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WP No.3420 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

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1.Union of India,
Represented by the Post Master General,
Western Region (TN),
Coimbatore-641002.

2.Senior Superintendent of Post Offices,
Erode Division,
Erode-638 001.

... Petitioners

versus

1.V.K.Palanivel
2.V.Subramanian-II
3.M.Ammasai
4.M.Thirunavukkarasu
5.V.Veeramani
6.P.Thangavelu
7.R. Vishwanathan
8.M. Vishwanathan
9.A.Maruthachalam
10.K.Chinnaraj

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- 11.Nirmala Sethumadhavan
- 12.P.Natarajan
- 13.L.N.Rangarajan
- 14.K.C.Eswaramoorthy
- 15.T.P.Prabhavathy
- 16.K.Palanisamy
- 17.N.Kunjireddy
- 18.S.Jayakodi
- 19.M.Punithavathy
- 20.R.Sivaramakrishnan

21.The Registrar,
Central Administrative Tribunal,
High Court Complex,
Madras-104.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari to call for the records in OA No.1154 of 2013 dated 14.12.2015 on the file of the Central Administrative Tribunal, Chenna Bench and to quash the same.

For the Petitioners :Mr.V.Balasubramanian

For the Respondents :Mr.Malaichamy
for respondents 1 to 20
21st respondent-Tribunal



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ORDER

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

Challenging the order in OA No.1154 of 2013 dated 14.12.2015, passed by the Central Administrative Tribunal, Madras Bench, the petitioner Department has filed the present writ petition.

Brief facts of the case:

2. The respondents 1 to 20 herein were initially appointed in the cadre of Postal Assistants. Subsequently, they were granted two financial upgradations under TBOP and BCR after completion of 16 years and 26 years of service respectively. After implementation of the Modified Assured Career Progression (MACP), as respondent 1 to 20 had completed 30 years of service, the second appellant, in pursuance of the order issued by the Directorate and the competent authorities, granted financial upgradation of MACP-III, by order dated 22.06.2010, to respondents 1 to 20 herein. Subsequently, the same has been withdrawn and amounts paid consequent to the grant of MACP-III ordered to be recovered on the ground that



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respondents 1 to 20 have declined to accept the regular promotion to the cadre of Lower Selection Grade (LSG), much before MACP came into effect. As per paragraph 25 of the said MACP order, if regular promotion is offered before MACP but the promoted official refused regular promotion before becoming entitled to financial upgradation, no financial upgradation under MCAP shall be allowed. As such, they have not stagnated due to lack of opportunities. Since the respondents 1 to 20 did not accept promotion to the cadre of Lower Selection Grade (LSG) before becoming entitled to financial upgradation, they are not entitled under the MACP III and hence it was withdrawn and the amount paid consequent to the grant of third MACP was ordered to be recovered. Challenging the said order, the respondents herein filed original application in OA No.1154 of 2013, before the Central Administrative Tribunal and the same was allowed by order dated 14.12.2015, by the Tribunal. Aggrieved by the aforesaid order, the petitioner Department has filed the present writ petition before this Court.



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3. The aforesaid facts have not been disputed by the counsel for both the parties

4. At this juncture, learned counsel for the respondents has submitted that the issue involved in the present writ petition is squarely covered by the decision rendered by a Division Bench of this Court in WP No.4791 of 2018 etc., batch dated 18.03.2022. The relevant portion of the said order is extracted hereunder:

'The MACPS having been brought into force from 01.09.2008, the consequence for a refusal which is provided therein can get attracted only in respect of refusal to promotion made after the implementation of the MACPS and not prior thereto.'

5. He further submits that following the aforesaid order of the Division Bench, similar order has been passed in WP No.41689 of 2016 dated 22.11.2023 by another Division Bench of this Court. The relevant portion of the order is extracted hereunder:

'10. Admittedly, before came into force of the above MACP scheme (01.09.2009), the



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petitioner had denied the LSG promotion in the year 2007 and the declination was expired in the year 2008. Further, though the subsequent promotion to the post of LSG offered by the Department in the year 2009 and 2011 were refused by the petitioner, i.e. after the implementation of the MACP scheme, he had completed 30 years of service, as early as in the year 2004 itself. Further, while offering LSG promotion in the year 2007, the petitioner was drawing higher pay, equivalent to the next promotion cadre of HSG-II. 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 2004 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 the 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 a period of twelve weeks from the date of receipt of a copy of this order.'



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6. The decision rendered by a Division Bench of this Court in WP No.4791 of 2018 etc., batch dated 18.03.2022, followed by the decision rendered by the Division Bench of this Court in WP No.41689 of 2016, dated 22.11.2023, squarely apply to the facts of this case. Hence, there is there is no merit in the writ petition. Consequently, the writ petition stands dismissed.

7. The petitioner Department is directed to comply with the direction issued by the Central Administrative Tribunal, by refunding the amount, if any, recovered from respondents 1 to 20 herein, within a period of three months from the date of receipt of a copy of this order.

8. There shall be no order as to costs. Consequently, WMP Nos.4191 and 4192 of 2018 are closed.

[D.K.K., J.] [K.B., J.]
03.04.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

1. The Registrar,
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D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

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