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In the Delhi High Court

Case No : LPA No. 405 of 2016

Delhi Urban Shelter Improvement Board APPELLANT

Vs

Shashi Malik RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

Citation : (2016) 8 ADDelhi 405

Hon'ble Judges : Mr. Sanjiv Khanna and Ms. Sunita Gupta, JJ.

Bench : Division Bench

Advocate : Mr. V.K. Garg, Senior Advocate with Mr. Parvinder Chauhan and Ms. Noopur Dubey, Advocates, for the Petitioner; Mr. Kirtiman Singh, CGSC, for the DoP&T; Mr. Parvinder Chauhan, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Sanjiv Khanna, J.—The Delhi Urban Shelter Improvement Board in these intra-Court appeals impugns the judgment dated 11th February, 2015 passed in Writ Petition (C)No. 2118/2012 titled Anil Kumar Nasa and ors. v. Delhi Urban Shelter Improvement Board and Writ Petition (C)No. 2117/2012 titled Shashi Malik and ors. v. The Chief Executive Officer and ors. The appellant also impugns the order of the Single Judge dated 14th March, 2016, whereby the review petitions filed by them have been dismissed.

2. The appellant had earlier challenged the judgment dated 11th February, 2015 in LPA No. 484/2015 titled Delhi Urban Shelter Improvement Board and anr. v. Shashi Malik and ors and LPA No. 492/2015 titled Delhi Urban Shelter Improvement Board and anr. v. Anil Kumar Nasa and ors. The said intra-Court appeals were dismissed as not pressed, observing that if the appellant would seek review of the order dated 11th February, 2015, the Single Judge would bestow consideration as per the review jurisdiction.

3. The respondents, who are employees of the appellant, had invoked writ jurisdiction for quashing the order dated 22nd March, 2012 by which the financial

up-gradations granted to them vide order dated 31st March, 2009, under the Assured Career Progression Scheme (for short, "ACP Scheme") were sought to be withdrawn. The contention of the appellant was that the Modified Assured Career Progression Scheme (for short, "MACP Scheme") was notified on 19th May, 2009, with retrospective effect from 1st September, 2008, and had replaced the ACP Scheme with effect from 1st September, 2008. Thus, the respondents were wrongly granted financial up-gradations under the ACP Scheme vide order dated 31st March, 2009. The MACP Scheme was retrospectively applicable on the said date.

4. The impugned judgment, rejecting the stance of the appellant and allowing the writ petition, relies on paragraph 11 of the MACP Scheme dated 19th May, 2009, which for the sake of convenience is reproduced below:

"11. It is clarified that no past cases would be re-opened. Further, while implementing the MACP Scheme, the differences in pay scales on account of grant of financial up-gradation under the old ACP Scheme (of August 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly."

The impugned judgment accepts that the MACP Scheme, though notified on 19th May, 2009, was given retrospective effect and made applicable from 1st September, 2008. However, it is observed that paragraph/Clause 11 quoted above was incorporated to explicate and clarify that the MACP scheme would not override or re-write the financial benefits granted under the ACP Scheme. The import of the words "past cases would not be reopened" was to restrict the impact of the retrospective effect. The cases wherein benefit accrued under the ACP Scheme, which was operational up to 18th May, 2009, had been granted, were not to be reopened and withdrawn.

5. Contesting the said finding, learned Senior Counsel for the appellant has relied upon the judgment of the High Court of Bombay, Nagpur Bench, passed in the Writ Petition Nos. 3722/2013 and 5296/2013 titled Union of India and anr. v. P.M. Wagh and anr. and Union of India and ors. v. Mrs.Dhanashree and anr., wherein the expression "past cases" referred to in paragraph/clause 11 of the MACP Scheme was examined. Overruling the decision of the Central Administrative Tribunal, the High Court of Bombay, Nagpur Bench, had held:

"15. The dispute essentially turns upon the interpretation to be placed on paragraph No. 11 of the office memorandum. It is trite that the office memorandum dated 19.5.2009, making the MACP applicable, has to be read as a whole. Paragraph nos. 9 and 11 of the office memorandum, which are relevant for the purpose, read as under:-

9. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the MACP Scheme shall be given by the Department of Personnel and Training (Establishment-D). The scheme would be operational w.e.f. 01.09.2008. In other words, financial up-gradations as per the provisions of the

earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008.

11. It is clarified that no past cases would be reopened. Further, while implementing the MACP Scheme, the differences in pay scales on account of grant of financial up-gradation under the old ACP Scheme (of August 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly."

16. It is, thus, clear that the ACP Scheme was to be operational only till 31.8.2008 and not thereafter. Paragraph No. 9 in terms makes it abundantly clear that the provisions of the ACP Scheme would not be permissible after 31.8.2008 that is on the MACP Scheme being made operational.

17. The Tribunal has found that the prohibition against reopening of "past cases" was safeguard for those who had been granted financial up-gradation on the basis of earlier ACP Scheme. The Tribunal found that the "past cases" prior to 31.8.2008 have nothing to do with the MACP Scheme as they were in any event to be covered by the ACP Scheme only. It was, therefore, found that the term "past cases" in paragraph No. 11 applies to the cases where earlier scheme was invoked during the period from 1.9.2008 to 18.5.2009 and such cases cannot be reopened.

18. In our considered opinion, we are unable to subscribe to the view as taken and the reasons articulated. On behalf of the petitioners, it is submitted that the old ACP Scheme was implemented as proposed by the 5th Pay Commission (`5th CPC? for short) while the MACP was introduced as a consequence of the recommendations of the 6th Pay Commission (''6th CPC'' for short). It is submitted that although the revised pay structure as per 6th CPC was implemented w.e.f. 1.1.2006, the MACP was made applicable w.e.f. 1.9.2008. Thus, the past cases would refer to such of the employees in respect of whom benefits under the ACP were granted between 1.1.2006 to 31.8.2008. The protection against reopening was for the benefits granted during this period. We find that this interpretation as has been clarified by the Department of Personnel and Training is in consonance with the overall reading of the office memorandum dated 19.5.2009. The reasoning that the ''past cases'' prior to 31.8.2008 have nothing to do with the MACP (as they were even otherwise to be covered by the ACP Scheme only) in our considered opinion, cannot be accepted. In our view, paragraph No. 11 read with paragraph No. 9 of the office memorandum would clearly show that the term ''past cases'' would not mean, cases in which the benefits of ACP are granted for the period from 1.1.2006 to 31.8.2008. We also find that if the interpretation as placed in the impugned judgment is accepted, that would either result into there being overlapping of the provisions of the ACP/ MACP during the said period or it would amount to rewriting of the MACP Scheme (inasmuch as it would result into MACP being applicable only from 19.5.2009 and not retrospective). None of the same would be permissible."

6. Referring to the question of retrospective effect given to the MACP Scheme

and whether or not the MACP Scheme is more beneficial than the ACP Scheme, it has been held as under:

"19. In the face of the view, as is being taken, we would like to make a brief reference to the cases cited on behalf of the parties. In the case of Ex Capt. K.C. Arora and another (supra) the dispute was between direct recruits and promotees. In paragraph No. 15 of the judgment, the Hon''ble Apex Court held that the Parliament as also the State Legislature have plenary powers to legislate within the field committed to them and subject to certain constitutional restrictions, they can legislate prospectively as well as retrospectively. It has been further held that every statute prima facie would be prospective unless it is expressly or by necessary implication made to have retrospective effect. It has also been held that the rule in general is applicable where the object of the statute is to affect the vested rights or to impose new burden or to impair existing obligations. In the case of Asian Food Industries (supra) again it has been held that by reason of a policy a vested or accrued right cannot be taken away. Such a right therefore, cannot a fortiori be taken away by an amendment thereof.

20. Turning to the present case, we find that it has not been conclusively shown that the MACP Scheme is less beneficial than the earlier ACP and at any rate, there was no challenge to the office memorandum on any such ground before the tribunal. The dispute was only as regards interpretation to be placed on paragraph No. 11 of the office memorandum. In that view of the matter, we do not find that the interpretation as placed on paragraph No. 11 of the office memorandum can be sustained. Consequently, the writ petitions are allowed. The impugned judgments and orders of the Central Administrative Tribunal are hereby quashed and set aside. The original applications are hereby dismissed."

7. In order to decide the controversy, we would like to reproduce the relevant clauses of the ACP and MACP Schemes. Relevant clauses of Annexure-I titled Conditions for Grant of Benefits under the ACP Scheme read as under:-

"1. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial up-gradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;

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3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;

4. The first financial up-gradation under the ACP Scheme shall be allowed after 12 years of regular service and the second up-gradation after 12 years of regular service from the date of the first financial up-gradation subject to fulfilment of

prescribed conditions. In other words, if the first up-gradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second up-gradation which would also get deferred accordingly;

5.1 Two financial up-gradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial up-gradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial up-gradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;

5.2 Residency periods (regular service) or grant of benefits under the ACP Scheme shall be counted from the grade in which employee was appointed as a direct recruit;

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7. Financial up-gradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial up-gradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the notification dated September 30,1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of the isolated posts in the pay-scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial up-gradations only to the pay-scales S-5 and S-6. Financial up-gradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial up-gradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of the well-defined cadre shall not qualify for the ACP Scheme on ''dynamic'' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only;

8. The financial up-gradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial up-gradation for the senior employee on the

ground that the junior employee in the grade has got higher pay-scale under the ACP Scheme;

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12. The proposed ACP Scheme contemplates merely placement on personal basis in the higher pay-scale/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Since orders regarding reservation in promotion are applicable only in the case of regular promotion, reservation orders/roster shall not apply to the ACP Scheme which shall extend its benefits uniformly to all eligible SC/ST employees also. However, at the time of regular/functional (actual) promotion, the Cadre Controlling Authorities shall ensure that all reservation orders are applied strictly;

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15. Subject to Condition No. 4 above, in cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial up-gradation under the scheme shall be granted directly. Further, in order to rationalise unequal level of stagnation, benefit of surplus regular service (not taken into account for the first up-gradation under the scheme) shall be given at the subsequent stage (second) of financial up-gradation under the ACP Scheme as a one time measure. In other words, in respect of employees who have already rendered more than 12 years but less than 24 years of regular service, while the first financial up-gradation shall be granted immediately, the surplus regular service beyond the first 12 years shall also be counted towards the next 12 years of regular service required for grant of the second financial up-gradation and, consequently, they shall be considered for the second financial up-gradation also as and when they complete 24 years of regular service without waiting for completion of 12 more years of regular service after the first financial up-gradation already granted under the Scheme."

The MACP Scheme was notified in the O.M. dated 19th May, 2009. Relevant clauses of the said OM and Annexure I read:-

"The Sixth Central Pay Commission in Para 6.1.15 of its report, has recommended Modified Assured Career Progression Scheme (MACPS). As per the recommendations, financial up-gradation will be available in the next higher grade pay whenever an employee has completed 12 years continuous service in the same grade. However, not more than two financial up-gradations shall be given in the entire career, as was provided in the previous Scheme. The Scheme will also be available to all posts belonging to Group "A" whether isolated or not. However, organised Group "A" services will not be covered under the Scheme

2. The Government has considered the recommendations of the Sixth Central Pay Commission for introduction of a MACPS and has accepted the same with further modification to grant three financial up-gradations under the MACPS at intervals of 10, 20 and 30 years of continuous regular service.

3. The Scheme would be known as "Modified Assured Career Progression. Scheme (MACPS) for the central Government civilian employees. This Scheme is in supersession of previous ACP Scheme and clarifications issued there under and shall be applicable to all regularly appointed Group "A", "B", and "C" Central Government Civilian Employees except officers of the Organised Group "A" Service. The status of Group "D" employees would cease on their completion of prescribed training, as recommended by the Sixth Central Pay Commission and would be treated as Group "C" employees. Casual employees, including those granted ''temporary status'' and employees appointed in the Government only on adhoc or contract basis shall not qualify for benefits under the aforesaid Scheme. The details of the MACP Scheme and conditions for grant of the financial up-gradation under the Scheme are given in Annexure-I

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9. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the MACP Scheme shall be given by the Department of Personnel and Training (Establishment-D). The scheme would be operational w.e.f. 01.09.2008. In other words, financial up-gradations as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008.

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11. It is clarified that no past cases would be re-opened. Further, while implementing the MACP Scheme, the differences in pay scales on account of grant of financial up-gradation under the old ACP Scheme (of August 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly.

Annexure-1 Modified Assured Career Progression Scheme (MACPS)

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5. Promotions earned/up-gradation~ granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/up-gradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting up-gradations under Modified ACPS. The pre-revised hierarchy (in ascending order) in a particular organisation was as under:-

Rs. 5000-8000, Rs. 5500-9000 & Rs. 6500-10,500.

(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 1.1.2006he would have got two financial up-gradations 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 up-gradations granted under ACP to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500 prior to 1.1.2006will 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 up-gradations 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.

6.2 ?..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 Rs4600 in the pay band PB-2 consequent upon up-gradation 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."

8. The ACP Scheme was introduced pursuant to the recommendation of the 5th Pay Commission by O.M. 9th August, 1999 and was in the nature of executive instructions. The Scheme envisaged grant of financial up-gradation in the next higher grade in accordance with the existing hierarchy in the cadre/category without creating new posts, on completion of 12 and 24 years of regular service, subject to the condition that the concerned employee had not earned or was not granted promotion during this period.

9. Similarly, the MACP Scheme was introduced by way of executive instructions dated 19th May, 2009 pursuant to the recommendation of the 6th Pay Commission. Pertinently, the MACP Scheme was not notified on the date when the Central Civil Services (Revised Pay) Rules 2008 ("2008 Rules" for short) were notified i.e. on 29th August, 2008. The 2008 Rules enacted under the proviso to Article 309 and Clause 5 of Article 148 of the Constitution, were given retrospective effect and made applicable from the 1st day of January, 2006.

10. The OM dated 19th May 2009, in paragraph 3, stipulates that the scheme was in supersession of previous ACP Scheme and the clarifications issued under the ACP Scheme. Paragraph 9 of the O.M. had stated that the MACP Scheme would be operational with effect from 1st September, 2008. Financial up-gradation as per the provisions of the earlier ACP Scheme of August, 1999 would be granted up till 31st August, 2008. Per contra, paragraph 11 stated that no past cases would be re-opened. The aforesaid paragraph/clause in the MACP Scheme alludes and expounds that the financial up-gradation or benefit granted to the respondents under the ACP Scheme cannot be withdrawn.

11. A conjoint and harmonious reading of paragraphs 9 and 11 of the OM dated 19th May, 2009, is required. One interpretation is that ACP Scheme was withdrawn and inapplicable after 31st August, 2008, even if it was actually operational till 18th May, 2009. Therefore, the expression "past cases" in clause 11 of the OM dated 19th May,2009 refers to cases wherein benefits were granted under the ACP Scheme on or before 31st August, 2008 and no benefit or financial up-gradation could have been granted under the ACP Scheme on or after 1st September, 2008. As sequitor, it follows that if financial benefits, if any, were granted under the ACP Scheme between 1st September, 2008 and 18th May, 2009, these should be withdrawn. The second plausible interpretation of the two paragraphs could be that the MACP Scheme was made retrospectively applicable with effect from 1st September, 2008 for it postulates grant of financial up-gradation on completion of 10/20/30 years of service instead of 12 and 24 years of continuous service under the ACP Scheme. The intent and object being that the Government employees who had completed 10/20/30 years of service instead of the earlier requirement of 12 and 24 years of service would be granted benefit under the MACP Scheme. The retrospective effect was to confer this benefit on employees from a back date, and not to withdraw or take away a benefit conferred on an employee under the ACP scheme till the MACP scheme was notified on 19th May, 2009.

12. For the reasons set out below, we would prefer the second interpretation.

13. There is a substantial difference between the ACP Scheme and the MACP Scheme which could adversely affect some employees. As per the ACP Scheme, the financial up-gradation was equivalent to the pay-scale in the promotional post in the hierarchy. The MACP Scheme on the other hand states that financial benefit would be with reference to the hierarchy of grade pay as given in Section 1, Part-A of the 1st Schedule of the Rules 2008 i.e. CCS (Revised Pay) Rules 2008. Thus, MACP Scheme and the ACP Scheme differ in the manner and method of financial up-gradation. It would not be correct to hold that the MACP Scheme is more advantageous and beneficial as compared to the ACP Scheme. In a given case MACP Scheme may not be as beneficial as ACP Scheme. The Nagpur Bench of the Bombay High Court in P.M. Wagh (Supra) had noticed and observed that there was no challenge to the OM dated 19th May, 2009 and the only question raised related to the interpretation of paragraph/clause 11 of the said memorandum.

14. The respondents were appointed as Lower Division Clerks between the period of 1st September, 1984 to 25th February, 1985. They were granted the first financial up-gradation under the ACP Scheme on completion of 12 years of service and were given the pay scale applicable to the post of Upper Division Clerk, and subsequently, they were promoted to the said post. On completion of 24 years of regular service, they became entitled to the second financial up-gradation and vide order dated 31st March, 2009 they were granted pay scale of Rs.6500 ? 10500, and in terms of the 6th Pay Commission recommendation,

were given replacement pay-scale in PB-2 of Rs. 9300 -34800 with grade pay of Rs.4200/-. It is an accepted and admitted position that the respondents in the present case were, by order dated 31st March, 2009, granted benefit of 2nd financial up-gradation under the ACP Scheme on completion of 24 years of regular service. The ACP Scheme was more advantageous and beneficial for the respondents.

15. The ACP Scheme was not withdrawn at any point of time till MACP Scheme was introduced by OM dated 19th May, 2009. The ACP Scheme, therefore, was as such operational till 18th May, 2009. The ACP Scheme and the MACP Scheme are both in the nature of delegated legislation. The Schemes are not formulated and enacted under the proviso to Article 309 and Clause 5 of Article 148 of the Constitution. As a rule, subordinate legislation could not have retrospective effect unless it is held that the said power has been granted under the legislation to the Executive. This is lacking and absent in the present case. We have not been shown any power and authority under which the said subordinate legislation could have been given retrospective effect. This would be one of the important factors and consideration to be kept in mind while interpreting clauses 9 and 11 of the OM dated 19th May, 2009.

16. In Director General of Foreign Trade and another v. Kanak Exports and anr. (2016) 2 SCC 226, the Supreme Court went into the question whether the delegated legislation framed and known as the Export Import (EXIM) Policy for the years 2002 -07 as amended on 31st March, 2003 and made effective from 1st April, 2003, could be given retrospective effect. Reference was made to Section 5 of the Foreign Trade (Development and Regulations) Act, 1992, under which the policy was framed. On the question of delegated legislation and whether such legislation can be made with retrospective effect, it was observed that delegated legislation can be given retrospective effect if a power in this behalf is contained in the principal Act. Reliance was placed on State of Rajasthan v. Basant Agrotech (India) Ltd., (2013) 15 SCC 1, and Mahabir Vegetable Oils (P) Ltd. v. State of Haryana (2006) 3 SCC 620. In the latter decision, in paragraphs 41 and 42 it has been held as under:-

"41. We may at this stage consider the effect of omission of the said note. It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main Act. The rule making power is a species of delegated legislation. A delegatee, therefore, can make rules only within the four corners thereof.

42. It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication."

17. In the present case, we are not dealing with an explanatory or clarificatory legislation, but a new and different Scheme, which was introduced and notified on 19th May, 2009 and given retrospective effect with effect from 1st September,

2008. It is not the case of the appellant that they stand conferred the power under any statute or enactment, to make and introduce delegated legislation in the nature of the MACP Scheme or the OM dated 19th May, 2009, retrospectively. They lack the power to negate and obliterate the existing and vested rights under the ACP Scheme, which were granted on or before 18th May, 2009 or even during the period 1st September, 2008 to 18th May, 2009. This being the legal position the second interpretation would clearly be preferable and acceptable.

18. We are of the opinion that the expression "past cases" in clause 11 would refer to cases wherein financial up-gradation under the ACP Scheme was granted on or before 18th May, 2009 and not to cases where financial up-gradation was granted till 31st August, 2008. In fact, there was no need and requirement to incorporate clause/paragraph 11 and use the expression "past cases" in view of what was stated and referred to in clause/paragraph 9 of the said memorandum. The object and purpose of using the expression "past cases" in paragraph/clause 11 is not to deny benefit which had already accrued and granted to the employees as per the ACP Scheme. In other words, the intent behind paragraph/ clause 9 of the OM dated 19th May, 2009 is to ensure that the employees who were entitled to benefit under the MACP Scheme on completion of 10/20/30 years of service would be entitled to the said benefit with retrospective effect from 1st September, 2008. To this extent, therefore, financial up-gradation would not be granted to them under the ACP Scheme. However, where financial up-gradations under the ACP Scheme, which was in actual operation until 18th May, 2009 had already been granted, and were more beneficial, the same would not be withdrawn. An employee would not be entitled to dual benefit under the two schemes during the period between 1st September, 2008 and 18th May, 2009

19. In the present case we are concerned with whether or not financial up-gradation as payable under the ACP Scheme between 1st September, 2008 and 19th May, 2009 granted under the ACP Scheme, can be withdrawn and taken away. This question had arisen as the grant of financial up-gradation under the ACP Scheme was more beneficial to the employee. Dual benefit is not claimed. In such cases, we would hold that the benefit of financial up-gradation under the ACP Scheme cannot be taken away. In this context, the paragraph/clause 11 stipulates that "past cases" would not be re-opened. Paragraph 9, on the other hand, deals with another set of cases where an employee finds it more beneficial to take advantage or benefit under the MACP Scheme, which is made applicable with retrospective effect from 1st September, 2008 by O.M. dated 19th May, 2009. It is in this context that the financial up-gradation under the earlier ACP Scheme would be granted till 31st August, 2008. The idea behind paragraph/ clause 9 is not to deny or withdraw higher or greater benefit which an employee may be entitled to under the MACP Scheme.

20. It could be urged and argued that the 6th Pay Commission Recommendations had resulted in higher pay-scales, and therefore, the respondents should not have any grievance even if the MACP Scheme is given retrospective effect from

1st September, 2008. The argument is fallacious and has to be rejected. The 6th Pay Commission recommendations were implemented with retrospective effect and made applicable from 1st January, 2006. The ACP Scheme was certainly applicable as on 1st January, 2006 and as per the appellant even till 31st August, 2008. The persons who had got the benefit of the ACP Scheme during this period would be certainly entitled to replacement of pay-scales in terms of 6th Pay Commission, in terms of the 2008 Rules.

21. In view of the aforesaid discussion, we do not find any merit in the present appeals and the same are accordingly dismissed. There will be no order as to costs.