



2024 INSC 1042

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024
(arising out of SLP(C) NO. 8015 OF 2022)

UNION OF INDIA & ORS. PETITIONER(S)

VERSUS

N.M. RAUT & ORS. RESPONDENT(S)

with

CIVIL APPEAL NOS. _____ OF 2024
(arising out of SLP(C) NOS. 10457-10458 of 2022)

CIVIL APPEAL NOS. _____ OF 2024
(arising out of SLP(C) NOS. 11342-11343 of 2022)

CIVIL APPEAL NOS. _____ OF 2024
(arising out of SLP(C) NOS. 10475-10476 of 2022)

CIVIL APPEAL NOS. _____ OF 2024
(arising out of SLP(C) NOS. 10642-10643 of 2022)

CIVIL APPEAL NOS. _____ OF 2024
(arising out of SLP(C) NOS. 12354-12355 of 2022)

CIVIL APPEAL NOS. _____ OF 2024
(arising out of SLP(C) NOS. 15188-15189 of 2022)

CIVIL APPEAL NOS. _____ OF 2024
(arising out of SLP(C) NOS. 10693-10694 of 2022)

CIVIL APPEAL NOS. _____ OF 2024
(arising out of SLP(C) NOS. 10272-10273 of 2022)

CIVIL APPEAL NOS. _____ OF 2024
(arising out of SLP(C) NOS. 11119-11120 of 2022)

CIVIL APPEAL NOS. _____ OF 2024
(arising out of SLP(C) NOS. 11207-11208 of 2022)

CIVIL APPEAL NO. _____ OF 2024
(arising out of SLP(C) NO. 2995 of 2023)

CIVIL APPEAL NO. _____ OF 2024
(arising out of SLP(C) NO. 2557 of 2023)

CIVIL APPEAL NO. _____ OF 2024
(arising out of SLP(C) NO. 3197 of 2024)

CIVIL APPEAL NO. _____ OF 2024
(arising out of SLP(C) NO. 3198 of 2024)

CIVIL APPEAL NO. _____ OF 2024
(arising out of SLP(C) NO. 9604 of 2024)

CIVIL APPEAL NO. _____ OF 2024
(arising out of SLP(C) NO. 12060 of 2024)

and

CIVIL APPEAL NO. _____ OF 2024
(arising out of SLP(C) NO. 12261 of 2024)

J U D G M E N T

Civil Appeals @ SLP(C) Nos. 8015 OF 2022, 10457-10458 of 2022, 11342-11343 of 2022, 10475-10476 of 2022, 10642-10643 of 2022, 12354-12355 of 2022, 15188-15189 of 2022, 10693-10694 of 2022, 10272-10273 of 2022, 11119-11120 of 2022, 11207-11208 of 2022, 2995 of 2023 and 2557 of 2023

1. Leave granted.

2. This judgment decides the aforesaid appeals, which are concerned with the interpretation and implementation of the Modified Assured Career Progression Scheme, 2008¹, applicable with effect from 01.09.2008.

3. The MACPS was considered by a Bench of three Judges of this Court in "*Union of India and Others v. M.V. Mohanan Nair*"² and other connected matters. This judgment elaborately compared the MACPS with the Assured Career Progression Scheme³, which was

¹ For short, "MACPS."

² (2020) 5 SCC 421.

³ For short, "ACP."

introduced with effect from 09.08.1999 and continued to remain in force till 31.08.2008. In a nutshell, this Court held that the MACPS differed from the ACPS on several aspects, including two significant ones. First, the ACPS envisaged financial upgradations on completion of 12 years and 24 years of regular service without one or two promotions, as the case may be, whereas the MACPS envisaged three financial upgradations after completion of regular service of 10, 20, and 30 years without promotions and continuing on the same Grade Pay for a decade. Second, the financial upgradation under the ACPS was to the pay scale of the next higher promotional post in the service whereas, under the MACPS, financial upgradation was not with reference to the next higher promotional post but to the next higher grade pay in the scale of pay, as notified upon implementation of the Central Civil Services (Revised Pay) Rules, 2008⁴.

4. The decision in *M.V. Mohanan Nair* (supra) was subsequently followed and elaborated upon by this Court in (i) "*Union of India v. R.K. Sharma and Others*"⁵; (ii) "*Director, Directorate of Enforcement and Another v. K. Sudheesh Kumar and Others*"⁶; and (iii) "*Union of India and Others v. Ex.HC/GD Virender Singh*"⁷."

5. In *K. Sudheesh Kumar* (supra), this Court had specifically dealt with Clause 8.1 of the MACPS and observed that the next financial upgradation in terms of Section 1, Part-A of the First Schedule to the CCS RP Rules, was from Pay Band⁸-2 with Grade pay of ₹5400 to

4 CCS RP Rules.

5 (2021) 5 SCC 579.

6 (2022) 3 SCC 649.

7 (2022) SCC OnLine SC 1058.

8 For short, "PB".

PB-3 with Grade Pay of ₹5400. The argument that the pay-scale and the Grade Pay of ₹5400 was common was rejected in view of the clear stipulation in Clause 8.1 of the MACPS. The effect thereof would be that a person given financial upgradation under the MACPS from PB-2 with Grade Pay of ₹5400 to PB-3 with Grade Pay of ₹5400 will be entitled to an increment at the rate of 3%.

7. In the case of *Ex.HC/GD Virender Singh* (supra), the issue which had arisen was as to whether the MACPS was applicable and was to be implemented with effect from 01.01.2006, the date on which the CCS RP Rules, were enforced or was to be applied, in terms of O.M. dated 19.05.2009.

8. *Ex.HC/GD Virender Singh* (supra), observes that the MACPS would be applicable with effect from 01.09.2008. Upon considering the reasoning in *M.V. Mohanan Nair* (supra), it was held that the earlier decision of this Court in "*Union of India and others v. Balbir Singh Turn and another*"⁹, was effectively overruled. It is relevant to refer to this settled position, as the arguments in the present cases primarily arise from the fact that the CCS RP Rules were enforced with effect from 01.01.2006 and granted certain benefits to the respondents in the form of revision or higher pay scales after completion of two or four years of service, as the case may be.

9. *Ex.HC/GD Virender Singh* (supra), following *M.V. Mohanan Nair* (supra) reiterated that under the MACPS, the eligible Government employees are entitled to financial upgradation equivalent to the immediate next Grade Pay in the hierarchy of the Pay Bands, as 9 (2018) 11 SCC 99.

stated in Section 1, Part-A of the First Schedule to the CCS RP Rules.

10. In the present case, upon implementation of the CCS RP Rules, some of the respondents who were working as Pharmacists in the Ordnance Factory, and the others, who were working as Superintendents in the Central Board of Excise, became entitled to non-functional upgradation, on completion of two or four years of service respectively, in PB-2 with Grade Pay of ₹4200 and PB-2 with Grade Pay of ₹5400 respectively. The earlier pay scale, before the grant of non-functional financial upgradation, was with the Grade Pay of ₹2800 and ₹4800 respectively.

11. In order to appreciate the controversy, we would refer to the factual position in the case of Devendra Saxena, one of the respondents before us:

- o He was appointed as an Inspector in the service on 16.09.1982. At the time of induction, his pay scale was ₹425-800, which was revised over time to ₹5500-9000.
- o In 1999, he was granted the first financial upgradation under the ACPS and he was given the promotional post scale of ₹6500-10500 with Grade Pay of ₹4200.
- o Pursuant to the Ministry's letter dated 21.04.2004, he was then moved to the higher Grade Pay of ₹4800. Subsequently, on 18.07.2000, he was promoted to Superintendent, but his pay was not changed as he was already given the promotional scale of pay due to the upgradation under the ACPS, a year earlier.
- o Upon implementation of the CCS RP Rules, the post of Superintendent carried two pay scales. The first pay scale was

in PB-2 with Grade Pay of ₹4800 and the second was PB-2 with Grade Pay of ₹5400. The Grade Pay of ₹5400 was applicable after four years of service in that post. As Devendra Saxena had already completed four years of service in the post of Superintendent, he was given PB-2 with Grade Pay of ₹5400 w.e.f. 01.01.2006.

- o Thereafter, on 16.09.2006, as he completed 24 years of service, he was granted his second financial upgradation under the ACPS by giving him the promotional post scale of ₹8000-13500 in PB-3 with Grade Pay of ₹5400.
- o In effect, he was given three financial upgradations in terms of Grade Pay in less than 30 years of service but was again granted a further upgradation on 16.09.2012, upon completing 30 years in service, by giving him the Grade Pay of ₹6600. This was clearly erroneous.

12. It would be relevant to reproduce the relevant clauses of the MACPS, which read as under:

"1. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.

2. 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 first 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/organisation will be given only at the time of regular promotion.

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5. Promotions earned/upgradation granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPS.

Illustration-1

The pre-revised hierarchy (in ascending order) in a particular organization was as under:-

₹5000-8000, ₹5500-9000 & ₹6500-10500.

(a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs. 5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006 he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, Le., to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500.

(b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs. 5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs. 5500-9000 & Rs. 6500-10500 during this period.

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the

pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of Rs. 5000- 8000, Rs. 5500-9000 and Rs. 6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs.4200 in the pay band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs. 4600 and Rs. 4800 in the pay band PB-2.

6. In the case of all the employees granted financial upgradations under ACPS till 01.01.2006, their revised pay will be fixed with reference to the pay scale granted to them under the ACPS.

6.1 xxx xxx xxx

6.2 In cases where financial upgradation had been granted to Government servants in the next higher scale in the hierarchy of their cadre as per the provisions of the ACP Scheme of August, 1999, but whereas as a result of the implementation of Sixth CPC's recommendations, the next higher post in the hierarchy of the cadre has been upgraded by granting a higher grade pay, the pay of such employees in the revised pay structure will be fixed with reference to the higher grade pay granted to the post. To illustrate, in the case of Jr. Engineer in CPWD, who was granted 1st ACP in his hierarchy to the grade of Asstt. Engineer in the pre-revised scale of Rs.6500-10500 corresponding to the revised grade pay of Rs.4200 in the pay band PB-2, he will now be granted grade pay of Rs.4600 in the pay band PB-2 consequent upon upgradation of the post of Asstt. Enggs. In CPWD by granting them the grade pay of Rs.4600 in PB-2 as a result of Sixth CPC's recommendation. However, from the date of implementation of the MACPS, all the financial upgradations under the Scheme

should be done strictly in accordance with the hierarchy of grade pays in pay bands as notified vide CCS (Revised Pay) Rules, 2008.

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9. 'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.

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13. Existing time-bound promotion scheme, including in-situ promotion scheme, Staff' Car Driver Scheme or any other kind of promotion scheme existing for a particular category of employees in a Ministry/Department or its offices, may continue to be operational for the concerned category of employees if it is decided by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch-over to the MACPS. However, these Schemes shall not run concurrently with the MACPS.

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19. The MACPS contemplates merely placement on personal basis in the immediate higher Grade pay /grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Therefore, no reservation orders/roster shall apply to the MACPS, which shall extend its benefits uniformly to all eligible SC/ST

employees also. However, the rules of reservation in promotion shall be ensured at the time of regular promotion. For this reason, it shall not be mandatory to associate members of SC/ST in the Screening Committee meant to consider cases for grant of financial upgradation under the Scheme.

20. Financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS.

21. Pay drawn in the pay band and the grade pay allowed under the MACPS shall be taken as the basis for determining the terminal benefits in respect of the retiring employee.

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28 Illustrations:

- A. (i) If a Government servant (LDC) in PB-I in the Grade Pay of Rs.1900 gets his first regular promotion (UDC) in the PB-I in the Grade Pay of Rs.2400 on completion of 8 years of service and then continues in the same Grade Pay for further 10 years without any promotion then he would be eligible for 2nd financial upgradation under the MACPS in the PB-I in the Grade Pay of Rs.2800 after completion of 18 years (8+10 years).
- (ii) In case he does not get any promotion thereafter, then he would get 3rd financial upgradation in the PB-II in Grade Pay of Rs.4200 on completion of further 10 years of service i.e. after 28 years (8+10+10).
- (iii) However, if he gets 2nd promotion after 5 years of further service in the pay PB-II in the Grade Pay of

Rs.4200 (Asstt. Grade/Grade "C") i.e. on completion of 23 years (8+10+5years) then he would get 3rd financial upgradation after completion of 30 years i.e. 10 years after the 2nd ACP in the PB-II in the Grade Pay of Rs.4600.

B. If a Government servant (LDC) in PB-I in the Grade Pay of Rs.1900 is granted 1 st financial upgradation under the MACPS on completion of 10 years of service in the PB-I in the Grade Pay of Rs.2000 and 5 years later he gets 1 st regular promotion (UDC) in PB-I in the Grade Pay of Rs.2400, the 2nd financial upgradation under MACPS (in the next Grade Pay w.r.t. Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-I in the Grade Pay of Rs.2800. On completion of 30 years of service, he will get 3rd ACP in the Grade Pay of Rs. 4200. However, if two promotions are earned before completion of 20 years, only 3 rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date 2nd promotion or at 30th year of service, whichever is earlier.

C. If a Government servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned third promotion in the hierarchy."

13. A careful reading of the aforesaid clauses/provisions reflects the objective purpose of the MACPS, that is, that an employee should not remain stagnant in the same pay scale/Grade Pay for periods of 10, 20 or 30 years. In such cases, the employee would be entitled to financial upgradation to the immediate next

higher Grade Pay, as mentioned in Section 1, Part-A of the first Schedule to the CCS RP Rules. Emphasis in clause 1 is on the expression "Grade Pay". Clause 2, similarly, states that the benefit under the MACPS is available where the eligible employee has not got regular promotion. In such cases, he/she will be given financial upgradation. However, such financial upgradation is not the same as a pay-scale/Grade Pay, which is applicable to the next promotional post in the hierarchy of the concerned cadre/organization.

14. Clause 5 states that the promotions earned/financial upgradations granted under the ACPS in the past shall be taken into account, but where there has been a merger of pay-scales/upgradation of posts recommended by the Sixth CPC, they shall be ignored for the purpose of granting upgradation under the MACPS. This has been explained by given examples A and B, which we have quoted above. At this stage, we would like to clarify that clause 5 will not be applicable to the cases in question. This is not a case of merger of pay-scales or upgradation of posts. On the other hand, this is a case wherein non-functional higher Grade Pay has been awarded to employees on completion of a certain length of service in the lower pay-scale/Grade Pay. We would, therefore, reject the contention of the respondents that, on implementation of the CCS RP Rules, upgrading the pay of Pharmacists and Superintendents, post the period of two or four years, would only amount to re-fixation of pay or revision of pay, as incorrect and, in essence, a wrong understanding of the CCS RP Rules.

15. Clause 6.2 specifically states that, where financial

upgradation has been granted to the next higher pay-scale/Grade Pay in the hierarchy in the cadre as per the provisions of the ACPS, but as a result of the implementation of the Sixth CPC by grant of higher pay-scale/Grade Pay, the pay of such employees has been revised, such benefit will be given to the said employees. However, from the date of implementation of the MACPS, all financial upgradations would be done under the MACPS strictly in accordance with the hierarchy of the Grade Pay in the Pay Band, as notified *vide* CCS RP Rules. "Regular service" for the purpose of MACPS, commences from the date of joining the post in the direct entry grade on a regular service basis either on a direct recruitment basis or on an absorption/re-employment basis.

16. Clause 13 of the MACPS states that any time-bound promotion scheme, including in-situ promotion scheme, which is in force, may continue to be in operation for the concerned category of employees if it is decided by the concerned administrative authorities to retain such schemes. However, such schemes cannot run concurrently with the MACPS. The objective is clear. An incumbent eligible Government employee should not take the benefit of both - the time-bound promotion scheme or in-situ promotion scheme as well as the benefit of financial upgradation under the MACPS. We have specifically referred to clause 13 for, in our opinion, the financial upgradation which is granted, after two or four years of service, to Pharmacists or Superintendents, would indicate that they availed financial upgradation. In their cases, because of service conditions, the Government had thought it proper to grant them such financial upgradation after they completed two or four

years of service in the lower pay-scale/Grade Pay. It is not the intention of the Government to ignore the said upgradation under the CCS RP Rules. If we do so, we would be granting them additional benefits beyond what was envisaged and stated in the MACPS. The Revised Pay Rules, including a grant of financial benefits, and the MACPS are not two watertight or separate compartments, each conferring independent benefits without reference to the other. Grant of financial upgradations as well as promotions are to be duly accounted for and taken into consideration in the MACPS.

17. Clauses 19 and 20 specify that the financial upgradation is purely personal and has no relevance to the seniority position. Grade Pay/grant of financial benefits shall not amount to actual or functional promotion of the employees concerned. Roster point etc. will not be applicable.

18. Clause 21 states that the pay drawn in the Pay Band and Grade Pay allowed under the MACPS shall be taken as the basis for determining the terminal benefits in respect of the retiring employees.

19. The illustrations in Clause 28 clearly affirm the view we have taken and are in accord with what we have stated above.

20. In view of the aforesaid position of the MACPS, we fail to understand how we can ignore the financial upgradation, which was granted upon completion of two or four years of service in the posts of Pharmacist or Superintendent, as the case may be, for the purpose of deciding as to whether or not the Government employee would be entitled to the next financial benefit under the MACPS. To ignore the financial upgradation granted on completion of two or

four years of service as Pharmacists or Superintendents, would be contrary to the intent and purpose of the scheme, the language employed as well as the examples/illustrations which have been given. No doubt, certain anomalies may arise because of the fact that the ACPS and MACPS did operate during different periods; the nature of financial upgradations was different; and the time periods specified for financial upgradation were different, but this cannot be a ground and reason to re-write or ignore the expressed language of the MACPS and the intent and purpose behind the scheme. Read in this light, we have no difficulty in accepting the present appeal and setting aside the impugned judgments. Hence, we allow the present appeals.

21. In other words, the respondents would be entitled to the benefits of the MACPS only after taking into consideration all the financial upgradations earned by them, in terms of the CCS RP Rules. Financial upgradations under the said Rules have to be accounted for and will be treated as financial upgradations earned for the purpose of reckoning the 10-year intervals and the three assured financial upgradations, in terms of Grade Pay, under the MACPS.

22. We are informed that, in the present case, the Government of India had implemented and executed the MACPS by granting benefits to the respondents and, later on, recoveries were initiated. As many of the employees may have retired, in terms of the decision of this Court in *"State of Punjab and Others vs. Rafiq Masih (White Washer) and Others"*¹⁰, we deem it appropriate to direct that the

¹⁰ (2015) 4 SCC 334

Union of India will not effect any recovery of arrears from the retirees or those who are retiring within one year from the date of pronouncement of this judgment.

23. In other cases, the recoveries may be made after issuing notice to the employee concerned, whose request for proportionate recovery over a period of time not exceeding two years, may be considered depending upon the quantum of recovery which is to be made. We also deem it appropriate to direct that the appellant, Union of India, will not charge interest on the amount to be recovered as they themselves had made the payment and, the issue being debatable, to ask the employees to pay interest at this distant point of time may lead to difficulty both in calculation as well as in payment.

24. However, it is clarified that the pension and the pay scale, which are payable shall be re-determined on the basis of this judgment and will apply prospectively with effect from 01.01.2025.

25. Where recoveries have been made from the retirees, the same shall be refunded. However, in the case of serving employees, where recoveries have been made, the same need not be refunded.

26. We also clarify that we have not made any comments or observations on any petition/appeal which is filed challenging the validity and legality of Clause 8.1 of the MACPS.

27. Pending application(s), including applications for impleadment/intervention, if any, shall stand disposed of.

Civil Appeals @SLP(C) Nos. 3197 of 2024, 3198 of 2024, 9604 of 2024, 12060 of 2024 and 12261 of 2024)

Leave granted.

The present appeals are disposed of in terms of the judgment passed in Civil Appeal @ SLP (C) 8015/2022.

Pending application(s), including applications for impleadment/intervention, if any, shall stand disposed of.

.....CJI.
(SANJIV KHANNA)

.....J.
(SANJAY KUMAR)

NEW DELHI;
DECEMBER 12, 2024.