

2022 LiveLaw (SC) 99

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; SANJIV KHANNA, JJ.
CIVIL APPEAL NO.442 OF 2022; January 28, 2022
The Director, Directorate of Enforcement & Anr.
VERSUS
K. Sudheesh Kumar & Ors.**

Service Law - Modified Assured Career Progression - MACP Scheme 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 and has nothing to do with the next promotional post. (Para 4.1)

For Appellant(s) Ms. Madhavi Divan, ASG Mr. Zoheb Hossain, Adv. Mr. B.K. Satija, Adv. Mr. Ashok Panigrahi, Adv. Mr. Manan Popli, Adv. Mr. M.K. Maroria, AOR Mr. B. Krishna Prasad, AOR

For Respondent(s) Mr. Alexander M. Paikaday, Adv. Mr. Sunil Roy, AOR

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 23.10.2019 passed by the High Court of Kerala at Ernakulam in OP (CAT) No.171 of 2019, by which the High Court has allowed the said original petition (OP) and set aside the order passed by the learned Central Administrative Tribunal, Ernakulam Bench and has declared that respondent Nos.1 & 2 herein – original petitioners are entitled to grade pay of Rs.6600/on their third financial upgradation as per the Modified Assured Career Progression (MACP) Scheme and they be paid the pension accordingly with effect from April, 2015, the Director, Directorate of Enforcement, New Delhi and another – original respondents before the High Court, have preferred the present appeal.

2. That the private respondent Nos.1 & 2 herein were appointed as Assistant Enforcement Officer (AEO) in the year 1976 and 1977, respectively. That in the year 2009, the Government of India – Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training) notified the MACP Scheme for the Central Government Civilian Employees. The Scheme further provided as per clause 8.1 (which is relevant so far as the present matter is concerned) ‘consequently upon the implementation of Sixth CPC’s recommendations, grade pay of Rs.5400 is now in two pay bands viz., PB2 and PB3. It further provided that the grade pay of Rs.5400 in

PB2 and Rs.5400 in PB3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme'. However, it so happened that while granting third financial upgradation vide order dated 17.11.2009, the private respondents herein and others were granted the grade pay of Rs.6600 for PB3 under MACP Scheme, though as per clause 8.1 PB3 carried the grade pay of Rs.5400. However, on the objection being raised by the Audit Department their grade pays (GP) of Rs.6600 in PB3 was modified/corrected as GP of Rs.5400 as per clause 8.1. Therefore, respondent Nos.1 and 2 herein approached the Central Administrative Tribunal, Ernakulam Bench and prayed to continue the GP of Rs.6600 as per the earlier order dated 17.11.2009 and not to make any recovery. A decision of the Madras High Court was pressed into service by which a similar order of withdrawing the GP of Rs.6600 and to grant GP Of Rs.5400 for PB3 was set aside. On relying upon the clause 8.1 of the MACP Scheme by which the implementation of Sixth CPC's recommendations, grade pay of Rs.5400 was in two pay bands i.e., PB2 and PB3 and for grant of upgradation under MACP Scheme they shall be treated as separate grade pays, the learned Tribunal dismissed the original application (OA).

3. Feeling aggrieved and dissatisfied with the judgment and order passed by the Central Administrative Tribunal dismissing the said OA, respondent Nos.1 & 2 herein preferred the original petition before the High Court. By the impugned judgment and order and ignoring clause 8.1 of the MACP Scheme the High Court has allowed the said petition by observing that the next promotion post of Assistant Director which is in the PB3 would be that of Deputy Director which carries a grade pay of Rs.6600, when the third financial upgradation is due to an employee, it has to be of the next promotional post in the hierarchy as per the Recruitment Rules. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the department has preferred the present appeal.

4. Ms. Madhavi Divan, learned ASG appearing on behalf of the appellants has vehemently submitted that the impugned judgment and order passed by the High Court is just contrary to the decision of the Delhi High Court in the case of **National Council of Educational Research & Training & Anr. Vs. Anita Gupta & Anr.** 2016 SCC OnLine Del 4720 as well as to the decision of this Court in the case of **Union of India and others Vs. M.V. Mohanan Nair** (2020) 5 SCC 421.

4.1 It is submitted that on interpretation of very MACP Scheme, it is observed and held by this Court that the employees are entitled to the grade pay as provided under the MACP Scheme which has been framed on the recommendations of the pay commission. It is submitted that on interpreting MACP Scheme, it is specifically observed and held by this Court that MACP Scheme 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 and has nothing to do with the next promotional post.

4.2 It is submitted that in the present case the High Court has allowed the grade pay of Rs.6600. However, as per clause 8.1, PB2 and PB3 carried grade pay of Rs.5400 and it specifically provided that the grade pay of Rs.5400 in PB2 and grade pay of Rs.5400 in PB3 shall be treated as separate grade pays for the purpose of grant of upgradation under MACP Scheme. It is submitted that therefore respondent Nos.1 & 2 – original petitioners as per the MACP Scheme shall be entitled to the grade pay of Rs.5400 i.e., next grade pay for PB3. It is submitted that as such by the impugned judgment and order and directing to grant grade pay of Rs.6600 the High Court has modified the MACP Scheme and has granted the benefit of three steps upward.

4.3 Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeal.

5. The present appeal is vehemently opposed by Shri Mathai Paikaday, learned Senior Advocate appearing on behalf of the private respondent Nos.1 & 2 herein.

5.1 It is vehemently submitted by learned Senior Advocate appearing on behalf of the private respondent Nos.1 & 2 that the employee shall be entitled to the next higher pay and the submissions made on behalf of the appellants that both PB2 and PB3 shall carry grade pay of Rs.5400 is accepted in that case the purpose of higher grade pay shall be frustrated. It is submitted that when the next higher grade pay would be Rs.6600, the High Court has rightly directed to grant grade pay of Rs.6600.

5.2 It is submitted that it is true that the High Court has wrongly used the word next promotion post. It is submitted that the question is not of next promotional post but the question is of next higher grade pay.

5.3 In the alternative it is prayed by the learned Senior Advocate appearing on behalf of respondent Nos.1 & 2 and relying upon the decision of this Court in the case of **State of Rajasthan Vs. Mahesh Kumar Sharma** (2011) 4 SCC 257 that if this Court is inclined to accept the submissions made on behalf of the appellants and set aside the judgment and order passed by the High Court holding that respondent No.1 & 2 shall be entitled to grade pay of Rs.5400, in that case no recovery be ordered as respondent Nos.1 & 2 have already retired and the difference would be of Rs.1200 approximately per month so far as the pension is concerned.

6. We have heard learned counsel appearing on behalf of the respective parties.

7. At the outset it is required to be noted that the issue involved in the present appeal is as such squarely covered by the decision of this Court in the case of **M.V. Mohanan Nair** (supra). By detailed judgment and order this Court has interpreted the very MACP Scheme and it is observed and held that under the MACP Scheme employees

are entitled to the immediate next higher grade pay as given in Section 1, Part A of the First Schedule of the CCS (Revised Pay) Rules, 2008. It is specifically observed and held by this Court in the aforesaid decision that MACP has nothing to do with the next promotional post and what the employee would be entitled would be the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in the CCS (Revised Pay) Rules, 2008. As per clause 8.1 of the MACP Scheme 'consequently upon the implementation of Sixth CPC's recommendations, grade pay of PB2 and PB3 would be Rs.5400. It specifically provides that the grade pay of Rs.5400 in PB2 and Rs.5400 in PB3 shall be treated as separate grade pays for the purpose of grant of upgradations under the MACP Scheme'. Therefore, respondent Nos.1 & 2 as PB2 shall be entitled to the next grade pay of Rs.5400 as per clause 8.1 and as per Section 1, Part A of the First Schedule of the CCS (Revised Pay) Rules, 2008. The High Court has allowed the grade pay of Rs.6600 by considering the next promotion post of Assistant Director i.e., Deputy Director which carries a grade pay of Rs.6600. However, the aforesaid interpretation would be contrary to the MACP Scheme. On considering the relevant clauses of the MACP Scheme, it appears that the MACP Scheme envisages 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 High Court has committed a grave error in allowing the grade pay of Rs.6600 the grade pay which was available to the next promotional post as Deputy Director. Respondent Nos.1 & 2 as per PB2 were entitled to the grade pay of Rs.5400 as PB3 as per clause 8.1.

8. By the impugned judgment and order and while granting grade pay of Rs.6600 to respondent Nos.1 & 2 virtually, the High Court has modified the MACP Scheme which has been framed by the Government on the recommendations of the expert body like the pay commission and its recommendations for the MACP Scheme. As observed and held by this Court in the case of **M.V. Mohanan Nair** (supra) the ACP which is now superseded by MACP Scheme is a matter of Government policy and interfering with the recommendations of the expert body like the pay commission and its recommendations for the MACP Scheme would have serious impact on the public exchequer. It is further observed that the recommendations of the pay commission for the MACP Scheme have been accepted by the Government and implemented. It is further observed that therefore the High Court has no jurisdiction to interfere with the Government policies in the form of MACP Scheme which was after accepting the Sixth Central Pay Commission. In view of the above and for the reasons stated above and the binding decision of this Court in the case of **M.V. Mohanan Nair** (supra) with which we also agree, the impugned judgment and order passed by the High Court granting grade pay of Rs.6600 to respondent Nos.1 & 2 is unsustainable and deserves to be quashed and set aside.

However, we observe that the view which we are taking is on the premise that neither the MACP Scheme nor Clause 8.1 is under challenge and as per the law laid down by this Court in **M.V. Mohanan Nair (supra)**, an employee is entitled to the higher grade pay as provided under MACP Scheme, more particularly, as per Section 1, Part A of the First Schedule of the CCS (Revised Pay) Rules, 2008. Therefore, so long as Clause 8.1 and the grade pay mentioned as per Section 1, Part A of the First Schedule of the CCS (Revised Pay) Rules, 2008 stands, the employee shall be entitled to the grade pay accordingly. Therefore, if any of the employees is aggrieved by Clause 8.1 and if in his opinion, there is any anomaly the same has to be challenged by the aggrieved employee, which can be considered in accordance with law and on its own merits. However, as the same is not under challenge, we have to go by the MACP Scheme as it is.

9. In view of the above and for the reasons stated above the impugned judgment and order passed by the High Court is hereby quashed and set aside and the judgment and order that of the Central Administrative Tribunal is hereby restored. It is observed and held that on implementation of MACP Scheme respondent No.1 and 2 herein shall be entitled to the grade pay of Rs.5400 and not of Rs.6600 as claimed by them. Their pensions be refixed accordingly. However, it is observed that as respondent Nos.1 & 2 are the retired employees and till date they have received the pension considering the grade pay of Rs.6600 and being retired persons it will be very difficult for them to refund the difference in the pay pension, in the peculiar facts and circumstances of the case we direct that there shall be no recovery of the difference in the pension between the grade pay of Rs.5400 and grade pay of Rs.6600 for the period prior to December, 2021. However, on refixation of the pension as per the present judgment and order, fixing their grade pay of Rs.5400 they shall be paid the pension accordingly from January, 2022 onwards. The present appeal is allowed accordingly, however, with the above observations and directions. No costs.

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