

22.01.2025
rpan/54

WPCT 134 of 2022

Smt. Sandhya Goswami (Paladhy)

- Versus -

Union of India & Others

Mr. Jagdish Ranjan Das
...for the Petitioner.

Mr. D. N. Ray,
Ms. Sarda Sha
... for the UoI/Respondents.

The contentious issue which arises for consideration is as to whether the petitioner, namely, Sandhya Goswami (in short, Sandhya) is entitled to the third financial upgradation benefit under the Modified Assured Career Progression Scheme (in short, MACPS) with effect from 01.09.2008 in the grade pay of Rs. 5,400/- pertaining to the scale of pay of Rs. 8000-13500/-. The said issue was decided against Sandhya by the learned Tribunal in the original application (in short, OA) being OA 1638 of 2018. The order passed in the said OA on 09.11.2022 is the subject matter of challenge in the present writ petition.

Mr. Das, learned advocate appearing for the petitioners submits that the issue is no longer *res integra* in as much as the same issue has already been decided by the Madras Bench of this Tribunal in original applications being OAs 197-200 of 2006 (G. Uma Maheswar Rao and Ors. Vs. Union of India and Ors.). The said order had already attained the finality as the same had been upheld by the Hon'ble High Court of Madras and the special leave petition preferred against the same had been dismissed by the Hon'ble Supreme Court and in compliance with the said

order, the respondents had granted financial upgradation to the applicants therein.

He argues that the Sandhya's claim was initially relegated to the Secretary, Ministry and Child Development for consideration by an order dated 09.08.2018 passed by the learned Tribunal in OA 723 of 2018. Thereafter by an order dated 24.09.2018 signed by the Deputy Director, Ministry of Women and Child Development, Government of India being the respondent no.3 herein, Sandhya's prayer was refused. Subsequent thereto, in derogation to the settled proposition of law, a further order was signed by the respondent no.3 giving further reasons towards refusal of Sandhya's claim.

According to Mr. Das, the respondents sought to create an artificial distinction between Sandhya and the applicants before the Madras Bench of this Tribunal stating that the latter judgment was relating to Demonstration Officer. However, Sandhya was in the post of Laboratory Assistant, a feeder post to Demonstration Officer/ Technical Assistant.

He contends that the respondents sought to introduce one intermediate grade of Rs. 6500–10500/- before the scale of pay of Rs. 8000–13500/- and persons allowed the scale of pay of Rs. 8000–13500/- was sought to be lowered without due amendment of the Recruitment Rules. Admittedly, Sandhya retired on 31.03.2013 prior to amendment of the Recruitment Rules *vide* Gazette notification dated 28.11.2014.

Such contention of Mr. Das has, however, been denied and disputed by Mr. Ray, learned advocate appearing for the respondents. Drawing our attention to a memo dated 16.05.2012, he submits that Sandhya was granted the second and third financial under MACPS and placed at grade pay of Rs. 4600/- and Rs. 4800/- respectively upon adding 3% increment and differences of grade pay with effect from 01.09.2008. Such fixation of pay would reveal that the MACPS benefit was granted on hierarchical grade of pay and not in the grade of promotional hierarchy.

He argues that Sandhya had all along served as Laboratory Assistant and got financial upgradations as per extant policy of the Government and is not similarly situated with the applicants in the original applications filed before the Madras Bench of this Tribunal.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

By the impugned order dated 09.11.2022 the learned Tribunal had refused Sandhya's prayer observing that MACPS benefits are to be granted in the hierarchy of next higher grade pay and not in the grade pay of promotional hierarchy which will be paid on actual promotion. The argument, as advanced, on behalf of the petitioner against such proposition was discounted placing reliance upon paragraph 2 of the MACPS which runs as follows:

'The MACPS envisages merely placement in 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 schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion'.

The learned Tribunal erroneously proceeded on the basis that the relief claimed by Sandhya would be contrary to the MACPS being a policy decision of the Government and in support thereof, reliance was placed upon a judgment delivered by the Hon'ble Supreme Court in the case of *R. S. Sengor & Others*. In the present case, there was no intermediate grade pay in between the grade pay of Rs. 4600/- and Rs. 5400/- prior to amendment of the Recruitment Rules and such amendment was effected after Sandhya's retirement. On the basis of such reasoning, the Madras Bench of this Tribunal 14.09.2007 held in favour of the applicants therein observing, *inter alia*, that '*if the recruitment rules with regard to promotional post of ATA, which is in the pay scale of Rs.8000-13500 stipulate as a feeder category post of DO, the next hierarchy in the Rules for grant of upgradation as to the pay scale has to be picked up from the intermediate grade, as stated by the respondents though introduced by the DOP&T, is on a legal fiction when*

deemed to be non-existent, as the recruitment rules are yet to be amended'. Therefore we, have no hesitation in accepting the arguments advanced on behalf of Sandhya, moreso when the respondents have implemented the decision of the Madras Bench of this Tribunal. Judicial propriety demands that the findings arrived at on the rudiments of similar facts should be given respect and should be followed.

For the reasons discussed above, the order impugned in the present writ petition is set aside and the respondents are directed to grant the third financial benefit under MACPS to Sandhya with effect from 01.09.2008 in the grade pay of Rs. 5400/- corresponding to the pay of scale of Rs. 8000–13500/-. The respondents shall accordingly refix Sandhya's pay and revise the pension and disburse the difference of pay and pensionary benefits within a period of eight weeks from the date of communication of this order.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)