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W.P.No.22821 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.No.22821 of 2021 and

WMP No.23044 of 2021

1. Union of India, Through Secretary,
Ministry of Commerce & Industries Department of
Industrial Policy and Promotion,
Government of India, Udyog Bhavan,
New Delhi.
2. The Salt Commissioner, Office of the Salt,
Commissioner No.2-A, Lavan Bhavan,
Lavan Marg, Jhalana Doongri, Jaipur.
3. The Deputy Salt Commissioner,
26, Haddows Road, Shastri Bhavan,
Chennai 06.

... Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal,
Chennai.
2. J. Angela
Respondents

...



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PRAYER: Writ petition is filed under Article 226 of Constitution of India, for issuance of a writ of Certiorari calling for the records from the file of the first respondent Tribunal made in O.A.No.310/904 of 2016, dated 03.06.2020.

For Petitioners : Mr.P.J.Anitha

For Respondents : No appearance for R2
R1 - Tribunal
ORDER

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

This writ petition has been filed by the Union of India, Ministry of Commerce and Industry, challenging the order passed by the Tribunal in O.A.No.310/904/2016, dated 03.06.2020, in and by which, the petitioners are directed to consider the re-fixation of the second respondent herein w.e.f. 03.12.1997 and granting of MACP on completion of 30 years, as per rules, within a period of six months from the date of receipt of the copy of the order.

2. It is contended by the learned counsel for the petitioner, MACP scheme was introduced, granting financial upgradation, only to the employees, who have been deprived of regular promotion for a long period,



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despite being eligible for promotion, due to non availability of vacancies in the higher grade. However, the financial upgradation cannot be granted to the employees, who refused the regular promotion offered to them, till they agreed for the regular promotion.

3. According to the petitioner/Department, though periodical promotion was given to the second respondent, she had denied the same on three occasions before 01.09.2008 (before the coming into force of the MACP Scheme). Hence, she is not entitled to get financial upgradation, till she accepts the regular promotion.

4. At this juncture, it is necessary to note that, in a similar writ petition in W.P.No.7181/2016, dated 22.11.2023, a Division Bench of this Court, in which, myself (D.KRISHNAKUMAR, J.) is one of the members, has passed the following order.

" 9. At this juncture, reliance was placed before this Court in W.P.No.4971 to 4975 and 20488/2018, dated 18.03.2022, in which, at page No.17 and 18, a Division Bench of this Court has held as follows.

d. The act of refusal of promotion occurred prior to introduction of MACPS and the consequence was provided in the



orders dated 16.04.2008 and 23.07.2008. Thus, to construe the above act as attracting the restriction under para 25 of MACPS, dated 18.09.2009, would result in the act of refusal of promotion, resulting in two adverse consequences (double jeopardy), one under the earlier orders dated 16.04.2008 and 23.07.2008 and the other under para 25 of MACPS dated 18.09.2009, which we think is inequitable, if not obnoxious.

MACPS being a beneficial scheme and a construction that would result in hardship must be eschewed. MACPS is in the nature of incentive scheme, by which, employees unable to avail of adequate promotional opportunities get some relief from stagnation in the form of financial benefits. MACPS is intended to ensure that the employees are adequately incentivised to work efficiently despite not getting promotion. The offers of promotion were financially detrimental to the respondents and therefore, they had not opted to avail promotion offered prior to introduction of MACPS.

The constructions that the consequences provided under MACPS for refusal to accept promotion even prior to its introduction would take away and defeat the very object of MACPS. More so, the employee, who has been stagnated would now also have to suffer the consequence for his act of refusal, which he was not even aware of, at the time of occurrence of the act of refusal of promotion. In other words, it amounts to changing the rules of the game, after the game is played, inasmuch as the respondents had already suffered the consequence for refusal of promotion in terms of orders dated 16.04.2008 and 23.07.2008, causes serious



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hardship and produces results that is inequitable and unfair, which is impermissible.

10. Admittedly, before came into force of the above MACP scheme (01.09.2008), the petitioner had denied the LSG promotion in the year 2007 and the declination was expired in the year 2008. Further, while offering LSG promotion in the year 2007, the petitioner was drawing higher pay, than the scale of pay for LSG. 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 2003 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 be set aside."

5. In the present case on hand, the second respondent had denied promotion on three occasions, viz., on 21.03.1989, 21.08.1991 and 09.10.2003, before came into force the MACP scheme (01.09.2008). However, it will not defeat the right of the petitioner from getting the benefits under MACP schemes. Therefore, as per the ratio laid down by the Division Bench of this Court in the decision stated supra, the second respondent is entitled for financial upgradation under ACP and MACP schemes and hence, we do not find any infirmity to interfere in the order passed by the Tribunal.



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6. Accordingly, the writ petition is dismissed and the impugned order passed by the Tribunal is confirmed. No costs. Consequently, connected miscellaneous petition is closed. The petitioner/Department is directed to comply the order of the Tribunal, within three months from the date of receipt of a copy of this order.

(D.K.K.J.)

(K.B.J.)

15.04.2024

Internet: Yes/No

Index : Yes/No

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To

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

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