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W.P.No.11142 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.12.2023

Delivered on: 15.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P.No.11142 of 2020

and

W.M.P. No.13594 of 2020

1. K. Babu S/o. E. Kothandaraman
2. N. Soundarajan S/o. Nellaiappan
3. A. Irudhayaraj S/o. M. Asirvatham
4. M.V. Vijayaraghavan S/o. Varadhachari
5. G. Rajaraman S/o. V. Gopalakrishnan
6. S. Ranjit Roy S/o. Samuel
7. M.K. Karunakaran
8. E. Ravindran, BCR, PA Cuddalore O.T. (Retd.,)
9. A. Palani, SPM, Kondur (Retired)
10. R. Ramadoss, SPM Cuddalore Court Buildings,
11. C. Chandrabose, BCR, Postal Assistant.
12. T. Thillai Selvan S/o. Thulasingham
13. T.A. Chinnaraj, Retired Postal Assistant

... Petitioners

Vs.

1. The Deputy Director General (Estt.)
Department of Post, Dak Bhawan Sansad Marg,
New Delhi – 110 001.

2. The Chief Post Master General,
Tamil Nadu Circle, Chennai-600 002.



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3. The Chief Post Master,
Anna Road, Head Post Office, Chennai-600 002.

4. The Chief Post Master,
Chennai GPO, Chennai-600 001.

5. The Post Master General,
Central Region – TN, Tiruchirappalli.

6. The Superintendent of Post Offices,
Cuddalore Division,
Cuddalore – 607 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to quash the orders of the Central Administrative Tribunal, Chennai dated 07.09.2018 made in O.A. Nos.310/01018/2017, 310/01122/2017, 310/01017/2017, 310/01016/2017, 310/01855/2017, 310/01022/2017, 310/00175/2018, 310/00179/2018, 310/00180/2018, 310/00181/2018, 310/00182/2018, 310/00921/2018 and 310/00177/2018 filed by the petitioners and consequential order of the 1st respondent dated 16.01.2019 made in No.2-4/2018-PCC (Vol.III) and consequently direct the respondents to grant III Financial upgradation to the petitioners from the date on which they have completed 30 years of service or from the date on which it is due to them till their retirement.



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For Petitioners : Mr. G. Ravisankar
For Respondents : Mr. A.R.L. Sundaram,
Additional Solicitor General
for Mr. Venkataswamy Babu,
Senior Panel Counsel [SPC]
[for R1 to R5]

Tribunal [for R6]

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This Writ Petition has been filed by the petitioners to issue a Writ of Certiorarified Mandamus or any other appropriate order or direction by setting aside the orders in O.A. Nos.310/01018/2017, 310/01122/2017, 310/01017/2017, 310/01016/2017, 310/01855/2017, 310/01022/2017, 310/00175/2018, 310/00179/2018, 310/00180/2018, 310/00181/2018, 310/00182/2018, 310/00921/2018 and 310/00177/2018 on the file of the 6th respondent / Central Administrative Tribunal dated 07.09.2018 and and consequential order of the 1st respondent dated 16.01.2019 made in No.2-4/2018-PCC (Vol.III) and consequently direct the respondents to grant III Financial upgradation to the petitioners from the date on which they have completed 30 years of service or from the date on which it is due to them till their retirement.



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2. According to the petitioners, they were working under the employment of 1 to 5 respondents and they have completed 30 years of service and thereby, they are entitled for grant of 3rd financial upgradation. But in their career, out of three financial upgradations, they had been granted only two financial upgradations. On enquiry, they came to know that their appointment as Postal Assistant through Limited Departmental Competitive Examination (LDCE) was counted as a promotion and set off against one of the three financial upgradations. Therefore, these petitioners had filed Original Applications before the Central Administrative Tribunal and the same were dismissed by the Central Administrative Tribunal. A Similarly placed person had got benefits and the same was implemented vide order passed in O.A. No.1088 of 2011 dated 04.03.2013 on the file of the Central Administrative Tribunal, Chennai. These respondents also challenged that order in W.P. No.30629 of 2014 and the same was also dismissed through order dated 04.02.2015. As against the said order, a Special Leave Petition was filed before the Hon'ble Supreme Court of India and the same was also dismissed. Thereafter, a review petition was filed and the same was also dismissed. Therefore, the petitioners herein, made their representations before the respondents and they rejected their claims



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through impugned order dated 16.01.2019. The Tribunal has failed to consider their claim and erroneously dismissed the original applications. Hence as against the orders, the petitioners have filed the present writ petition.

3. The respondents filed a counter stating that these petitioners entered into the respondents' department as either Group-D (now Multi Tasking Staff) or Postman and they were promoted to the cadre of Postal Assistant through Limited Departmental Competitive Examination in respect of officials working in the cadre of Group-D and Postman. Though there is a provision for direct recruitment to the cadre of Postal Assistant from open market, there is no parity between the departmental candidates and the open market candidates. The standards prescribed for departmental candidates and direct recruit candidates for promotion / direct recruitment to the cadre of Postal Assistant are different. The appointment to the cadre of Postal Assistant from the cadre of Poatman / Multi Tasking Staff through Limited Competitive Examination cannot be treated as Direct Recruitment and it has to be construed as promotion only.



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3.1. The Central Government introduced the Modified Assured Career Progression Scheme for the Central Government Civilian employees through Department of Personnel and Training OM dated 19.05.2009. The main purpose of introduction of this scheme is to overcome the problem of stagnation in the career of the employees without any financial benefits or any promotion. As per the Modified Assured Career Progression Scheme, all regularly appointed Group A, B & C employees are eligible for 3 financial upgradations on completion of 10, 20 & 30 years of service respectively. As per the clarification issued by Department of Personnel & Training in OM dated 07.08.2010, the benefits under MACPs would be available from the date of actual joining of the post in the entry grade and as per OM dated 19.05.2009, the promotions earned in the post carrying same grade pay in the promotional hierarchy as per the recruitment rules shall be counted for the purpose of MACP Scheme. As per the aforesaid provisions of MACP Scheme, the promotion of the petitioners from the cadre of Group D to the cadre of Postal Assistant in pay matrix level 4 offsets MACP-1. The second financial upgradation granted to the petitioners under the erstwhile TBOP (Time Bound One Promotion) in pay matrix level 5 offsets MACP II and the subsequent financial upgradations



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in pay matrix level 6 under the erstwhile BCR (Biennial Cadre Review) or Modified Assured Career Progression Scheme offsets MACP III. As the petitioners have availed one promotion and two financial upgradations in their entire career, they are not entitled to any further financial upgradation under Modified Assured Career Progression Scheme.

3.2. These petitioners claiming MACP without counting their promotion and appointment as Postal Assistant with consequential benefits. Since these petitioners have passed Limited Departmental Competitive Examination available for departmental officials, they cannot be treated as direct recruit in that cadre. Therefore these petitioners are to be treated against promotion quota. Since the petitioners have already got three promotions / upgradations in their service, they are not entitled for further upgradation under MACP Scheme. As per rules, inductions to PA cadre from Group D and Postman cadre are promotions through Departmental Examination under the relevant Recruitment Rules. The petitioners' promotion to the cadre of Postal Assistant from MTS / Postman cadre offsets MACP I. Subsequently, they were granted financial upgradations under Time Bound One Promotion and Biennial Cadre Review Scheme



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which offsets MACP II & III respectively. These petitioners had already availed of all three financial upgradations during their service period. Therefore, they are not entitled to any further financial upgradation under MACP Scheme. The claim of the petitioners was duly examined by the competent authority in the light of the provisions of MACP and a suitably reply was given through a letter dated 16.01.2019 by rejecting the requests of the petitioners for grant of financial upgradations under MACP. Therefore the present writ petition is not maintainable and the same is liable to be dismissed.

4. The learned counsel appearing for the petitioners would contend that these petitioners were working under the employment of 1 to 5 respondents' department and they are eligible for III financial upgradation after completion of 30 years, but the respondents had not granted III financial upgradation. Thereby, the petitioners had given their representations and the same had not been considered positively and the same were rejected by impugned order dated 26.05.2017 on the ground that no instructions based on the order of the Tribunal has been received from the Directorate / CO / RO and further the said OA has been rejected



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on the ground that three financial upgradations had already been granted to them by way of promotions from Postman to the cadre of Postal Assistant and subsequent promotions under the Schemes of TBOP & BCR and further some of the representations were given before the Tribunal and the same were rejected on the ground that the order of the Tribunal relied upon by the applicant was in personam and was applicable only to that applicant. But the Tribunal has failed to consider that ratio laid down by the Hon'ble Division Bench of the Madras High Court in W.P No.30629 of 2014 and the same was also confirmed by the Hon'ble Apex Court and further the Tribunal failed to consider the impugned rejection order. No valid excuse to reject the claim of the petitioners. But once again directed the 1st respondent to take a decision in the matter in accordance with law and to pass a reasoned and speaking order. Thereafter, the respondents has passed speaking order dated 16.01.2019 by stating that these petitioners have already got 3 promotions / upgradations in their service and they are not entitled for further upgradation under MACP. The Judgment dated 14.03.2013 passed by the Central Administrative Tribunal, Madras in O.A. No.1088 of 2011 came under scrutiny of Hon'ble Supreme Court by way of filing S.L.P. (C) No.4848 of 2016 and the review petition



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filed by the department was dismissed through judgment dated 16.08.2016.

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Further the Hon'ble Supreme Court has kept the question of law open. The 3rd financial upgradation under the MACP before completion of 30 years of continuous service or 10 years of continuous service in same Grade Pay is not admissible. The above said observations made by the 1st respondent is against law and these petitioners are entitled to the III financial upgradation. Therefore the order of Central Administrative Tribunal is liable to be set aside by allowing this Writ petition.

5. The learned counsel appearing for the respondents would contend that these petitioners were appointed as Grade 'D' employees of the department and thereafter they promoted from the Pay Matrix level 1 to 4 as Postal Assistant. In Pay Matrix Level 4, III financial upgradation was granted to the petitioners under erstwhile TBOP in Pay Matrix Level 5 offsets MACP II and the subsequent financial upgradation in Pay Matrix Level 6 under the erstwhile BCR or MACP offsets MACP III. Since the petitioners have availed one promotion and two financial upgradations in their entire career, they are not entitled to any further financial upgradation under MACP Scheme. The above said position has been clarified to the



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petitioners. But in spite of that, they gave representations and the said representations were suitably rejected and then they filed petitions before the Central Administrative Tribunal and the same was disposed by directing the 1st respondent to pass a speaking order and in compliance of the said order, the 1st respondent has passed order dated 16.01.2019 by rejecting the requests of the petitioners and hence the present Writ petition is liable to be dismissed.

6. Heard both sides and perused the entire materials available on record.

7. It is an admitted fact that these petitioners were under the employment of the respondents' department and they were granted one promotion and two financial upgradations. The petitioners' contention is that they completed 30 years of service but the department has denied one more financial upgradation. According to the respondents, these petitioners already promoted and thereafter got two financial upgradations and therefore they are not entitled for further financial upgradation.

8. As per the MACP Scheme, three financial upgradations to be



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granted on completion of 10, 20 and 30 years of service from the date of entry or whenever a person spend 10 years in the same grade pay, he is entitled for MACP. In the case on hand also, already requests of the petitioners were rejected and thereafter they filed Original Applications before the Central Administrative Tribunal, Chennai and the Tribunal also disposed the said applications by directing the 1st respondent to pass a speaking order. As against the above said order, the petitioners have not filed any appeal or writ petition immediately. Thereafter in compliance of the order passed by the Central Administrative Tribunal, the respondent has passed the impugned order dated 16.01.2019, once again by rejecting the claim of the petitioners. Therefore, challenging the order passed by the Central Administrative Tribunal became infructuous, since the order has been complied with by the 1st respondent. Till the compliance of the order of the Tribunal by the respondents, these petitioners have not filed any Writ petition by challenging the said order of the Tribunal. Therefore, the Writ petition challenging the order passed by the Tribunal becomes infructuous.

9. In the Writ petition, the petitioners have also sought for prayer to quash the order passed by the 1st respondent dated 16.01.2019. The above



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said order has not been challenged before the Central Administrative Tribunal and the petitioners straight away have challenged the said order before this Court. Thereby, this Writ petition is not maintainable, since the petitioners without availing remedy before the Central Administrative Tribunal and they straight away filed this Writ petition before this Court.

10. Therefore this Writ petition is not maintainable and the petitioners are at liberty to challenge the said impugned order dated 16.01.2019 before the Central Administrative Tribunal in accordance with law. The petitioners are entitled to the benefit under Section 14 of Limitation Act, while pending proceedings before this Court.

11. With the above said observations, this Writ petition is dismissed. No costs. Connected miscellaneous petition, if any, is closed.

(D.K.K.J) & (P.D.B.J)
15.02.2024

mjs

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Deputy Director General (Estt.)
Department of Post, Dak Bhawan Sansad Marg,



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D.KRISHNAKUMAR, J.,
and
P.DHANABAL,J



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(mjs)

Pre-delivery judgment in
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