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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision:16.01.2024*

+ W.P.(C) 9184/2017

UNION OF INDIA & ORS

..... Petitioners

Through: Ms. Archana Gaur & Ms.Ridhima
Gaur, Advs.

versus

ASHOK KUMAR AGGARWAL

..... Respondent

Through: Mr. S.P. Sethi, Adv

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 28.11.2016 passed by the learned Central Administrative Tribunal (Tribunal) in O.A. No.3684/2013. Vide the impugned order, the learned Tribunal has allowed the O.A. preferred by the respondent by directing the petitioners to extend the benefit of Modified Assured Career Progression Scheme (MACP) to the respondent w.e.f. 01.09.2008 as against 21.09.2010, vide which the said benefit was extended to him by the petitioners as per the order dated 19.07.2012.

2. The respondent, who was the applicant before the learned Tribunal, joined the Central Water Commission (CWC) as a Research Assistant on 16.11.1972 and was working with the Central Soil & Material Research Station (CSMRS), which was in 1981 delinked from the CWC and placed directly under the Ministry of Water Resources. Based on his seniority and



performance, the respondent was promoted to the post of Assistant Research Officer on 15.05.1987, and thereafter to the post of Research Officer (later re-designated as Scientist 'B') on 21.09.2000. Even though the respondent thereafter became eligible for being considered for promotion to Scientist 'C', he could not be considered for the said post due to the pendency of a writ petition before this Court pertaining to the procedure and parameters to be followed for promotion to the post of Scientist 'C'. Consequently, the respondent superannuated on 31.10.2011 without being considered for promotion.

3. Even though the respondent was deprived of the opportunity to be considered for promotion, the petitioners, in 2012, vide their order dated 19.07.2012 extended the benefit of the 3rd MACP to the respondent w.e.f. 21.09.2010. Since the respondent had joined service on 16.11.1972 and had consequently completed thirty years of continuous service on 16.11.2002, he approached the petitioners by way of representations for antedating the date of grant of 3rd MACP to him to 01.09.2008, i.e., the date when the MACP scheme was introduced. Upon his representations being rejected, the respondent approached the learned Tribunal by way of an OA which came to be allowed vide the impugned order.

4. In support of the petition, learned counsel for the petitioner submits that the impugned order is illegal and is liable to be set aside as the learned Tribunal has, while directing the petitioner to extend the benefit of the MACP scheme to the respondent w.e.f. 01.09.2008, failed to appreciate that the petitioner could not be faulted for the delay in considering the case of the respondent for grant of MACP. She submits that the learned Tribunal had itself noted that the matter regarding the procedure and parameters for



promotion to the post of Scientist 'C' remained pending before this Court from 2005 to 2010, during which period, the petitioners were restrained from carrying out promotions to the said post. She, therefore, contends that the impugned order directing the petitioner to grant benefits of the 3rd MACP to the respondent from a date prior to 2010 is liable to be set aside.

5. On the other hand, learned counsel for the respondent supports the impugned order, by urging that the respondent had joined service on 16.11.1972 and had therefore, completed almost 36 years of service by the time MACP scheme was introduced on 01.09.2008. He submits that as per the MACP scheme, an employee is eligible for grant of benefits of 3rd MACP on completion of 30 years of service, or from the date when the scheme was introduced, whichever is later. He, therefore, prays that the writ petition be dismissed.

6. In order to appreciate the rival submissions of the learned counsel for the parties, it would be apposite to note the relevant observations of the learned Tribunal as contained in paragraph no.4 of the impugned order, which read as under:

“Before the aforesaid promotions were made, the applicant was granted third financial upgradation vide office order dated 19.07.2012 (Annexure A-9) w.e.f. 21.09.2010. He made a representation dated 04.10.2012 seeking benefit of MACP w.e.f. 01.09.2008 Instead of 27.09.2010. According to the applicant, he was promoted as Scientist 'B' (earlier Research Officer) on 21.09.2000, and he had completed 30 years of service in November, 2002. However, the MACP, scheme came to be notified on 01.09.2008. It is accordingly submitted that the applicant is at least entitled to the benefit of third financial upgradation under MACP when the scheme was notified, as has been done in case of various other officers, The applicant has also placed on record copy



of office order dated 19.01.2010 whereby two scientists, namely, Virender Kumar and Pushplata, who joined service on 19.09.1975 and 03.01.1976 and completed 30 years of service in September, 2005 and January, 2006 respectively, were granted benefit of 3m MACP w.e.f. 01.09.2008. These Scientists are Junior to the appellant. This fact has not been disputed by the respondents in the counter affidavit. Even though the relief claimed by the applicant in the OA is for his promotion to the grade of Scientist 'C' from the date his juniors were promoted, however, keeping in view the fact that he has been granted benefit of MACP. Instead of FCS, the applicant is entitled to only one benefit either under FCS or under MACP scheme. He has already been granted benefit under MACP scheme, but the benefit has been granted to him w.e.f. 21.09.2010, whereas he was entitled to the benefit of third financial upgradation under MACP scheme on completion of 30years of service, i.e., in the year 2002. However, the MACP scheme itself having been brought in w.e.f 01.09.2008, the applicant is at least entitled to the benefit of third financial upgradation under MACP with effect from the said date. In case of Virender Kumar and Pushplata, referred to above, they have been granted benefit of MACP with effect from the date of enforcement of the Scheme, i.e., 01.09.2008, though they were appointed later in point of time and completed 30 years of service in the years 2005 and 2006 respectively.”

7. From the aforesaid detailed observations made by the learned Tribunal, it is evident that the learned Tribunal has directed the petitioner to antedate the grant of benefit of the third MACP to the respondent w.e.f. 01.09.2008, after taking into account that the respondent had already completed 30 years of service much before 01.09.2008 i.e., the date when the MACP scheme came into effect. As noted hereinabove, the only plea of Ms.Gaur to assail the impugned order is that the petitioner, having been restrained by the judicial orders to carry out any promotion to the post of



Scientist 'C' till September, 2010, could not have considered any employee for grant of benefits under the MACP scheme during the said period. In our considered view, merely because the petitioners may have been justified in not considering employees for grant of benefits under the MACP scheme till September 2010, does not imply that when the said consideration takes place, the employees should not receive the benefits from the due date.

8. In our considered view, once the petitioners had themselves realised that the respondent must be granted the benefits of the 3rd MACP, having completed 30 years of service before his superannuation, the necessary corollary thereof, is that this relief ought to have been granted from the date of introduction of the MACP scheme, i.e., 01.09.2008 as he had already completed 30 years of service on 16.11.2002.

9. For the aforesaid reasons, we are in agreement with the view taken by the learned Tribunal that the respondent must receive the benefits of 3rd MACP w.e.f., 01.09.2008. We, therefore, find no infirmity with the impugned order. The writ petition being meritless is, accordingly, dismissed.

REKHA PALLI
(JUDGE)

RAJNISH BHATNAGAR
(JUDGE)

JANUARY 16, 2024

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