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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 11427/2024

RADHA BHALLAV BHATTACHARJEE & ANR. .....Petitioners
Through: Mr. Abhay Kumar Bhargava, Adv.

versus

UNION OF INDIA & ORS. .....Respondents
Through: Mr. Piyush Beriwal, Ms. Ojasvi & Mr. Ankur Yadav, Advs. for R-1 to 3.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MS. JUSTICE SHALINDER KAUR

<u>O R D E R</u>

% **20.08.2024**

1. The petitioners, who are serving in the General Duty Cadre with the Border Security Force (BSF) have approached this Court under Article 226 of the Constitution of India, seeking the following directions:

> i. *Issue a writ of Mandamus or any other writ order or direction thereby placing the case of the petitioners before the Joint Committee, Union of India and DoP&T to take a decision in terms of Para 53 and 48 of the judgment dated 05.03.2020 passed by the Hon'ble Supreme Court in UNION OF INDIA AND OTHERS vs. M.V. MOHANAN NAIR, SLP(C) No.21803 of 2014 in a time bound manner;*
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> ii. *Issue a writ of Mandamus or any other writ order or direction thereby placing the case of the petitioners before Joint Committee, Union of India and DoP&T for the purpose of granting one-time exemption to the petitioners w.r.t grant of benefits MACP at the grade pay of Rs. 4200/- i.e., after completion of 20 Years of service which was the next promotional grade/post available at the time of financial up-gradation;*
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> iii. *Issue a writ of Mandamus or any other writ order or direction thereby Granting the benefits of ACP to the petitioner instead of MACP on completion of 20 years of service on different dates in 2006, 2007 and 2008 because under the ACP scheme, the petitioners would have been*

entitled to 2nd financial upgradation at the Grade Pay of Rs. 5500-9000/-, even if the MACP scheme were reckoned from 20 years of respective service then the petitioners would have gotten the benefits of annual financial upgradation after getting benefits of MACP on completion of 20 years of their service (i.e., since 2006, 2007 and 2008 respectively+ annual financial upgradation) i.e. 4200/-, great prejudice will be caused to the petitioner because wrongly grade pay fixed under MACP.

2. Learned counsel for the petitioners submits that though in ***Union of India & Ors vs. M.V Mohanan Nair: (2020) 5 SCC 421***, the Apex Court has rejected the challenge to the MACP scheme which was promulgated in supersession of the then existing ACP scheme, since a number of representations by the employees pointing out anomalies qua the implementation of the MACP scheme were pending consideration before the Joint Committee set up under the chairmanship of the Joint Secretary of the DoPT, directions were issued to the respondents to consider these anomalies. He submits as the financial benefits accruing to the petitioners and other employees under the MACP scheme are much lesser *vis-a-vis* what they would have received under the ACP scheme, it was incumbent upon the respondents to consider the cases of all the petitioners so as to ensure that they do not suffer any financial loss upon implementation of the MACP scheme. He therefore prays that the respondents be directed to place the claims of the petitioners before the Joint Committee and grant them second financial upgradation as per the ACP scheme itself.

3. In order to appreciate the submissions of the learned counsel for the petitioners, we deem it appropriate to note the relevant directions issued by the Apex Court, as contained in paragraph 56-58 of its aforesaid decision in ***Mohanan Nair (supra)***, the same read as under :

"56. *The ACP Scheme which is now superseded by MACP Scheme is a* *matter of government policy. Interference with the recommendations of the expert body like the Pay Commission and its recommendations for the MACP Scheme, would have serious impact on the public exchequer. The recommendations of the Pay Commission for MACP Scheme has been accepted by the Government and implemented. There is nothing to show that the Scheme is arbitrary or unjust warranting interference. Without considering the advantages in the MACP Scheme, the High Courts erred in interfering with the Government's policy in accepting the recommendations of the Sixth Central Pay Commission by simply placing reliance upon Raj Pal case [Union of India v. Raj Pal, 2011 SCC OnLine P&H 14580] . The impugned orders [Union of India v. M.V. Mohanan Nair, 2013 SCC OnLine Ker 11713]' [Union of India v. Reeta Devi, CWP No. 24278 of 2013, order dated 7-11-2013 (P&H)]' [Union of India v. Rajini Kanta Deka, 2014 SCC OnLine Megh 269]' [Union of India v. M. Swarnalatha, 2016 SCC OnLine Hyd 746]' [Nagendra Pati Tripathy v. Union of India, 2016 SCC OnLine Pat 4799]' [Union of India v. G.V.S.S. Anand, 2016 SCC OnLine Hyd 745] cannot be sustained and are liable to be set aside.*

***57.** In the result, all the impugned orders [Union of India v. M.V. Mohanan Nair, 2013 SCC OnLine Ker 11713]' [Union of India v. Reeta Devi, CWP No. 24278 of 2013, order dated 7-11-2013 (P&H)]' [Union of India v. Rajini Kanta Deka, 2014 SCC OnLine Megh 269]' [Union of India v. M. Swarnalatha, 2016 SCC OnLine Hyd 746]' [Nagendra Pati Tripathy v. Union of India, 2016 SCC OnLine Pat 4799]' [Union of India v. G.V.S.S. Anand, 2016 SCC OnLine Hyd 745] in these batch of appeals arising out of SLPs (C) Nos. 21803, 22181, 23335, 23333 of 2014, 18227 of 2015, 31125 of 2016 and SLP (C) Diary No. 6042 of 2017 are set aside and the appeals preferred by the Union of India are allowed. Consequently, appeal arising out of SLP (C) No. 33706 of 2016 is disposed of. No costs.*

***58.** However, as pointed out earlier in paras 52 to 54, since certain anomalies on implementation of the MACP Scheme have been brought to the notice of the Joint Committee in the various meetings of the Joint Committee, the Union of India and DoP&T to consider the same as they deem it appropriate and take a decision in accordance with law."*

4. From a perusal of the aforesaid judgment, we find that the Apex Court was conscious of the fact that since under the MACP scheme, upgradation was to the next higher grade pay and not to the pay scale of the promotional post, the employees may be entitled for lesser financial benefits under the

MACP scheme. Despite this finding, the Apex Court did not find any reason to interfere with the decision of the respondents in introducing the MACP scheme in lieu of the ACP scheme.

5. However, while rejecting the challenge to the MACP scheme, the Apex Court directed that the anomalies qua the implementation thereof as had been brought to the notice of the Joint Committee be considered by the Central Government as per law. Learned counsel for the petitioner has by relying on these directions, urged that the Joint Committee ought to have considered the cases of all the petitioners. We are however unable to agree, as we are of the considered view that the directions issued by the Apex Court did not imply that the Joint Committee was required to consider individual cases of the petitioners, only because they claim to have suffered financial losses due to implementation of the MACP scheme *vis-a-vis* the benefits which would have accrued to them under the ACP scheme.

6. In the light of the afore said, once the Apex Court has itself opined that there was nothing to show that the MACP scheme was arbitrary or unjust, we find no reason to issue directions as prayed for by the petitioners. The writ petition being meritless is, accordingly, dismissed.

REKHA PALLI, J

SHALINDER KAUR, J

AUGUST 20, 2024/ab/fs