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W.P.No.18302 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.18302 of 2017 and
W.M.P.No.19865 of 2017

1. The Union of India,
Rep. by Directorate General of Health Services,
Nirmal Bhavan,
New Delhi-110 108.

2. The Director,
BCG Vaccine Laboratory,
Guindy, Chennai-600 032.

... Petitioners

-VS-

1. J.Gowthaman

2. Central Administrative Tribunal,
Rep. by its Registrar,
Madras Bench,
Chennai-600 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent and quash the order dated 22.11.2016 in O.A.No.310/01567/2014, as the same is unsustainable.

For Petitioners : Mr.Venkatasamy Babu

For R1 : Mr.P.Rajendran

For R2 : Tribunal



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ORDER

(By D.Krishnakumar,J.,)

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This Writ Petition has been filed, challenging the order dated 22.11.2016 of the 2nd respondent / Tribunal made in O.A.No.310/01567/2014, by which, a direction was issued to the petitioners herein to grant MACP benefits within three months.

2. It is the case of the petitioners that the 1st respondent was employed as Khalasi (Workshop) on regular basis in the pay scale of Rs.2750-70-38-75-4400 on 06.06.1992 and subsequently, 6th Pay Commission came into force. The Government of India introduced MACP Scheme with effect from 19.05.2009 vide DOP&T, O.M.No.35034/3/2008-Estt(D). It is further case of the petitioners that the 1st respondent was granted 1st Financial Upgradation under the MACP scheme in the PB-1 Rs.5200-20200 with grade pay of Rs.1900/- and he had completed 20 years of regular service on 06.06.2012. It is also the case of the petitioners that the 1st respondent made a request for grant of 2nd Financial Upgradation under MACP scheme with grade pay applicable to hierarchy post. It was intimated by the DOP&T in its latest O.M.No.22034/04/2013-Estt(D) dated 20.01.2016 that there was a stay order issued by the Apex Court in C.C.No.8271/2014 (SLP No.21803/2014) in respect of grant of MACP scheme benefits and the same is pending. Thus, it was argued that the Tribunal, without taking into fact the pendency of the matter before the Supreme Court, has



passed the impugned order and the same is liable to be set aside and the 1st respondent is not entitled to the relief sought for.

3. Learned counsel for the 1st respondent stated before this Court that in the light of the judgment of the Supreme Court in the case of **Union of India and others vs. M.V.Mohanan Nair**, reported in **(2020) 5 SCC 421**, the 1st respondent is not entitled to claim benefits under MACP scheme. The relevant passage of Paragraph No.38 of the said judgment is extracted hereunder:

“38....In the present batch of cases where the respondents are claiming financial upgradation in the grade pay of promotional hierarchy, no grounds are made out to show that the MACP Scheme granting financial upgradation in the net grade pay is arbitrary and unjust; warranting interference. The implementation of the MACP Scheme is claimed to have led to certain anomalies; but as pointed out earlier, MACP Scheme itself is not under challenge.”

4. However, learned counsel for the 1st respondent pointed out that the 1st respondent is entitled to the benefit under Old Scheme upon completion of 12 years, as, at that time the said benefit has not been given to him consequent to the pendency of the disciplinary proceedings and subsequently, the proceedings have been dropped. Therefore, the 1st respondent may be granted notional benefits for the purpose of pensionary benefits under the Old Scheme.

5. At this juncture, learned counsel for the petitioners stated before this Court that the issue before this Court is with regard to the grant of benefit under MACP



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alone and not under ACP and if any representation is made by the 1st respondent to the Authority concerned, the same may be considered by the petitioners, if he is otherwise eligible.

6. In view of the submissions made on either side, the 1st respondent is directed to give a representation to the 2nd petitioner for sanction of benefits under Old ACP, within a period of two weeks from the date of receipt of a copy of this order and if any such representation is made, the 2nd petitioner shall consider the same and pass orders thereon within a period of twelve weeks from the date of receipt of application, if any made by the 1st respondent.

7. With the above observation and direction, this Writ Petition is allowed and the order dated 22.11.2016 of the 2nd respondent / Tribunal is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K., J.,]

[K.B., J]

05.07.2024

Index: Yes / No

Internet: Yes / No

Speaking Order/Non Speaking Order

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To:

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

D.KRISHNAKUMAR,J.,
AND



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K.KUMARESH BABU,J.,
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