

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO. 1543 OF 2025

Union of India & Ors.

....Petitioners

V/S

Shri. Deepak B. Deshmukh & Ors.

....Respondents

Mr Abhijeet A. Joshi, Advocate for Petitioners

Ms Annie Nadar a/w. Mr. O. S. Nadar, Advocates for the Respondent
Nos. 1 to 19

**CORAM : A. S. CHANDURKAR &
M. M. SATHAYE, JJ.**

DATED : 17th FEBRUARY 2025

P.C.:

1. The Petitioners (Union of India, the Chairman and Director General of Ordnance Factories and its General Manager), are challenging the order dated 28/03/2024, passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai ('the Tribunal' for short) in O.A. No. 373 of 2020. By the said impugned order, the Tribunal has allowed the Application filed by the present Respondents thereby setting aside the office order dated 18/10/2019 and directing the Petitioners to consider and grant Non-Functional Grade (NFG) scale i.e. Pay Band (PB)-2 (Rs.9300-34800) + Grade Pay (GP) Rs.4800/- with all consequential benefits i.e. pay fixation, arrears of pay, pension/family pension, fixation, arrears of pension/family pension and other retiral dues. The said exercise is directed to be completed within a stipulated time. It is further provided that if directions are not complied within the stipulated time, the Respondents will be entitled to

interest on delayed payments at the rate applicable to General Provident Fund (GPF) amount.

2. Few facts necessary for disposal of this Petition are as under. The Respondents, 19 in numbers, were initially appointed on various posts in the office of the Petitioners on various dates during 1991 to 1995 and are presently either working or retired as Junior Works Manager (JWM). Under Government of India resolution in accordance with recommendations of 6th pay commission, it is provided that Group-B officers will be granted GP Rs.5400/- in PB-2 on non-functional basis after rendering 4 years of regular service in GP Rs.4800/- in PB-2. The Madras High Court in case of **M. Subramanian vs Union of India and Ors.**¹ held that if an officer has completed 4 years in the pre-revised pay scale of Rs.7500-12000 (corresponding to GP of Rs.4800/- in present case) on 01/01/2006 or earlier, he will be given non-functional upgradation w.e.f. 01/01/2006 and if the officer completes 4 years after 01/01/2006, he will be given non-functional up-gradation in PB-2 + GP Rs.5400 from such date on which he completes 4 years in the pay scale of PB-2 + GP Rs.4800/-. Civil Appeal No. 8883 of 2011 filed by the Union of India in the said case of **M. Subramaniam (supra)** was dismissed by Hon'ble Supreme Court on 10/10/2017 and even the Review Petition preferred thereon, was also dismissed. Since the Respondents' claim was similar, as decided by the Madras High Court, which is upheld by the Hon'ble Supreme Court, the Respondents filed representations to the Petitioner No. 3, which were rejected by order dated 18/10/2019 on the sole ground that the benefits of the said judgment is applicable to individual Petitioner/s only. In these circumstances, the

¹ Madras High Court Order dt. 06.09.2010 in W.P. No. 13225 of 2020

Respondents filed the aforesaid Original Application, which is allowed by the impugned order.

3. The learned Counsel for the Petitioners submitted that the Respondents cannot be considered to have completed four years of regular service for being eligible as per their representation, essentially because the Petitioners were only 'financially upgraded on non-functional basis' and in that capacity they have completed four years of service. He submitted that the 4 years of regular service necessarily means 4 years of service after actual promotion to a particular level and mere financial up-gradation will not be sufficient. He invited our attention to the Office Memorandum dated 09/08/1999 ('the said OM' for short), especially Clause 3 about posts in Group A, B, C and D categories and clause 3.2 providing for 'regular service' for the purpose of Assured Career Progression (ACP) scheme.

4. On the other hand, learned Counsel for the Respondents submitted that their case is squarely covered by the case of **M. Subramaniam (supra)**, which has been confirmed by the Hon'ble Supreme Court. She has invited our attention to the judgment of the Madras High Court and observations therein, as also the order of the Hon'ble Supreme Court, dismissing the Appeal as well as the Review Petition.

5. Having heard the learned Counsel for the parties and on perusal of the judgment of **M. Subramaniam (supra)**, we are of the view that the Respondents' case is covered by the said judgment as rightly observed by the Tribunal.

6. Perusal of the impugned order shows that the Tribunal, relying upon the judgment of the Hon'ble Supreme Court in **K. C. Sharma Vs. Union of**

India² has held that the benefit of a judgment can not be denied to similarly situated employees. The Tribunal has also relied upon the judgment of Hon'ble Supreme Court in the case of **State of Karnataka Vs. C. Lalitha**³ to hold that only because one person has approached the Court, does not mean that similarly situated persons are to be treated differently.

7. We agree with the said view. Once an issue has been decided by the competent Court, the Government being model employer should not compel all similarly placed individual employees to approach the Court/Tribunal for grant of same benefits. Admittedly in the present matter, the Respondents were granted financial up-gradation and thereafter they have completed four years of service. Clause 3.2 of the said OM issued for the subject of ACP scheme for the Central Government employees, reads as under:

“3.2 ‘Regular Service’ for the purpose of ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Service Rules”

8. Having considered the said Clause, in our view, it cannot be interpreted that the service rendered after financial up-gradation is not to be counted so as to deprive the Respondents of the benefits granted under impugned order.

9. As rightly pointed out by the learned Counsel for the Respondents, the judgment of **M. Subramaniam (supra)** also considers the Resolution of the Ministry of Finance dated 29/08/2008, which provides in Clause x(e) as under:

“(x) Regarding Group ‘B’ cadres, the Commission’s recommendations will be modified in the following manner:

² (1997) 6 SCC 721

³ 2006 SCC (L&S) 447

x

x

x

(e) Group B officers of Department of Posts, Revenue, etc. will be granted Grade Pay of Rs.5400 in PB-2 on non-functional basis after 4 years of regular service in the grade pay of Rs.4800 in PB-2.”

The judgment of **M. Subramaniam (supra)** considered the same Resolution and the benefits were granted to the similarly situated Applicants as the Respondents.

10. In view of the aforesaid facts and circumstances, it is noted that the reasons given and conclusion drawn by the Tribunal are based on the material on record. There is neither any perversity or jurisdictional error in the impugned order, which takes a probable view. Therefore, this is not a fit case to interfere under our extraordinary writ jurisdiction.

11. The Petition is accordingly dismissed. No order as to the costs.

(M. M. SATHAYE, J.)

(A. S. CHANDURKAR, J)