



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

% Date of decision: January 05, 2024

+ W.P.(C) 63/2024

RAVISH CHANDER & ORS.

..... Petitioners

Through: Mr. Sitesh Kumar, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mrs. Avshreya Pratap Singh Rudy,
Sr. PC with Mr. Aakash Meena, GP
with Ms. Usha Jamnal, Mr. Kanav
Veer Singh and Mr. Adil Hussain
Takv, Advs. for UOI with
Mr. Hemender Singh (Law) for BSF

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioners with the following prayers:

“In the premises mentioned above it is most respectfully prayed that this Hon'ble Court may be pleased to:-

a. Issue a Writ, order or direction in the nature of Certiorari thereby quashing and setting aside provisions/clauses of O.M. dated 19.5.2009/MACPS, like clause 2, which give the financial upgradation to the



immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008 and thus deny higher grade pay attached to the next higher post in the hierarchy of the concerned cadre/organisation; and

b. issue an appropriate writ, order or direction quashing those provisions/ clauses of the O.M. dated 19.5.2009/ MACPS including clause IO , which denies stepping up of pay in the pay band or grade pay with regard to juniors getting more pay than the senior on account of pay fixation under MACP Scheme, as illegal, arbitrary and in violation to the constitutional provisions; and

c. issue an appropriate writ, order or direction quashing clause 9 of the O.M. dated 19.5.2009 / MACPS which makes the scheme operational retrospectively w.e.f. 01.09.2008 and arbitrarily stops the benefit of financial upgradation as per the provisions of the earlier ACP Scheme (of August, 1999) w.e.f. 31.08.2008; and

d. Issue a Writ, order or direction in the nature of Certiorari thereby quashing and setting aside DoPT OM dated 05.04.2021 whereby the Respondents have failed to consider grant of MACPS benefits to the Grade Pay corresponding to the next higher promotional rank in accordance with law; and

e. Issue a Writ, order or direction in the nature of Mandamus thereby directing the Respondents to grant the benefits of MACPS in the next high Grade Pay available in the concerned department/organisation by taking appropriate inputs/ information from the Ministry of Home Affairs and in accordance with law and as per the directions passed by the Hon'ble Supreme Court in 'Union of India &



*Ors. v. M.V. Mohanan Nair' Civil Appeal No.2016/2020;
and*

f. Issue a Writ, order or direction in the nature of Mandamus thereby directing the Respondents to grant 2nd MACP benefit to the Petitioners in Pay Band 2 Grade Pay Rs.4200/-with effect from the dates they had completed 20 years of service along with all consequential benefits; and

g. Without prejudice to the above, issue an appropriate writ, order or direction, directing the Respondents to grant 3rd MACP benefit to the Petitioners in Pay Band 2 Grade Pay Rs.4600/- (in the corresponding level in the pay matrix) with effect from the dates they had completed 30 years of service along with all consequential benefits; and

h. issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to give to the Petitioners the arrears of pay and other consequential benefits arising out of aforesaid re-fixation from grade pay of Rs.2800 to Rs.4200/-; and

i. to issue such other appropriate writ, order of directions as this hon'ble court may deem fit and proper in the circumstances of the case."

2. At the outset, learned counsel for the respondents draws our attention to Annexure-P3 at page 77, which is an order passed by the Co-ordinate Bench of this Court of which one of us (Saurabh Banerjee, J.) was a member wherein the Court had passed the following order:

"1. As all the above petitions entail the same question of law and facts i.e., qua MACP, therefore, they all have been heard together and thus being decided by this common order.



2. *In view of ratio laid down by the Hon'ble Supreme Court in Union of India & Ors. Vs. Ex. HC/GD Virender Singh, 2022 SCC OnLine SC 1058, learned counsels for petitioners seek permission to withdraw the present petitions with liberty to take appropriate steps as per law.*

3. *Permission granted with the liberty as prayed for.*

4. *Accordingly, the present petitions alongwith pending applications, if any, are dismissed as withdrawn."*

3. Noting the order passed by a Co-ordinate bench of this Court in the batch of petitions which included the petition filed by the petitioners herein and the fact that the petitioners have withdrawn the writ petition seeking liberty to take appropriate steps as per law, and on a specific query to the learned counsel for the petitioners as to what steps he has taken, since no reply is forthcoming, we are of the view, the present petition is not maintainable.

4. That apart, the prayers as sought by the petitioners in this petition are covered by the judgment of the Supreme Court in the case of *Union of India v. M.V. Mohanan Nair, (2020) 5 SCC 421*, more particularly, paragraphs 17, 30, 38 and 56, which are reproduced as under :-

"17. Per contra, under the MACP Scheme, financial upgradation is granted in the next higher grade pay in the hierarchy of the recommended pay bands and grade pay as given in Section 1, Part A of the First Schedule to the CCS (Revised Pay) Rules, 2008. Under the MACP Scheme, the financial upgradation would be on non-functional basis subject to fitness in the hierarchy of grade pay. MACP Scheme contemplates merely placement on personal basis in the immediate higher grade pay/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned (vide Para 19 of the MACP Scheme). In



terms of Para 20 of MACP Scheme, financial upgradation under the MACP Scheme shall be purely personal to the employees and shall have no relevance to the seniority position. As such there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/higher grade pay under MACP Scheme (vide Para 20 of the MACP Scheme).

30. The learned Amicus Curiae and the learned counsel appearing for the respondents urged the Court to adopt a “purposive interpretation” that the words “immediate next higher grade pay” to be interpreted as “Grade pay of the next promotional post” in the hierarchy. MACP Scheme envisages merely placement in the immediate next higher grade pay. By perusal of the MACP Scheme extracted earlier, it is seen that the words used in the Scheme are “placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands”. The term “grade pay in the next promotional post” is conspicuously absent in the entire body of the MACP Scheme. The argument of the respondents that the benefit of MACP Scheme is referable to the promotional post, is de hors the MACP Scheme and cannot be accepted. Though ACP and MACP Schemes are intended to provide relief against stagnation, both the schemes have different features. Pay scales under the Sixth Pay Commission and the MACP Scheme are stated to be more beneficial since it extends to the employees with time intervals with higher pay bands and various facilities which were not available under the ACP Scheme including the three financial upgradations in shorter time span. In any event, MACP Scheme has not been challenged by the respondents. As rightly contended by the learned ASG, the respondents cannot be permitted to cherry-pick beneficial features from the erstwhile ACP Scheme and also take advantage of the beneficial features in the MACP Scheme.

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38. The prescription of pay scales and incentives are matters where decision is taken by the Government based upon the recommendation of the expert bodies like the Pay Commission



and several relevant factors including financial implication and court cannot substitute its views. As held in Haryana Civil Secretariat Personal Staff Assn. [State of Haryana v. Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72 : 2002 SCC (L&S) 822] , the Court should approach such matters with restraint and interfere only when the Court is satisfied that the decision of the Government is arbitrary. Even in a case where the Court takes the view that order/scheme passed by the Government is not an equitable one, ordinarily only a direction could be given to the State Government or the authority for consideration of the matter and take a decision. 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 next 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.

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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. The impugned orders cannot be sustained and are liable to be set aside.”
(emphasis supplied)

5. In view of the above, we find no reason to entertain the present petition. The same is dismissed.



2024:DHC:116-DB



V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 05, 2024/aky