

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1625-1627 OF 2021

UNION OF INDIA & ORS. ETC.

...APPELLANT(S)

VERSUS

S. RANJIT SAMUEL & ORS. ETC.

...RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. The short question that falls for consideration in the present appeals is, as to whether the respondents-employees would be governed by the Assured Career Progression Scheme, 1999 (hereinafter referred to as “the ACP Scheme”) or by the Modified Assured Career Progression Scheme, 2009 (hereinafter referred to as “the MACP Scheme”).

2. The facts, in brief, giving rise to the present appeals are as under:

3. The respondents-employees were working as Junior Engineers/Lower Division Clerks at the relevant point of time. Taking into consideration the fact that the employees were stagnated on a particular post for a prolonged period on account of non-availability of promotional post, the appellant-Union of India, in order to give relief to such employees, brought into effect the ACP Scheme vide Office Memorandum dated 9th August, 1999. Subsequent to the recommendation of the 6th Central Pay Commission, the ACP Scheme came to be superseded by the MACP Scheme vide the Office Memorandum dated 19th May, 2009. However, the MACP Scheme was made applicable retrospectively with effect from 1st September, 2008.

4. As per the ACP Scheme, an employee was entitled to the first benefit/financial upgradation after completion of 12 years

of regular service, if the regular promotion was not available to him/her during that period. The employee was entitled to the second benefit/financial upgradation after completion of 12 years of regular service from the date of the first benefit/financial upgradation, i.e., after completion of a total of 24 years of regular service, subject to fulfillment of prescribed conditions. The noticeable distinction between the ACP Scheme and the MACP Scheme was that, instead of two benefits/financial upgradations under the ACP Scheme, an employee was entitled to three benefits/financial upgradations on completion of 10, 20 and 30 years of regular service under the MACP Scheme. The other distinction between the ACP Scheme and the MACP Scheme was that the former (ACP Scheme) assured the promotional grade, whereas the latter (MACP Scheme) only assured higher grade pay.

5. It is not in dispute that all the respondents-employees had already availed of the first benefit/financial upgradation under

the ACP Scheme. They had completed their 24 years of regular service between January and April 2009. They expected that their cases would be considered by the Screening Committee in the month of January, 2009, in accordance with clause 6.3 of the ACP Scheme. In the meantime, the MACP Scheme was brought into effect vide Office Memorandum dated 19th May, 2009, making it retrospectively applicable with effect from 1st September, 2008. Contending that they were entitled to get the second benefit/financial upgradation as per the ACP Scheme, since the right accrued to them prior to the issuance of Office Memorandum dated 19th May, 2009, the respondents made representations to the concerned Authorities. The same were rejected.

6. Being aggrieved thereby, the respondents preferred Original Applications being O.A. Nos. 818 of 2011, 1170 of 2012 and 437 of 2013 before the Central Administrative Tribunal, Madras Bench (hereinafter referred to as “the

Tribunal”). The Tribunal by its orders dated 6th November, 2013, passed in O.A. No. 818 of 2011 and 26th February, 2014, passed in O.A. Nos. 1170 of 2012 and 437 of 2013, allowed the Original Applications and directed their cases to be put up before the Screening Committee for consideration for grant of second benefit/financial upgradation under the ACP Scheme on completion of 24 years of service.

7. Being aggrieved thereby, the appellants filed writ petitions being Writ Petition Nos. 33946, 34602 and 27798 of 2014, before the High Court of Judicature at Madras. The same were dismissed by the impugned common order dated 14th February, 2017. Hence the present appeals.

8. We have heard Ms. Madhavi G. Divan, learned Additional Solicitor General appearing on behalf of the appellants and Shri Vinay Kumar Garg, learned Senior Counsel appearing on behalf of the respondents.

9. Ms. Madhavi G. Divan, learned Additional Solicitor General, submitted that the Government of India vide its Resolution dated 29th August, 2008, accepted the 6th Central Pay Commission Report. She submitted that as per the said Resolution, though the revised pay structure of pay bands and grade pay, as well as pension, was implemented with effect from 1st January, 2006, the revised rates of allowance (except dearness allowance/relief) was implemented with effect from 1st September, 2008. She submitted that since the Government of India was contemplating to bring into effect the MACP Scheme, the cases of such employees, which were due for consideration after 1st September, 2008, were not put up before the Screening Committee. She submitted that by Resolution dated 29th August, 2008, the recommendation of the 6th Central Pay Commission with regard to revised rates of allowance was implemented with effect from 1st September, 2008. The MACP

Scheme though was notified on 19th May, 2009, it was made applicable retrospectively with effect from 1st September, 2008.

10. She submits that clauses 6 and 7 of the MACP Scheme provide for taking care of such employees, who were entitled to the benefits of the MACP Scheme between 1st September, 2008 and 30th June, 2009. She submits that clause 6 of the MACP Scheme is similar to clause 6.3 of the ACP Scheme, which requires the cases maturing during the first half (April-September) of a particular financial year to be taken up for consideration by the Screening Committee meeting in the first week of January of the same financial year. Similarly, the cases maturing during the second half (October-March) of a particular financial year are to be considered in the first week of July of the same financial year. Clause 7 of the MACP Scheme specifically provides that the first Screening Committee shall be constituted within a month from the date of issue of this Office Memorandum to consider the cases maturing upto 30th June,

2009 for grant of benefits under the MACP Scheme. She, therefore, submits that the respondents-employees would be entitled to be considered under the MACP Scheme. It is submitted that all such employees, who had become due for the benefit under the ACP Scheme prior to 1st September 2008, would get the benefit of the ACP Scheme, whereas all such employees, who had become due for the benefits from 1st September, 2008 onwards would be considered only under the MACP Scheme. She relies on the recent judgment of this Court by a three Judge Bench in the case of ***Vice Chairman Delhi Development Authority vs. Narender Kumar and others***¹.

11. Shri Vinay Kumar Garg, learned Senior Counsel appearing on behalf of the respondents-employees, on the contrary, submitted that since the respondents-employees had completed their 24 years of service between January and April 2009, the Screening Committee ought to have considered their cases in

¹ 2022 SCC OnLine SC 273

January, 2009. It is submitted that, if their cases were considered in January, 2009, they would very well be entitled to get the second benefit/financial upgradation under the ACP Scheme. He submitted that for the fault of the appellants in not holding the Screening Committee meeting, the respondents-employees cannot be penalized. He relies on the order of this Court in the case of ***Union of India & ors. vs. Vinay Kumar***².

12. The issue is no more *res integra*. Recently this Court, in the case of ***Vice Chairman Delhi Development Authority*** (supra), decided on 8th March, 2022, has considered a similar challenge with regard to the employees of the Delhi Development Authority. In the said case also, the employees had contended that they had completed 24 years of service in January, 2009 and as such, they were entitled to get the second benefit/financial upgradation under the ACP Scheme. This court, relying on its earlier judgments in the cases of

² Order dated 25th August, 2021 passed in Civil Appeal No.6359 of 2016

Union of India & Ors. vs. M.V. Mohanan Nair*³ and *Union of

***India vs. R.K. Sharma & Ors.*⁴ observed thus:**

“35. In the present context, none of the employees actually earned a second financial up-gradation. They undoubtedly became eligible for consideration. However, the eligibility ipso facto could not, having regard to the terms of the ACP scheme translate into an entitlement. The eligibility was, to put it differently, an expectation. To be entitled to the benefits, the public employer (here DDA) had to necessarily review and consider the employees' records, to examine whether they fulfilled the eligibility conditions and, based on such review individual orders had to be made by DDA. In other words, second ACP up-gradation was not automatic but dependant on external factors. Furthermore, as held by this Court in M.V. Mohanan Nair (supra), MACP benefits are only an incentive meant to relieve stagnation - framed under the executive policy. **Its continued existence cannot be termed as an enforceable right.**

3 (2020) 5 SCC 421

4 (2021) 5 SCC 579

36. Such expectation is akin to a candidate being declared successful in a recruitment process and whose name is published in the select list. *That, such candidate has no vested right to insist that the public employer must issue an employment letter, has been held by a Constitution Bench Judgment of this Court in Shankarsan Dash v. Union Of India [(1991) 3 SCC 47]. Therefore, it is held that employees' contention that they acquire a vested right in securing the second ACP benefit is insubstantial.*

37. The employees in this case approached the High Court, complaining that their *vested right*, which was the assumed entitlement to be given by second ACP, was taken away by the MACP, introduced with effect from 01-09-2008, by an order dated 19-05-2009. No doubt, the MACP scheme is an executive order. Usually, such orders are expressed to be prospective. *However, the executive has the option of giving effect to such an order, from an anterior date; especially if it confers some advantages or benefits to a sizeable section of its employees, as in this case. The nature of benefits-as emphasized by this court earlier, were by way of incentives. They are not embodied under rules. In such circumstances, a set of employees, who might have benefitted*

from the then prevailing regime or policy, cannot in the absence of strong and unequivocal indications in the later policy (which might be given effect to from an anterior date, like in this case), ***insist that they have a right to be given the benefits under the superseded policy.*** It is noteworthy that a larger section of employees would benefit from the MACP benefits, because they are to be given after 10-, 20- and 30-years' service (as compared with two benefits, falling due after 12 and 24 years of service) and further that such benefits under MACP scheme are subjected to less rigorous eligibility requirements, than under the ACP scheme.”

[emphasis supplied]

13. This Bench is sitting in a combination of two Judges. As such, this Bench is bound by the view taken by the three-judge Bench of this Court in the case of ***Vice Chairman Delhi Development Authority*** (supra). Insofar as the reliance placed by Shri Vinay Kumar Garg, learned Senior Counsel, on the order of this Court in the case of ***Vinay Kumar*** (supra) is concerned, firstly, the said order was passed by a two-judge

Bench, and secondly, the question that fell for consideration in the said case was with regard to benefit under “Flexible Complementing Scheme” notified by the Union of India with effect from 1st January, 1999. As such, the question that fell for consideration in the case of **Vinay Kumar** (supra) was totally different than the question that falls for consideration in the present matter.

14. In the present case, this Court is considering the question, as to whether the employees, who had completed 24 years of regular service between 1st September, 2008 and 19th May, 2009 would be considered under the ACP Scheme or under the MACP Scheme. This was also a question, which directly fell for consideration and decided by the three-judge Bench of this Court in the case of **Vice Chairman Delhi Development Authority** (supra).

15. In that view of the matter, the appeals deserve to be allowed. It is, therefore, ordered that :

- (i) The appeals are allowed.
- (ii) The impugned order of the High Court of Judicature at Madras dated 14th February, 2017, passed in Writ Petition Nos. 33946, 34602 and 27798 of 2014 and the orders of the Tribunal dated 6th November, 2013, passed in O.A. No. 818 of 2011 and 26th February, 2014, passed in O.A. Nos. 1170 of 2012 and 437 of 2013 are quashed and set aside;
- (iii) The Original Applications filed by the respondents-employees herein are dismissed.
- (iv) It is held and declared that the cases of the respondents-employees/applicants before the Tribunal would be governed by the MACP Scheme.

(v) In case, the appellants have not finalized the cases of any of the respondents-employees for their entitlement under the MACP Scheme, the same shall be considered in accordance with the MACP Scheme and the benefits be given to them within a period of three months from the date of this order.

16. Pending applications, if any, shall stand disposed of. No order as to costs.

.....**J.**
[L. NAGESWARA RAO]

.....**J.**
[B.R. GAVAI]

NEW DELHI;
MARCH 24, 2022