'The applicant is a Gr. 'B' Officer and he has received three financial upgradations under the MACP Scheme and was placed in the pay scale of Rs. 9300-34800/- with Grade Pay of Rs. 4800/- w.e.f. 1.9.2008. Thereafter, he has worked for a further period of 4 years. The Ministry of Finance, Department of Expenditure Resolution dated 29.8.2008 all Group 'B' officers in the Department of Posts, Revenue will be granted Grade Pay of Rs.5400/- in Pay Band 2 on non-functional basis after four years of service in the Grade Pay of Rs. 4,800/-

We are, therefore, of the view that the applicant is entitled to the Grade Pay of Rs. 5400/-.

The O.A. is thus allowed. There shall be no order as to costs.'

Mr. Tiwari, learned advocate appearing for the petitioners submits that the as per the MACP

scheme, the officials are entitled to MACP I, II and III after completion of 10/20/30 years of service in a cadre and that there is no provision for entitlement of MACP on completion of four years of service in a particular cadre.

According to him as per sixth CPC, the Superintendents of Post Offices in PS Gr. 'B' cadre are only entitled to enhancement of Grade Pay of Rs.5400/- after completion of four years of service in the Grade Pay Rs. 4800/- and such enhancement of Grade Pay has not been extended to any other Gr. 'B' officials.

He argues that the learned Tribunal has disposed of the OA failing to appreciate that the issue involved in the present matter is not identical to the subject matter of the writ petition before the Hon'ble High Court at Madras. The said judgment is distinguishable on facts and as such the same ought not to have been applied in the instant case.

Ms. Ghosh, learned advocate appearing for the respondent denies and disputes the contention of Mr. Tiwari and submits that the issue of entitlement of the respondents towards enhancement of Grade Pay of Rs.5400/- upon completion of 4 years of service in the Grade Pay of Rs. 4800/- is no longer *res integra* and the said issue has been decided in favour of persons

similarly situated with the respondents herein in a writ petition preferred by the Union of India and its functionaries by an order dated 22nd February, 2022 passed in a writ petition being WP.CT 85 of 2021.

She further submits that the said judgment of the Coordinate Bench has also been complied with by the petitioners *vide* memoranda dated 24th July, 2023 and 4th August, 2023. Let the copies of the judgment passed by the Coordinate Bench and the memoranda dated 24th July, 2023 and 4th August, 2023 issued by the competent authority, as produced, be kept on record.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

It appears that an identical issue, as urged, by Mr. Tiwari came up for consideration before a Coordinate Bench of this Court and by a judgment dated 22nd February, 2022, the writ petition was dismissed upon discussing the judgment delivered by the Hon'ble High Court at Madras and taking note of the fact that the said judgment was challenged by filing a Special Leave Petition which was ultimately dismissed. In the judgment dated 22nd February, 2022, the Court has also considered that the resolution dated 29th August, 2028 issued by the Ministry of Finance (Department of

Expenditure) has its applicability to Gr. 'B' officers of the Department of Posts, as would be evident from paragraphs (x)(e) of the said resolution. The Court also observed that there cannot be different parameters at different parts of the country under central legislation and similar benefit should be extended uniformly.

We do not find any reason to differ with the judgment delivered by the Coordinate Bench of this Court *moreso* when service jurisprudence as evolved by this Court from time-to-time postulates that all persons similarly situated should be treated similarly. Furthermore, we find that the petitioners herein did not challenge the judgment of the Coordinate Bench and have also taken follow up steps towards compliance of the same, as would be explicit from the memoranda dated 24th July, 2023 and 4th August, 2023.

In view thereof, no interference is called for in the present writ petition and the same is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)