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

+ **LPA 767/2017**

DR A K DAHIYA DECEASED THR. LRSAppellant

Through: **Mr. T.N. Tripathi and Mr. Prem Chand, Advs.**

versus

GOVT OF NCT OF DELHI & ORSRespondents

Through: **Mrs. Avnish Ahlawat, Standing Counsel-GNCTD (Service) with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam, Mr. Mohnish Sehrawat, Advs.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

02.12.2024

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1. The present Letters Patent Appeal seeks to impugn the judgment rendered by the learned Single Judge on 10 August 2017, dismissing a writ petition which had sought the framing of directions commanding the respondents to grant financial upgradation and other benefits to the petitioner under the **Assured Career Progression Scheme¹** as well as the **Modified Assured Career Progression Scheme²** along with consequential benefits.

2. From the material which stood placed before the learned Single Judge, the following undisputed position appears to emerge. The appellant was initially appointed as an Assistant Director (Topic) in the National Cooperative Development Corporation. He is stated to have been sent on deputation to the **Delhi Energy Development**

¹ ACP Scheme

² MACP Scheme



Agency³ as an officer on Special Duty with effect from 22 July 1998. He was thereafter permanently absorbed in DEDA. At the relevant time and around 09 August 1999, when the ACP Scheme came to be notified, the appellant was placed in the pay scale of INR 3,700/- to INR 5,000/-.

3. The learned Single Judge has further come to note that on 05 October 2004, DEDA came to be dissolved by the **Government of National Capital Territory of Delhi**⁴. The existing staff were consequently declared surplus and were sent for redeployment by the Services Department, GNCTD. It is also the case of the appellant that the surplus staff ultimately came to be redeployed in that Department of the GNCTD. The appellant had alleged that despite being declared surplus, he was not redeployed with the Services Department and continued to work in DEDA till he attained the age of superannuation on 31 October 2013. It is in the aforesaid backdrop that a claim for benefits under the ACP/MACP Scheme seems to have been addressed.

4. Before us, learned counsel who addressed submissions on the appeal had also drawn our attention to an order of the GNCTD dated 24 July 2015 and which had, while referring to certain decisions rendered by the **Central Administrative Tribunal**⁵ as well as this Court, held that the past services rendered in DEDA would be liable to be reckoned and taken into consideration for the purposes of examining whether an officer is eligible for being extended benefits under the ACP/MACP Scheme. That communication is reproduced hereinbelow:-

“Sir,

³ DEDA

⁴ GNCTD

⁵ CAT



In compliance of decision of Hon'ble High Court, Delhi dated 5.11.2014 in 1378/2014 C.M. No. 2879/2014 in the matter of GNCT of Delhi and Ors vs. Pravender Singh & decision of Hon'ble Central Administrative Tribunal (CAT) 2014, OA/169548/2003 & MA/2495/2014 in the matter of Govt. of NCT of Delhi vs Sunil Kumar & Ors and in the light of opinion of Law Department NCT of Delhi vide note date 20/11/2013. Competent Authority had accorded approval vide U O No. 1907 dated 14.07.2015 to count the past services-for the who have rendered services in DEDA/DSMDC and declared surplus and further redeployed in GNCT of Delhi vide general orders issued by Services Department GNCT of Delhi from time to time.

It is therefore requested to forward the ACP/MACP cases accordingly, in the prescribed Performa with IC/VC in respect of those eligible officers, and rendered their services in DEDA/DSMDC and further declared surplus and redeployed in GNCT of Delhi.

Sd/- (RICHA)
JOINT SECRETARY (SERVICES)”

5. The learned Single Judge, however, has found that DEDA had, on principle, never adopted the ACP or the MACP Scheme which came to be introduced. It is on the aforesaid basis that the learned Single Judge has ultimately come to hold that the appellant would not be entitled to claim any benefits under those schemes.

6. Insofar as the benefit extended to the writ petitioner during his employment in DEDA is concerned, the learned Single Judge had also placed reliance on an order dated 31 July 2017 and which reads as follows: -

“No specific order for adopting MACP Scheme for employees of DBDA was issued. However, in the specific case of Dr. A.K. Dahiya, the Screening Committee headed by Hon'ble Chairman, DEDA/ Secretary, Environment, Govt. of NCT of Delhi (Head of the administrative Department) has taken a conscious decision to award the benefit of financial upgradation under MACP Scheme, on 12.09.2012. Copy enclosed.

Yours faithfully
(Dr. SD Singh)
Director”

7. The aforementioned communication in unequivocal terms states that MACP Scheme provisions were never adopted by the DEDA. The



respondents appear to have taken a decision to award certain benefits of financial upgradation as a one-time measure to the appellant. It is thus evident that the prayer as made in the writ petition was rightly refused by the learned Single Judge.

8. It becomes pertinent to note that for the purposes of issuing a prerogative writ requiring a High Court to invoke its powers conferred by Article 226 of the Constitution and to direct the respondents to extend the benefits of the ACP/MACP Scheme, it would have been incumbent upon the appellant to have established that he was statutorily, and as a matter of right, eligible and entitled to benefits which flow therefrom. A right which was neither backed by statute nor by way of an executive adoption could not have possibly formed the subject matter of the grant of relief as claimed.

9. We bear in this connection, the following pertinent observations as rendered by the Supreme Court in **Vice Chairman, Delhi Development Authority vs. Narender Kumar And Others**⁶:-

“28. It is therefore, quite clear that both *M.V. Mohanan Nair and R.K. Sharma*, examined the MACP Scheme; the latter, especially, ruled that the scheme was operable from 1-9-2008, and that the respondents “*officers are not entitled to seek implementation of the benefits of MACPS with effect from 1-1-2006 according to the Resolution dated 29-8-2008*”. Having regard to this clearly enunciated principle, which, in this Court’s opinion, stems from a correct reading of the scheme, the reasoning of the High Court, that the MACP Scheme is operative not from 1-9-2008, but from 1-1-2006, is untenable. The mere circumstance that the resolution of the Government which led to adoption of the MACP also contained the effective date for implementation of the pay benefits of the Pay Commission recommendations, did not obliterate the fact that the date from which the scheme was to be made effective, was another one.

29. The submissions of the DDA that executive agency’s considerations, while extending a benefit or new regime such as the promotion or career advancement programme, is to be effective,

⁶ (2022) 11 SCC 641



involves decision-making that is complex and nuanced, is justified. The date of operation of new pay scales cannot be per se the same when the operation of another scheme (which may also involve pay benefits) need not be the same. The shifting of dates (once settled by the executive after due deliberations) may seemingly have not consequences, but inevitably would have radical financial implications. Given these factors, it has been held, in previous decisions that courts should in the absence of any facially compelling reason disclosing arbitrariness desist from stepping into the arena of decision-making, and avoid directing their reformulation or even requiring such schemes to be administered from any anterior period.

30. The other reasons why the High Court went wrong, in holding what it did, is that DDA is an autonomous- a statutory- organization. No doubt, it largely follows the Central Government's policies, in respect of pay and allowances, and other benefits for its employees. However, any revision of pay structure or revision in other terms and conditions, of Central Government personnel cannot and do not automatically apply to the DDA; it has to consider the new or fresh scheme formulated by the Central Government, and adopt it, if necessary, after appropriate adaption, to suit its needs. Therefore, the Central Government's MACP Scheme did not apply to it automatically. The DDA decided to apply it, through an office order dated 6-10-2009. The High Court has overlooked this aspect, and apparently assumed that the MACP Scheme applied automatically, upon its adoption by the Central Government, to the DDA."

10. In view of the undisputed position of the DEDA having never adopted the MACP Scheme or adopted its provisions for the benefit of its employees, we find no justification to interfere with the view ultimately expressed by the learned Single Judge.

11. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 2, 2024

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