

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

Present:

The Hon'ble Justice Debangsu Basak

and

The Hon'ble Justice Md. Shabbar Rashidi

APO No. 102 of 2024

Chittaranjan Patra

Vs.

Union of India and Ors.

For the appellant : Mr. Samim Ahammed, Adv.
Mr. Arka Maiti, Adv.
Mr. Aniruddha Singh, Adv.
Ms. Ambiye Khatun, Adv.

For the respondents: Mr. Soumya Majumder, Adv.
Mr. Arijit Bakshi, Adv.
Mr. Sukanta Ghosh, Adv.

Heard on : August 22, 2024

Judgment on : September 10, 2024

Md. Shabbar Rashidi, J.

1. The appeal is in assailment of an order dated March 21, 2024 passed in WPO No. 1892 of 2023 dismissing the Writ Petition filed on behalf of the appellant.
2. By the impugned order the learned Single Judge held that by reason of the upgradation, the petitioner was disentitled of the first tranche of the MACP, i.e. from 1992 to 2002. In the second tranche, i.e. from 2002 to 2012, the petitioner secured a promotion on November 22, 2004 from S-1 to S-12. He was therefore disentitled to the second tranche of MACP between 16.12.2002 to 16.12.2012. He retired on July 31, 2020 before completion of the third tranche which would be accrued to him had he served until 15th December 2022.
3. The appellant filed the Writ Petition seeking direction upon the respondent authorities to grant the petitioner the benefits of modified career advancement scheme. It is the case of the petitioner that he was initially appointed to the post of cataloguer in the Indian Museum library on December 16, 1992 in the pay scale of ₹. 1200 – 2040. Subsequently his services were confirmed by an office order dated April 12, 1996.
4. It was further case of the writ petitioner that by an office memorandum dated July 24, 1990, a review committee constituted

in terms of the recommendations of the 4th Pay Commission, recommended the re-designation of the post carrying pay scale of ₹. 1200 – 2040 as library information assistant in the pay scale of ₹. 1400 – 2600. In pursuance of such recommendation, the petitioner along with others submitted a representation for implementation of such recommendations.

5. By an office order dated August 25, 1998, the writ petitioner was granted personal upgradation of pay to the pre-revised scale of ₹. 1400 – 2300 with effect from the initial appointment of the petitioner. Such upgradation, according to the petitioner, was not a promotion. At the same time the recommendations of memorandum dated July 24, 1990 was also not implemented.
6. The writ petitioner filed a Writ Petition being WP No. 1909 of 1999 seeking implementation of the office memorandum dated July 24, 1990. The said writ petition has to be withdrawn in view of the implementation of the recommendations of the 5th Pay Commission. The said recommendations provided for merger of the post of Library and Information Assistant and Senior Library Assistant in the pay scale of ₹. 5500 – 9000 with effect from January 1, 1996.
7. Accordingly, on January 16, 2003 the post of the petitioner i.e. Cataloguer was redesignated as Library and Information Assistant in

the revised scale of pay of ₹. 5500 – 9000. According to the writ petitioner, since his appointment in the year 1992, he never received any promotion till 2003. According to him, such redesignation of the post of the petitioner in the revised pay scale of ₹. 5500 – 9000 cannot be construed as a promotion.

8. By an office order dated November 22, 2004, the petitioner was promoted to the post of Assistant Library and Information Officer in the pay scale of ₹. 6500-10500. On account of such promotion, the petitioner was disentitled from the benefits of Assured Career Progression Scheme notified on November 25, 2004.
9. Subsequently, in pursuance of the recommendation of 6th Pay Commission, by an office order dated February 3, 2009, the pay of the petitioner was revised in the pay scale of ₹. 9300-34800 with grade pay of ₹. 4600/-. The 6th Pay Commission also recommended for Modified Assured Career Progression Scheme (MACPS) which provisioned for financial upgradation on completion of 10, 20 and 30 years of service.
10. The petitioner also submitted that in terms of clause 5 of the MACP scheme, financial upgradation of the pay scale of the petitioner in the revised the scale of ₹ 5000/8000, ₹ 5500/9000 and ₹ 6500 – 10,500 could not be considered as promotion as such

upgradation was on account of merger of the scales. Similarly, the upgradation of the pay scale of the petitioner in terms of office order dated January 16, 2003 with effect from January 1, 1996 was also re-fixation of his pay following the recommendations of the Pay Commission. Such upgradation can neither be considered as promotion nor benefits of Assured Career Progression. The petitioner also submitted that in spite of serving for 16 years in the post of Assistant Library and Information Officer, the petitioner was never favoured with the benefits of ACP/MACPS till his superannuation on July 31, 2020.

11. The petitioner further submitted that in spite of a directive from the Ministry of Culture vide its letter dated February 27, 2012 Re: consideration of the promotion of the persons working in the post of Assistant Library and Information Officer to the post of library information officer in the pay scale of ₹ 15,600 – 39,100 with Grade Pay of ₹ 6600, the respondents did not take any steps either to promote the petitioner or favor him with the benefits of MACPS even after seven years of continuous service. The petitioner approached this Court in WP 30144 (W) of 2015 in this regard but to no avail.

12. The petitioner submitted several representations before the authorities seeking the benefits of MACPS and having failed any

consideration, filed the Writ Petition being WPO 1892 of 2023 which resulted in the impugned order.

13. The petitioner was initially appointed in the post of cataloguer in the Indian Museum library on December 16, 1992 in the pay scale of ₹. 1200 – 2040. His employment was confirmed by the office order dated April 12, 1996. A review committee constituted following the recommendations of the 4th Pay Commission, recommended by its memorandum dated July 24, 1990, for redesignation of the post carrying pay scale of ₹. 1200 – 2040 as Library Information Assistant in the pay scale of ₹. 1400 – 2600. Following such recommendations and in view of the representations made on behalf of the petitioner, he was upgraded in the pay scale of ₹ 1400 – 2300 by an office order dated August 25, 1998 with effect from the date of his initial appointment on December 16, 1992. Therefore, such upgradation of the pay scale of the petitioner, at no stretch of imagination, could be considered as extending him the benefits of Assured Career Progression or the promotion. It was merely the upgradation following the recommendations of the pay commission.

14. Furthermore, since, the recommendations dated July 24, 1990 was not fully implemented in the case of the petitioner because he was upgraded to the pay a scale of ₹ 1400 – 2300 instead of the scale

of ₹ 1400 – 2600, the petitioner approached this court in a writ petition being WP No. 1909 of 1999. However, the said writ application had to be withdrawn by the petitioner in order to facilitate the implementations of the 5th Pay Commission by the authorities. By the recommendations made by the 5th Pay Commission, the posts of Library and Information Assistant and Senior Library Assistant were recommended to be merged in the pay scale of ₹. 5500 – 9000 with effect from January 1, 1996.

15. In accordance with such recommendations, the petitioner was placed in the post of Library and Information Assistant in the pay Scale of ₹. 5500 – 9000 with effect from January 01, 1996 i.e. the date of implementation of 5th pay commission. Such upgradation of the scale of pay of the petitioner was also following the recommendations of the Pay Commission generally applicable to all the employees falling under such scales of pay. Therefore, such upgradation also could not be considered as the benefit extended on account of Assured Career Progression or promotion.

16. The petitioner was neither granted promotion nor did he receive the benefit of any Assured Career Progression scheme since his appointment on December 16, 1992 until 2003. However, by an office order dated November 22, 2004, the petitioner was promoted to

the post of Assistant Library & Information Officer in the pay scale of ₹. 6500-10500, from the post of Library and Information Assistant. Subsequently, the benefit of Assured Career Progression scheme was also notified on November 25, 2004 extending the benefits of ACP to the petitioner with effect from December 16, 2004 i.e. on completion of 12 years of service in the same scale as applicable at the relevant time for the employees belonging to Group 'B' 'C' or 'D', in terms of Office Memorandum No. 35034/1/97-Estt. (D) Dated August 9, 1999. Since the petitioner was promoted to the post of Assistant Library & Information Officer in November, 2004, he became disentitled for the benefits of such ACP.

17. The petitioner has been working in the post of Assistant Library and Information Officer since his promotion in the year 2004 and superannuated on July 31, 2020. He was not granted any promotion upon benefit of assured carrier progression during the period from November 22, 2004 till July 31, 2020, he was served in the cadre for sixteen years.

18. In pursuance of the recommendation of this pay commission, by an office order dated November 03, 2009, the pay scale of the writ petitioner was revised in the pay band of Rs. 9,300-34,800/-with grade Pay of Rs. 4,600/-. The records placed before us also

demonstrates that under the recommendation of this pay commission, modified career progression scheme (MACPS) was introduced vide office memorandum dated May 19, 2009. Such MACP provided for financial upgradation of pay scale upon completion of 10 years, 20 years and 30 years of service.

- 19.** As noted above, the petitioner was promoted to the post of Assistant Library and Information Officer with effect from October 27, 2004 vide office order dated November 22, 2004. He served in the said post for 16 years without any promotion. As such, in terms of the office memorandum dated May 19, 2004, the petitioner was entitled for MACPS upon completion of 10 years in the post of Assistant Library Information Officer. Apparently, he completed 10 years of service in the post of Assistant Library and Information officer on October 26, 2014. Accordingly, the petitioner was entitled for the benefit of first MACPS in the post of Assistant Library and Information Officer with effect from October 27, 2014. Admittedly, he was superannuated on July 31, 2020 before completion of the next 10 years, he cannot claim the second MACPS which would have become due, had he completed 20 years of service in the said post without promotion.

20. In the light of the discussion made hereinabove, we set aside the impugned order. We hereby direct the authorities to grant the petitioner the benefits of first MACPS in the post of Assistant Library and Information Officer as indicated above. Accordingly, the appeal being APO No. 102 of 2024 is hereby disposed of.

21. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

22. I agree.

[DEBANGSU BASAK, J.]