

(2022) 01 GAU CK 0049

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4751 OF 2020

Member Secretary, Central Silk Board

APPELLANT

Vs

Mira Bharali

RESPONDENT

Date of Decision : 20-01-2022

Acts Referred:

Citation : (2022) 01 GAU CK 0049

Hon'ble Judges : Sudhanshu Dhulia, J;Soumitra Saikia, J

Bench : Division Bench

Advocate : B.C. Pathak, S. Choudhury

Final Decision : Allowed

Judgement

1. The Member Secretary, Central Silk Board (hereinafter referred to as the Board) and the Union of India and its officers have approached this

Court by way of a writ petition assailing the order dated 06.03.2019 passed by the Central Administrative Tribunal, Gauhati Bench in Original

Application No. 188/2015. The Central Silk Board is a Statutory Body created by an Act of Parliament namely the Central Silk Board Act, 1948. The

Board functions under the administrative control and command of the Ministry of Textile, Government of India. The predominant function of the

Board is Research and Development (R&D) in the field of Sericulture. The Board has established a network of Units across various regions of the

country to carry out its activities. The employees of the Board include Scientific, Administrative, Technical and other operational and supporting staff.

The service Rules as applicable to the Central Government employees are followed by the Board to regulate the service conditions of the employees

of the Board.

2. The short case projected by the petitioner is that the Government of India, Ministry of Personnel, Public Grievances and Pensions, New Delhi,

notified a scheme vide the OM No. 35034/1/97-Estt(D) dated 09.08.1999, called Assured Career Progression Scheme (ACPs). The said Scheme

envisaged placement of employees in higher pay scale/grant of financial benefits through financial up-gradation to employees who faced stagnation

due to lack of promotional avenues. The scheme provided for two (2) financial up-gradations of which the first shall be given after completion of first

12 years of regular services and the second after completion of further 12 years of regular services from the date of first financial up-gradation. The

said financial up-gradation was to be given to the immediately next higher Pay Scale as indicated in the Annexure-II to Part-A of the First Schedule

annexed to the Notification dated 30.09.1997 of the Ministry of Finance (Department of Expenditure).

3. Thereafter, the Government of India, Ministry of Personnel, Public Grievance and Pensions, New Delhi issued another scheme namely, the

Modified Assured Career Progression Scheme (MACPs) vide the OM No. 35037/3/2008-Estt(D) dated 19.05.2009 and the same was made effective

from 01.09.2008. With the issuance of the new scheme, the earlier ACP Scheme dated 9. 08.1999 was replaced and it became ineffective. This

replacement was subsequent to the revised Pay Scale as approved pursuant to 6th CPC with effect from 01.01.2006. As per the 6th CPC, the pay

structure comprises Pay Band + Grade Pay under the earlier ACP Scheme. The financial up-gradation was to be considered and given to an

employee in the next promotional hierarchy post whereas in the new MACP Scheme, the employee will be considered and given financial up-

gradation in the successive Grade Pay in the hierarchy of recommended revised Pay Band and Grade Pay and not in the promotional hierarchy. As

such under the new MACP Scheme, an employee who has not been promoted will be entitled, upon completion of each 10, 20 and 30 years of

continuous regular service, financial up-gradation are granted to such employees without promotion. The MACP Scheme was made applicable to

employees who have completed atleast 10 years continuous service in the same Grade Pay without any promotion. The respondents who are the

applicants before the Central Administrative Tribunal (hereinafter referred to as CAT) were earlier appointed as Lower Division Clerks (LDC)

in different offices of the Board located in the North-Eastern Region. Subsequently, they were all promoted to the grade of Upper Division Clerks

(UDC) on different dates in the Grade Pay of Rs. 2400/- in PB-2 of Rs. 5,200-20,200 in the pre-revised Pay Scale of Rs. 3050-72-3950-80-4590 on

28.09.1996. The said Pay Scale was revised to PB-1 of Rs. 5200-20,200 with Grade Pay of Rs. 1900/- with effect from 01.01.2006 in view of the 6th

CPC recommendation.

As the respondents completed 12 years of regular services after introduction of MACP Scheme which was made effective from 01.09.2008, their

cases for grant of second financial up-gradation were considered under MACP Scheme and not under the earlier ACP Scheme. The respondents,

however, raised their grievances by making claims under the ACP Scheme. The respondents claimed for grant of Grade Pay which is attached to the

promotional post of Assistant i.e. the next higher promotional post.

4. The respondents submitted their representations and which, however were rejected by the authorities. Being aggrieved, the respondents filed

applications before the CAT, Guwahati. Meanwhile, similar petitions were filed by other similarly situated employees like the respondents before the

Central Administrative Tribunals in other States. One such petition was filed before the Central Administrative Tribunal, Chandigarh Bench being OA

No. 1038/CH/2010 (Raj Pal â?"vs- Union of India) which was decided in favour of the respondents and which subsequently also came to be affirmed

by the Punjab and Haryana High Court. The Appeal preferred by the Union before the Apex Court was dismissed on the point of limitation. The

Central Administrative Tribunal, Gauhati Bench relying upon the said decision dated 06.03.2019 passed by the CAT, Chandigarh Bench allowed the

OA filed by the respondents as well as by relying on another order of the Tribunal rendered in Rajini Kanta Deka vs- Union of India and Ors. and

which was affirmed by the High Court of Meghalaya, Shillong vide Order dated 04.12.2014 in W.P.(C) No. 237/2014, held that the respondents were

entitled to Grade Pay of Rs. 4,200/- which was the Grade Pay of hierarchical promotional post of the Assistant. The CAT, Gauhati Bench while

disposing of the OA directed the Government to grant of second financial up-gradation to the applicants i.e. the respondents herein under the MACP

Scheme from the due date fixing their pay in the hierarchy of posts decided in

their cases earlier and to pay the resultant arrears without interest within a period of two years from the date of receipt of the copy of this order. The CAT, Gauhati Bench relying on the above decision allowed the OA filed by the respondents and directed the appellants/petitioners to decide the present issue in accordance with the aforesaid precedents after examining the case of the applicants and if they are found similarly situated, similar benefits be granted to the applicant i.e. the respondents herein and the said direction was required to be complied with within a period of three months from the date of receipt of the copy of this order.

5. It is submitted at the bar that in the meantime an order passed by the CAT, Chennai Bench had travelled to the Apex Court. The Apex Court considered the decision rendered by the CAT, Chandigarh and affirmed by the Punjab and Haryana High Court rendered in *Rajpal and Ved Prakash*'s case (Supra). The Apex Court after considering the various orders passed by the CAT Benches across the country as well as the decisions rendered by the High Courts in *Raj Pal* and *Ved Prakash*'s case finally laid to rest the controversy.

6. The Apex Court held that the ACP Scheme had been superseded by the MACP Scheme and which is a matter of Government Policy. The Apex Court held that interference with the recommendations of the expert body like Pay Commissioner and its recommendations for the MACP, will have serious impact on the public exchequer. The Apex Court held that since the MACP Scheme as recommended by the Pay Commission has been accepted by the Government and there is nothing to show that the Scheme is arbitrary or unjust warranting any interference, the High Courts had erred in interfering with the Government's Policy in accepting the recommendations of the 6th CPC by simply placing reliance on *Raj Pal*'s case. The impugned orders, accordingly, were held to be not sustainable and were therefore held liable to be set aside. Accordingly, all the impugned orders passed by the various High Courts including the orders passed in *Raj Pal*'s case by Punjab and Haryana High Court and *Rajani Kanta Deka* passed by the Meghalaya High Court were all interfered with and the appeals preferred by the Union of India were allowed. The Apex Court further directed that the certain anomalies on implementation of MACP Scheme which had been brought to the notice of the Joint Committee in the

various meetings of the Joint Committee, Union of India, were directed to be considered by the DoP&T as deemed appropriate and to take a decision

in accordance with law.

7. The learned counsels at the bar are in agreement that the Judgment rendered by the Apex Court in the case of Union of India and Ors Vs. M.V.

Mohanan Nair being Civil Appeal No. 2016/2020 dated 05.03.2020 reported in (2020) 5 SCC 421 and the directions contained therein will also cover

the issue raised in the present writ petition and the same can also be disposed of in terms of the said orders passed by the Apex Court. The relevant

paragraphs of the said Judgment are extracted below:

56. The ACP Scheme which is now superseded by MACP Scheme is a matter of government policy. Interference 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. The recommendations of the Pay Commission for MACP Scheme has been accepted by the Government and implemented. There

is nothing to show that the Scheme is arbitrary or unjust warranting interference. Without considering the advantages in the MACP Scheme,

the High Courts erred in interfering with the Government's policy in accepting the recommendations of the Sixth Central Pay Commission by

simply placing reliance upon Raj Pal case [Union of India v. Raj Pal, 2011 SCC OnLine P&H 14580] . The impugned orders [Union of

India v. M.V. Mohanan Nair, 2013 SCC OnLine Ker 11713] , [Union of India v. Reeta Devi, CWP No. 24278 of 2013, order dated 7-11-

2013 (P&H)] , [Union of India v. Rajini Kanta Deka, 2014 SCC OnLine Megh 269] , [Union of India v. M. Swarnalatha, 2016

SCC OnLine Hyd 746] , [Nagendra Pati Tripathy v. Union of India, 2016 SCC OnLine Pat 4799] , [Union of India v. G.V.S.S. Anand,

2016 SCC OnLine Hyd 745] cannot be sustained and are liable to be set aside.

57. In the result, all the impugned orders [Union of India v. M.V. Mohanan Nair, 2013 SCC OnLine Ker 11713] , [Union of India v. Reeta

Devi, CWP No. 24278 of 2013, order dated 7-11-2013 (P&H)] , [Union of India v. Rajini Kanta Deka, 2014 SCC OnLine Megh 269] ,

[Union of India v. M. Swarnalatha, 2016 SCC OnLine Hyd 746] , [Nagendra Pati Tripathy v. Union of India, 2016 SCC OnLine Pat

4799] , [Union of India v. G.V.S.S. Anand, 2016 SCC OnLine Hyd 745] in these batch of appeals arising out of SLPs (C) Nos. 21803,

22181, 23335, 23333 of 2014, 18227 of 2015, 31125 of 2016 and SLP (C) Diary No. 6042 of 2017 are set aside and the appeals preferred

by the Union of India are allowed. Consequently, appeal arising out of SLP (C) No. 33706 of 2016 is disposed of. No costs.

58. However, as pointed out earlier in paras 52 to 54, since certain anomalies on implementation of the MACP Scheme have been brought

to the notice of the Joint Committee in the various meetings of the Joint Committee, the Union of India and DoP&T to consider the same as

they deem it appropriate and take a decision in accordance with law.

8. Accordingly, this writ petition is allowed and disposed of in terms of the law laid down by the Apex Court in M.V. Mohanan Nair (Supra). The

order dated 06.03.2020 of the CAT, Gauhati Bench passed in O.A. No. 188/2020, impugned in the present writ petition are interfered with and set

aside. No order as to costs.