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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 62 OF 2019

Chandrakant Krishna Vernekar
Assistant Engineer, (Civil),
Office of the Chief Electrical
Engineer, Vidyut Bhavan, Panaji-Goa
Aged 59 years, Married, Indian
National, R/o 253/16, Valley View
Colony Pundalik Nagar, Alto
Porvorim, Bardez, Goa.

... Petitioner.

V e r s u s

1. The State of Goa,
Through Chief Secretary,
Administrative Block,
Porvorim-Goa.
2. The Secretary, (Power)
State of Goa, Administrative
Block, Porvorim-Goa.
3. The Chief Electrical Engineer,
Vidyut Bhavan,
Panaji-Goa

.... Respondents.

Mr Vallabh Pangam, Advocate for the petitioner.

Mr Deep Shirodkar, Addl. Govt. Advocate for respondent nos. 1 to 3.

**CORAM: BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

Date: 3rd April, 2025.

JUDGMENT (PER Nivedita P. Mehta, J).

1. The Petitioner has approached this Court praying for a direction against the respondents for the grant of the 3rd financial upgradation under the Modified Assured Career Progression Scheme (hereinafter referred to as 'MACPS') with effect from 11.06.2014 with 10% interest from the date of filing of the petition.
2. Succinctly, the factual background of the instant Writ Petition is as follows:
 - 2.1. The petitioner was appointed to the post of Junior Engineer on an *ad-hoc* basis vide Memorandum No. CEE/Estt-33(B)/2095 dated 16.05.1984 in the office of respondent no.3, pursuant to which, the petitioner joined the services on 11.6.1984.
 - 2.2. The petitioner was granted 'Interim Revised Time Bound Promotion Scale' on completion of 12 years of service with effect from 11.06.1996 vide order dated 23.4.1997.
 - 2.3. The 2nd financial upgradation was granted to the petitioner upon completion of 24 years of regular service on 20.10.2015.

- 2.4.** On 06.09.2009, respondent no.1 issued a circular pursuant to office memorandum dated 19.05.2009 issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India. In terms of the recommendation of the 6th Pay Commission, the MACPS came into effect from 01.09.2009.
- 2.5.** The benefit of the MACPS was made available for the posts of Group A, B and C of the Central Government Civilian Employees. Employees of respondent no.2, falling under the aforementioned groups would be eligible to the benefit of this scheme. As per the MACPS, there shall be three financial upgradations granted at intervals of completion of 10, 20 and 30 years of continuous regular service.
- 2.6.** On 02.12.2010, respondent no.1 issued another circular, pursuant to an office memorandum dated 09.09.2010 issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India offering clarifications regarding various aspects of the MACPS.
- 2.7.** A further clarification concerning various aspects of the MACPS was made by respondent no. 1 vide an office memorandum dated 21.06.2011.
- 2.8.** The petitioner addressed numerous representations to the respondents seeking the grant of the 3rd Financial

Upgradation in terms of the MACPS. One such representation was addressed on 26.10.2018, wherein the petitioner sought the grant of the benefit under the MACPS on completion of 30 years of regular service in the office of respondent no.3 on 11.06.2014. The petitioner further informed the respondents that he is due to retire on superannuation on 31.12.2018.

2.9. Respondent no.3, vide letters dated 15.03.2019, replied to the representations of the petitioner, stating therein, that 30 years of regular service which are necessary for the grant of the 3rd financial upgradation are counted from the date of regularisation and therefore, the two years of *ad-hoc* service rendered by the petitioner from 11.06.1984 to 01.01.1986 cannot be taken into consideration. Consequently, as on 11.06.2014, the petitioner has not completed the requisite 30 years of service.

3. Aggrieved by the non-grant of the 3rd financial upgradation in terms of the MACPS, the petitioner has filed the instant Writ Petition.

4. To substantiate the stance of the petitioner, Mr. Pangam, learned counsel for the petitioner made the following submissions:

4.1. The circular dated 06.08.2009 issued by respondent no.1, which was issued pursuant to the office memorandum dated 19.05.2009 of the Government of India, granted the benefit

of financial upgradation in terms of the MACPS, applicable to the employees of respondent no.3 with effect from 01.09.2008. As per this circular, the petitioner was entitled to the 3rd financial upgradation as granted by the respondents to other similarly situated employees.

- 4.2. In a similar instance concerning other departments that fall within the purview of respondent no.1, specifically, the Goa Health Department, three employees in *ad-hoc* service of the Goa Health Department were considered for the grant of financial upgradation under the ACP Scheme. Also, in the office of respondent no.3, an individual, namely Mr. Naryan Agrwadekar, was granted financial upgradation under the ACP/MACP Scheme by the respondents.
- 4.3. The failure of the respondents to grant benefits to the Petitioner of the 3rd financial upgradation under the MACPS is violative of the petitioner's fundamental rights as guaranteed under Articles 14 and 16 of the Constitution of India, 1950.
- 4.4. The petitioner has relied upon the decision of the Division Bench of this Court in *Shri Jagpal Singh Chaudhary Vs State of Goa and another*,¹ to buttress his case and

¹ Writ Petition No.589/2019

submitted that his case is similar to the case of the petitioner in the aforesaid petition.

4.5. In response to the application filed by the petitioner under Right to Information Act, 2005, respondent no. 3 addressed a reply dated 13.02.2007 stating therein that the number of sanctioned post of Junior Engineer (Civil) as on 30.06.1984 were twenty in number which were filled on a regular basis and the number of Junior Engineer (Civil) post filled on an *ad-hoc* basis as on 30.6.1984 were two in number.

4.6. As per the clarification placed at serial number 4 of the circular dated 02.12.2010 issued by respondent no.1, the benefits of the MACPS would be available from the date of actual joining of the post and therefore, the petitioner must be granted the upgradation from 11.06.2014.

5. *Per Contra*, Mr D. Shirodkar, learned Additional Government Advocate for respondent nos.1 to 3 made the following submissions:

5.1. The representation of the petitioner was decided on 15.03.2019, and the said decision was placed before this Court. Respondent no. 3, while deciding the petitioner's representation, stated that as per the MACPS, only regular service can be counted while computing the 30 years required for the grant of the 3rd financial upgradation.

Petitioner's *ad-hoc* service from 11.06.1984 to 01.01.1986 before regular appointment cannot be considered.

5.2. The petitioner was informed that his case, however, will be considered for the grant of the 3rd upgradation in terms of the MACPS. Pursuant to the Personnel Department's instructions to take necessary action as per the MACPS guidelines, Electricity Department issued Order dated 12.06.2019 in supersession of the Order dated 20.10.2015. Respondent no. 3 issued Order dated 14.08.2019 granting the 3rd financial upgradation to the petitioner with effect from 02.01.2016 having completed 30 years of regular service on 01.01.2016.

5.3. The petitioner's claim to the grant of 3rd financial upgradation with effect from 11.06.2014 is meritless as the appointment order of the petitioner dated 06.06.1984 clearly stated that the appointment is purely on an *ad-hoc* basis. The petitioner was appointed on a regular basis on 17.01.1986 with effect from 02.01.1986, and as such, the period of service for the purpose of grant of financial upgradation has been computed from 02.01.1986 from the date of commencement of service on a regular basis.

6. Having heard the learned counsel for the petitioner as well as the learned Additional Government Advocate on behalf of the respondents, the rival contentions now fall for our determination.
7. In the pendency of the instant Writ Petition the petitioner has been granted the benefit of the 3rd financial upgradation in terms of the order dated 14.08.2019 issued by respondent no.3 with 30 years being calculated from 02.01.1986 as the date from which the petitioner is considered to be in regular appointment of the office of respondent no.3. In response, the learned Advocate for the petitioner stood firm on his stance that the appropriate date of calculation for 30 years of service is the date of initial appointment, i.e. 16.05.1984, and therefore, the grant of benefit of the 3rd financial upgradation should be in terms of years calculated based on the initial date of appointment.
8. *Per Contra*, the learned Additional Government Advocate argued that regular service of the petitioner has to be counted from 17.01.1986 with effect from 02.01.1986 as being service on a regular basis.
9. With respect to the date based on which 30 years of regular continuous service is to be calculated, the learned counsel for the petitioner invited this Court's attention to a ruling of this court in *Shri Jagpal Singh Chaudhary* (supra) wherein the Court looked into a similar issue.
10. With the 3rd financial upgradation already having been granted, the only question that remains for determination in the instant Writ Petition

is whether the services rendered by the petitioner during the period between 11.06.1984 and 01.01.1986 be regarded as being on an *ad-hoc* basis or whether the said period may be counted for the purpose of the computation of the 30 years of service necessary for the grant of the 3rd financial upgradation.

11. It is an uncontested fact that the petitioner's initial appointment was on an *ad-hoc* basis. In this regard, the office memorandum dated 19.05.2009, pursuant to which, respondent no.1 had issued a circular dated 06.09.2000, wherein it was specified in clause 3 that employees appointed on *ad-hoc* basis shall not qualify for benefits under the MACPS.

12. In the subsequent office memorandum dated 09.09.2010 issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India, a clarification has been given as to whether the benefit of the MACPS is granted from the date of entry in service or from the date of regular/approved service. The relevant portion has been extracted here under for convenience:

“[Reference:. Office Memorandum No.35034/3/2008-Estt.(D) dated 07.09.2010]

<i>Sr. No</i>	<i>Point of doubt</i>	<i>Clarification</i>
<i>1</i>	-----	

<i>Sr. No</i>	<i>Point of doubt</i>	<i>Clarification</i>
2	-----	
3	-----	
4	<i>Whether the benefits of MACPS would be granted from the date of entry grade or from the date of their regular service/ approved service counted under various service rules.</i>	<i>The benefits under MACPS would be available from the date of actual joining of the post in the entry grade.”</i>

13. This issue was further clarified by respondent no.1 by way of the office memorandum dated 21.06.2011. The relevant portion of the office memorandum has been extracted hereunder for convenience:

“FREQUENTLY ASKED QUESTIONS (FAQs) ON MODIFIED ASSURED CAREER

PROGRESSION SCHEME

<i>Sr.No</i>	<i>Point of doubt</i>	<i>Clarification</i>
1.	-----	
2.	-----	
3.	-----	
4.	-----	
5.	-----	
6.	-----	
7.	-----	
8.	<i>Whether adhoc appointment would be</i>	<i>No. Only continuous</i>

	<i>counted towards qualifying service for MACPS</i>	<i>regular service is counted towards qualifying service for the purpose of MACPS. The regular service shall commence from the date of joining of a post in direct entry grade on a regular basis. (Para 9 of the MACPS)”</i>
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14. Therefore, it is clear that only continuous regular service is counted towards qualifying service for the purpose of the MACPS. It has been clarified that service rendered on an *ad-hoc* basis cannot be counted for regular service and regular service shall commence from the date of joining of post in direct entry grade on regular basis.
15. In light of the clarifications given by the Government of India as well as respondent no.1, it would appear that years of service on an *ad-hoc* basis cannot be counted towards computation for the requisite 30 years for the grant of benefits under the MACPS. However, a contrary view may be taken based on notification dated 11.04.1988 issued by respondent no.1 which has been extracted hereunder for convenience.

*“No.2/38/75-PER (Vol.II)
Government of Goa,
Department of Personnel,
Secretariat, Panaji Goa.
Dated: 11th April, 1988*

NOTIFICATION

In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Government of Goa hereby amends all the rules, relating to recruitment to all Group 'C' and 'D' posts under this Administration (hereinafter called the 'said Rules') as follows, namely: -

In the Schedule appended to the said Rules, after the existing entry in column 11, the following note shall be added, namely: -

“Note: In computing the regular service in the grade the ad-hoc service, if followed without break by regular appointment, shall be treated as regular service for the purpose of promotion:

Provided that where any official is considered for promotion, all persons senior to him in the grade who have successfully completed the period of probation shall also be considered notwithstanding the length of service rendered by them in the grade.

Provided further that the ad-hoc appointment referred to above has been made after having complied with the following criteria:-

- i) there existed a regular vacancy;*
- ii) the appointment was made as per then notified Recruitment Rules;*
- iii) the appointment was made on the recommendations of a duly constituted DSC/DPC and all eligible candidates as sponsored by Employment Exchange or falling in the zone of consideration, as the case may be, were considered.”*

*By order and in the name of the
Governor of Goa*

Sd/-
(A. V. Pimenta)
Under Secretary (Personnel)”

16. Based on the aforesaid extract, this Court in *Shri Jagpal Singh Chaudhary* (supra) opined as extracted hereunder:

“20. No doubt, the initial appointment order dated 27.03.1984 of the Petitioner stipulates that he is appointed on an ad-hoc basis. According to the Respondents, the regular service of the Petitioner has to be counted from 07.08.1987. It is the contention of learned Counsel for the Petitioner that he fulfils all the requirements of the aforesaid Notification for treating the service on ad-hoc basis to be regular service for the purpose of promotion. Let us consider if the Petitioner has complied with the criteria stipulated in the Notification dated 11.04.1988. There is no serious challenge to the appointment of the Petitioner initially on ad-hoc basis fulfilled the below mentioned conditions : -

- (a) There existed a regular vacancy;*
- (b) The appointment was made as per then notified Recruitment Rules;*
- (c) The appointment was made on the recommendations of a duly constituted DSC/DPC and all eligible*

candidates as sponsored by Employment Exchange or falling in the zone of consideration, as the case may be.

21. We, thus, find that the ad-hoc appointment of the Petitioner was followed without a break by a regular appointment. The Notification dated 11.04.1988 of the Government of Goa clearly stipulates that in computing regular service in the grade an ad-hoc service if followed without break by regular appointment shall be considered as regular service for the purpose of promotion. The initial appointment order dated 27.03.1984 undoubtedly provided that ad-hoc appointment will not bestow on the Petitioner a claim for regular appointment/promotion and the service rendered on ad-hoc basis in the grade will not count for the purpose of seniority in that grade for eligibility for promotion to the next higher grade. However, for the purpose of considering the claim of the Petitioner for promotion, his claim will be governed by the Notification dated 11.04.1988 which clearly covers the case of the Petitioner. In this view of the matter, we have no hesitation in holding that the service rendered by the Petitioner from 27.03.1984 to 07.08.1987 will have to be counted as regular service for the purpose of seniority in that grade.”

17. We are of the considered view that the judgment relied upon by the petitioner is squarely applicable to the facts of the present case.
18. Accordingly, the Writ petition is allowed.
19. Respondents are directed to grant the benefit of 3rd financial upgradation under the MACPS to the petitioner with effect from 11.06.2014. As far as the prayer for grant of 10% interest from the date of filing of the petition till the date of payment is concerned, we direct to pay interest at the rate of 6% per annum from the date of petition till the date of realisation.
20. Rule is made absolute.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.