IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.12.2023	Delivered on: 29.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P.No.9010 of 2017
and
W.M.P. No.9922 of 2017

1. Union of India,
represented by Secretary to Government,
Ministry of Communications and Information Technology,
(Department of Posts), Sansad Marg,
New Delhi – 110 001.

2. Union of India,
represented by Member (Finance),
Ministry of Communications and Information Technology,
(Department of Telecommunications), Ashoka Road,
New Delhi – 110 001.

3. The Deputy Director General (Postal Accounts Wing),
O/o. The Director General, Department of Posts,
Sansad Marg, New Delhi – 110 001.

4. The General Manager (Postal Accounts & Finance),
Tamil Nadu Circle,
No.5 & 7, Ethiraj Salai, Egmore, Chennai-600 0008.

5. The Controller of Communication Accounts,
Department of Telecommunications,
7th Floor, R.K. Nagar Telephone Exchange,
R.A. Puram, Chennai-600 028. ... Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-600 104.

2. L. Prakash S/o. K.V. Lakshmanan
3. S. Prakash S/o. P.S. Mani
4. A. Nelson Koil Doss S/o. K. Arumai Nayagam
5. M. Nesaraj Selvam S/o. V. Munusamy
6. S. Elangovan S/o. Susainathan
7. S. Rave Sharma S/o. K.R. Subramanian
8. R. Mohan Rao S/o. Raghavendra Rao
9. A.L. Pandi S/o. P.A. Alagesan
10. T. Ramesh S/o. Thiruvenkata Chari.
11. S. Shiva S/o. Subramanian
12. N. Srinivasan S/o. R. Natarajan
13. K. Uma Maheswari D/o. Vaidyanathan
14. S. Valayapathi S/o. V. Shanmugam
15. R. Vasudha D/o. V. Rajagopalan
16. C. Ravichandran S/o. Chinnaiah Pillai
17. Gomathi Govindan D/o. P. Parthasarathy
18. S. Gopalakrishnan S/o. Swaminathan
19. P. Sermugapandian S/o. Palanivel
20. W.R. Vijaya D/o. W.R. Srinivasan
21. Kalyani Jayaraman D/o. T.V. Viswanathan
22. V. Geetha D/o. Veeraraghavan
23. M. Balasaraswathi D/o. K. Nataraja Senai Nattar
24. K. Vaijayanthi Mala D/o. A. Kuthalam Pillai
25. J. Padmaja D/o. J. Janartham
26. A. Therasa Revathy D/o. Amtai Raj
27. R. Rajeswari D/o. J. Radhakrishnan
28. R. Bhavani D/o. V. Rameshan

29. K. Selvaraj S/o. V. Karmegam
30. K.M. Ambika D/o. K. K. Mani
31. G. Crdelia Emerald Esther D/o. G.M. Gnanadoss
32. S. John Bosco S/o. A. Selvaraj
33. S. Manivasakam S/o. N. Sethuraman
34. N. Murali S/o. L.N. Narayanan
35. S. Nagarajan S/o. K.S. Srinivasan
36. G. Palaniappan S/o. P. Gopalan
37. T. Kubenthiran S/o. S.R. Thulasiraman
38. G. Krithivasan S/o. Govindaraj
39. R. Nagarajan S/o. A. Rangasamy
40. S. Helen Rachel Pramila D/o. J. Chellaiah
41. M. Arivazhagan S/o. B.J. Manivasagam
42. S. Santhakumar S/o. S. Subramanian
43. P. Girirajan S/o. Palanivel ... Respondents

<u>PRAYER</u>: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent and quash the order passed by the 1st respondent in O.A. 310/00668 of 2015 dated 08.04.2016.

For Petitioners : Mr. N. Ramesh,
Senior Panel Counsel [SPC]

For Respondents : Tribunal [for R1]

Mr. S. Apunu [R2 to R4, R8, R10 to R15, R17, R20, R22, R24, R26, R27, R29, R30, R32 to R34, R36, R39 to R41]

No appearance [R7, R9, R16, R21, R25, R28, R35, R38 and R42].
Not Ready: R23, R31, R37 and R43.

JUDGMENT

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

This Writ Petition has been filed by the petitioner department to issue of Writ of Certirari or any other appropriate order or direction calling for the records of the 1st respondent and quash the order passed by the 1st respondent in O.A.310/00668 of 2015 dated 08.04.2016.

2. According to the petitioners, the Central Government introduced Assured Career Progression Scheme (ACPS) for the Central Government Civil Employees with effect from 09.08.1999 through Department of Personnel & Training O.M. No.35034/1/97-Estt.(D) dated 09.08.1999. As per the above said scheme, two financial upgradations shall be granted during the period of 12 and 24 years of service in the service career of an employee against regular promotion. Thereafter, the Central Government introduced Modified Assured Career Progression at the intervals of 10, 20 and 30 years continuous regular service with effect from 01.09.2008 through DOP&T OM No.35034/3/2008-Estt. (D) dted 19.05.2009. The MACP Scheme was granted in the immediate next higher grade pay in the hierarchy of revised Pay Band (PB) and Grade Pay (GP). The said

financial upgradations under both the schemes shall be purely personnel to the employee and shall have no relevance to his seniority position. The Direct Recruit Junior Accountants (JA) of Postal Accounts Offices were granted one promotion to Senior Accountant (SA) Cadre and 2nd financial upgradation under ACP Scheme in the promotional hierarchy prior to 01.09.2008. After introduction of MACP Scheme with effect from 01.09.2008, they were granted III financial upgradation in the Pay Band-2 with Grade Pay of Rs.5,400/- i.e., next higher grade pay. A group of Senior Accountants who have completed 24 years of service before 01.09.2008 and got 2nd financial upgradation under ACP Scheme were given Grade Pay of Rs.4,800/- and were allowed the immediate next higher grade pay of Rs.5,400/- in the hierarchy of revised pay band and grade pay under 3rd financial upgradation under MACP Scheme. Since the financial upgradation under both the Schemes are purely personal to the individual concerned, the claim of contesting respondents for grant of grade pay of Rs.5,400/- is not in order. But the Tribunal without considering the above said aspects, allowed the Original Application filed by the respondents by claiming 3rd financial upgradation under MACP Scheme. Therefore the order passed by the Tribunal is liable to be set aside.

3. The respondents filed a counter stating that the statements made in the affidavit are not true. The respondents are not claiming any seniority but demanding the parity in the Grade Pay only since the respondents are in supervisory cadre and also also qualified in a departmental examination whereas the private respondents, who are now protected by the petitioners, are neither qualified nor promoted to AAO [Assistant Accounts Officer] Cadre, ie., supervisory cadre, but they are getting higher grade pay. The Comptroller & Auditor General's version of interpretations will not bind the respondents. Though the similarly placed persons were stepping up of pay, whereas these respondents in the Writ petition are claiming only the parity in the Grade Pay on the ground that supervising officers should not get less pay than that of the supervised, which is against natural justice. Therefore, the Tribunal after taking into consideration has correctly allowed the original application, thereby the present Writ Petition is liable to be dismissed.

4. The learned counsel appearing for the petitioners would contend that the Central Government has introduced Assured Career Progression (ACP) Scheme with effect from 09.08.1999 through order dated

09.08.1999. Thereafter, the Modified Assured Career Progression Scheme (MACP) was introduced from 01.09.2008 through Official Memorandum dated 19.05.2009. As per the above said Scheme, the financial upgradations under both these Schemes shall be purely personal to the employees and shall have no relevance to his seniority position. As per the clarification issued by the Comptroller & Auditor General vide letter dated 31.03.2015, the fundamental principles of the Scheme, the financial upgradation granted under MACP Scheme, is purely personal to the employees and shall have no relevance to his seniority position. Therefore, the petitioners request that their subordinates have got higher Grade Pay than the petitioners, cannot be accepted. Without considering the above said aspects, the Tribunal has allowed the Original application filed by the petitioners. Therefore the said order passed by the 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 are working under the supervising capacity and their subordinates have got higher Grade Pay of Rs.5,400/- under MACP Scheme, whereas these respondents / AAO [Assistant Acocunts Officers],

amalgamated post of JAO [Junior Accounts Officers] and AAO [Assistant Accounts Officers], are getting MACP at Grade Pay of Rs.4,800/-. Therefore, these respondents are entitled for Grade Pay under MACP Scheme on par with their subordinates i.e., Senior Accountant cadre. The Tribunal, taking into account of these aspects, has correctly allowed the Original Application 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 the case of the petitioners that the respondents are working as AAO [Assistant Accounts Officers], combined post of AAO [Assistant Accounts Officers] and JAO [Junior Accounts Officers]. The JAO and AAO posts are higher than the Senior Accountants, whereas the Senior Accountants are getting more Grade Pay than the JAOs and AAOs. Therefore, pay anomaly has to be corrected.

8. According to the respondents, while awarding ACP Scheme,

depending upon the number of years of service, Senior Accountants would get II MACP on the hierarchy grade pay of Rs.5,400/- i..e, these respondents being held the post of supervisory cadre, are entitled to Rs.4,800/- Grade Pay as their promotional hierarchy Grade Pay. As per the clarification issued by the Committee formed by the Hon'ble Supreme Court in the case in ***Union of India vs. M.V. Mohanan Nair & others reported in (2020) 5 SCC 421,*** in which, it is clarified that *as per the fundamental principles of Scheme, financial upgradation granted under the MACPS is purely personal to the employees, and has no relevance to his seniority position*.

Therefore, from the above said clarification, it is clear that the MACP Scheme is purely personal and has no relevance to the seniority position. In the present case also, the contention of the respondents is that they are holding higher post i.e., amalgamated post of JAO and AAO than the Senior Accountants and they are getting lower Grade Pay of Rs.4,800/-, whereas their subordinates/Senior Accountants are getting higher Grade Pay of Rs.5,400/-. Since the Senior Accountants who completed 24 years of service before 01.09.2008 and got 2[nd] financial upgradation under ACP

Scheme were allowed immediate next higher grade pay of Rs.5,400/-, these respondents cannot be equated with them.

9. Since the MACP Scheme is personal to the employees and the cadre of the respondents are not same and different cadre, the contention of the respondents cannot be accepted. Further, the learned Tribunal without considering the above said aspects, allowed the Original Application filed by the respondents and thereby, the order passed by the Tribunal is liable to be set aside.

10. Accordingly, this Writ petition is allowed. The order passed by the Central Administrative Tribunal / 1st respondent in O.A. 310/00668 of 2015 dated 08.04.2016 is hereby set aside.

11. There is no order as to costs. Connected miscellaneous petition, if any, is closed.

(D.K.K.J) & (P.D.B.J)
29.01.2024

mjs
Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No

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

(mjs)

To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-600 104.

Pre-delivery judgment in
W.P.No.9010 of 2017

29.01.2024