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W.P.Nos.5743 & 9490 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.Nos.5743 & 9490 of 2020

and

W.M.P.No.6721 of 2020

W.P.No.5743 of 2020:

- 1.Union of India,
rep. by its, Secretary,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi – 110 001.
- 2.Director General, [Works]
Central Public Works Department,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi – 110 001.
- 3.Special Director General (PR),
Central Public Works Department,
Rajaji Bhavan, Besant Nagar,
Chennai – 600 090.
- 4.Additional Director General (CR),
Central Public Works Department,
Rajaji Bhavan, Besant Nagar,



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Chennai – 600 090.

5.Chief Engineer,
Chennai
Central Public Works Department,
Rajaji Bhavan, Besant Nagar,
Chennai – 600 090.

6.Executive Engineer (C-4-D),
Central Public Works Department,
GPRA Campus, Thirumangalam,
Anna Nagar, Chennai – 600 040.

... Petitioners

Vs.

1.The Registrar,
Central Administrative Tribunal,
High Court Complex,
Chennai – 104.

2.C.P.K.Ramesh

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records of 1st respondent in O.A.No.1428 of 2016 dated 12.10.2018 in allowing the O.A filed by the 2nd respondent and quash the same.

For Petitioners : Mr.S.Janarthanam
SPCGSC

For R1 : Tribunal

For R2 : Mr.P.Ulaganathan



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W.P.No.9490 of 2020:

C.P.K.Ramesh

... Petitioner

Vs.

- 1.Union of India,
rep. by its, Secretary,
Ministry of Housing and Urban Affairs,
Nirman Bhavan,
New Delhi – 110 001.
- 2.Director General (Works),
Central Public Works Department,
Ministry of Housing and Urban Affairs,
Nirman Bhavan, New Delhi – 110 001.
- 3.Special Director General (PR),
Central Public Works Department,
Rajaji Bhavan, Besant Nagar,
Chennai – 600 090.
- 4.Additional Director General (CR),
Central Public Works Department,
Rajaji Bhavan, Besant Nagar,
Chennai – 600 090.
- 5.Chief Engineer (South Zone),
Chennai
Central Public Works Department,
Rajaji Bhavan, Besant Nagar,
Chennai – 600 090.
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Central Public Works Department,
GPRA Campus, Thirumangalam,
Anna Nagar, Chennai – 600 040.



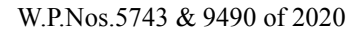
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7. The Registrar,
Central Administrative Tribunal,
Additional City Civil Court Buildings,
Chennai – 600 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the 7th respondent Tribunal in connection with its order passed in OA.No.310/01428/2016 dated 12.10.2018 and quash the same to the extent that it failed to consider the claim of the petitioner to count the approved service in Central Secretariat Clerical Service (CSCS), in entry grade for the residency period for the purpose of financial up-gradation under ACPS / MACPS from 01.07.1984 and direct the 6th respondent to grant to the petitioner 2nd financial up-gradation, on his completion of 24 years of service under Assured Career Progression Scheme (ACPS) in terms of G.I.O.M dated 09.08.1999, in P.B 2 (Rs.9300-34800) + G.P Rs.4200/- with effect from 01.07.2008, and third financial up-gradation under MACPS w.e.f 01.07.2014 in P.B2 (Rs.9300-34800) + G.P Rs.4600/-, taking into account the approved service in Central Secretariat Clerical Service (CSCS) and further direct 6th respondent not to recover the alleged excess payment of pay and allowances.

For Petitioner	: Mr.P.Ulaganathan
For R1 to R6	: Mr.S.Janarthanam Senior Panel Counsel
For R7	: Tribunal



[Order of the Court is made by **S.M.SUBRAMANIAM, J.**]

Under assail is the order dated 12th October, 2018 passed in O.A.No.1428 of 2016. Two writ petitions have been filed. W.P.No.5743 of 2020 has been filed by the Union of India, challenging the said order of the tribunal. W.P.No.9490 of 2020 has been filed by the original applicant before the Tribunal.

2. For the sake of convince, the parties are referred by their original ranking in the Central Administrative Tribunal.

3. The issue that arises in the present writ petitions is whether the original applicant is entitled to receive a second monetary financial up-gradation under Second Assured Career Progression Scheme (ACPS) or the Second Modified Assured Career Progression Scheme (MACPS).

4. The facts in brief necessary for consideration of these writ petitions are that the original applicant initially joined as a Lower Division Clerk



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(LDC) in the Central Secretariat Clerical Service (CSCS) cadre on 21.03.1985. He was subsequently transferred from the CSCS cadre to the subordinate cadre on 18.01.1989, submitted his technical resignation on 13.02.1989, and rejoined as LDC in subordinate cadre on 13.03.1989. ACP Scheme was introduced with effect from 09.08.1999. However, the original applicant had completed 12 years of services on 20.03.1997 prior to the implementation of ACP Scheme on 09.08.1999.

5. It was not disputed before the Tribunal that the date of appointment of the petitioner was on 21.03.1985. Admittedly, he had completed 12 years from 21.03.1985 to 21.03.1997. Since the ACP Scheme itself was implemented only from 09.08.2009, the original applicant was granted financial up-gradation under first ACP in the year 1999.

6. The applicant was promoted as Upper Division Clerk (UDC) on 18.09.2008. Even as per the original applicant, he completed 24 years of service from 21.03.1985 to 20.03.2009. However, even before completion of 24 years of service from the date of appointment, the ACP Scheme was superseded and MACP Scheme was implemented. The MACP Scheme was retrospectively implemented with effect from 01.09.2008. Therefore, the case



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of the petitioner was considered for grant of second MACP financial up-gradation under the new scheme, which was implemented with effect from 01.09.2008.

7. With reference to the eligibility of the petitioner for financial up-gradation of second ACP the scheme itself was superseded and new MACP Scheme came into force with effect from 01.09.2008. As on 01.09.2008, the original applicant has not completed 24 years of service from the date of appointment. He had completed 24 years qualified services from his date of appointment only on 20th March 2009. Since the MACP scheme was implemented with effect from 01.09.2008, admittedly the petitioner has received the financial up-gradation under the second MACP Scheme. The issue relating to the implementation of MACP Scheme and withdrawal of ACP was considered by the Hon'ble Supreme Court of India in the case of ***Vice Chairman, Delhi Development Authority vs. Narender Kumar and Others¹***, and by referring the case of ***Union of India vs. M.V.Mohanan Nair²***, the Hon'ble Supreme Court considered the issues and the relevant paragraph in the case of ***M.V.Mohan Nair*** cited supra reads as under:

1. (2022) 11 SCC 641

2. (2020) 5 SCC 421



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“26.

“32. The change in policy brought about by supersession of ACP Scheme with the MACP Scheme is after consideration of all the disparities and the representations of the employees. The Sixth Central Pay Commission is an expert body which has comprehensively examined all the issues and the representations as also the issue of stagnation and at the same time to promote efficiency in the functioning of the departments. MACP Scheme has been introduced on the recommendation of the Sixth Central Pay Commission which has been accepted by the Government of India. After accepting the recommendation of the Sixth Central Pay Commission, the ACP Scheme was withdrawn and the same was superseded by the MACP Scheme with effect from 1-9-2008. This is not some random exercise which is unilaterally done by the Government, rather, it is based on the opinion of the expert body—Sixth Central Pay Commission which has examined all the issues, various representations and disparities. Before making the recommendation for the pay scale/revised pay scale, the Pay Commission takes into consideration the existing pay structure, the representations of the government servants and various other factors after which the recommendations are made. When the expert body like the Pay Commission has comprehensively examined all



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the issues and representations and also took note of inter-departmental disparities owing to varying promotional hierarchies, the Court should not interfere with the recommendations of the expert body. When the Government has accepted the recommendation of the Pay Commission and has also implemented those, any interference by the court would have a serious impact on the public exchequer.”

8. The learned counsel for the original applicant would submit that initial appointment of the applicant is to be reckoned from the year 1984. However, the said arguments deserves no merit consideration, since the original applicant has accepted the financial up-gradation of first ACP in the year 1999. That being so, he cannot now turn around and dispute his initial date of appointment, which is recorded as 21.03.1985 for all purposes. Such dispute cannot be adjudicated for the purpose of claiming the benefit of financial up-gradation at this length of time.

9. We found that the original applicant has not completed 24 years of service as on 01.09.2008, the date on which the MACP Scheme was implemented. Therefore, he was rightly granted the financial up-gradation II under the new MACP Scheme.



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10. That being the factum, we are of the considered opinion that the directions issued by the Tribunal are not in consonance with the withdrawal of the ACP Scheme and implementation of MACP Scheme with effect from 01.09.2008. Thus, the order impugned dated 12th October, 2018 in O.A.No.1428 of 2016 is set aside.

11. It is brought to the notice of this Court that the original applicant has already retired from service on attaining the age of superannuation. In respect of the retired employees, recovery of excess salary paid, if implemented, would cause hardship, as the original applicant presently is a pensioner. That being so, this Court is inclined to direct the respondents in O.A.No.14428 of 2016 not to recover the excess salary already paid to the original applicant.



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12. Accordingly, the Writ Petition in W.P.No.5743 of 2020 is allowed and the Writ Petition in W.P.No.9490 of 2020 is dismissed. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

[S.M.S., J.] [M.J.R., J.]
18.12.2024

Jeni

Index : Yes

Speaking order

Neutral Citation : Yes

To

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Union of India,
Ministry of Housing and Urban Affairs,
Nirman Bhavan,
New Delhi – 110 001.

2.The Director General (Works),
Central Public Works Department,
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AND
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