

**(2015) 04 JH CK 0046**

**In the Jharkhand High Court**

**Case No :** Writ Petition (S) Nos. 5991, 5993, 5995 and 5996 of 2013

Samson Sanjay Toppo and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 13-04-2015

**Acts Referred:**

**Citation :** (2015) 04 JH CK 0046

**Hon'ble Judges :** Aparesh Kumar Singh, J

**Bench :** Single Bench

**Advocate :** Afaque Ahmed, for the Appellant; Prem Pyari Roy, Advocates for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Aparesh Kumar Singh, J.—Heard learned senior counsel for the petitioners and learned counsel for the State.

2. Since the common grievances are involved in these writ petitions, they are being heard together. Since the controversies to be decided are common in all writ petitions, facts are as evident in the first writ petition W.P.(S) No. 5991 of 2013 are being noticed for convenience sake. Learned senior counsel has also addressed the Court from pleadings on record in the first writ petition as they are sufficient to cover the case of other petitioners as well.

3. Counter affidavits have been filed on behalf of Department of Animal Husbandry and Fisheries as also by Finance Department in W.P.(S) No. 5991 of 2013. Counsel for respondents in other writ petitions also adopt the same stand taken by the respondent Department in the first writ petition and other analogous cases as the issues are common.

4. The petitioners are incumbents of Animal Husbandry service, who are in the basic entry grade having been appointed in the years 1997; 1998 and 2001 respectively.

5. Vide Annexure-3 notification dated 30th April, 2012 issued by Animal Husbandry Department, total 288 officers including these 4 petitioners were granted benefits of A.C.P. or M.A.C.P. as per their entitlement. All these 5 petitioners whose names figured at serial Nos. 156, 173, 191, (211 and 212 petitioners in W. P. (S) No. 5996 of 2013) have been granted the benefits of 1st A.C.P.

6. Petitioner, Dr. Samson Sanjay Toppo in WP(S) No. 5991 of 2013 has been granted the benefit of 1st A.C.P w.e.f. 1st September, 2008; Dr Dharma Rakshit Vidyarthi in W. P. (S) No. 5993 of 2013 has been granted the benefit of 1st A.C.P w.e.f. 1st September, 2008; Dr. Nakul Modi in W. P. (S) No. 5995 of 2013 has been granted the benefit of 1st A.C.P w.e.f. 22nd October, 2008, petitioner, Dr. Mukesh Mishra has been granted the benefit of 1st A.C.P w.e.f. 8th November, 2011 and Dr. Rajesh Kumar has been granted the benefit of 1st A.C.P w.e.f. 11th October, 2010 in W.P.(S) No. 5996 of 2013. They have been given consequential pay scale and Pay Band-III, Rs. 15,600-39,100/- and grade pay Rs. 5400/-.

7. The petitioners, however, are aggrieved by corrigendum dated 22nd June, 2012, whereunder as per Para-1(iii) and Para 2 upon grant of 1st M.A.C.P on completion of 10 years of service, they have been placed in the Pay Band-III in Grade Pay Rs. 5400/- on their entitlement upon completion of 10 years of service by 1st September, 2008. The reason for the petitioners to be aggrieved is that the persons, who have got the benefit of 1st A.C.P. prior to 31st August, 2008, were given Pay Band of Grade Pay Rs. 6600/- while the petitioners, who got the benefit of 1st M.A.C.P. have been given the Grade Pay of Rs. 5400/- only causing hostile discrimination. This, according to the petitioners, is without any reasonable classification and those, who benefited by Higher Grade Pay are only few years senior some of them having been appointed in 1994, for example. Therefore, this pay fixation has caused great prejudice to them despite having been granted the benefit of 1st M.A.C.P. on completion of 10 years of service. They have sought for a declaration that Para 1 (iii) and Para 2 of corrigendum dated 22nd June, 2012, be held as arbitrary and discriminatory and further that the petitioners should be given Grade Pay of Rs. 6600/- in stead of Rs. 5400/-.

8. To decide the question issued in the light of rival stand taken by respective parties, at first, it is to be noticed as is also evident from para 12 of the writ petition that the petitioners were drawing the scale of Rs. 8,000-13,500/- (pre-revised) and were placed in the revised pay scale of Rs. 9300-34,800/- with grade pay of Rs. 5400/- on implementation of pay revision w.e.f. 1st January, 2006. It is also to be noticed that the revised pay scales recommended by State Government upon implementation of 6th Pay Revision vide notification dated 28th February, 2009, extract of schedule-I, which is annexed by the petitioners themselves as Annexure-5/A, shows the respective Pay Band/Scale of Pay in Pay Band-II and Pay Band -III which are being extracted hereinbelow as it is material for deciding the controversy.

"PB-II (Rs. 9300-34800)

PB-III (Rs. 15600-39100)

9. Now comparing the revised pay structure implemented on 1st January, 2006 with notification dated 30th April, 2012, Annexure-3, it is evident that in Pay Band-II having revised scale of Rs. 9300-34,800/-, the different grades that has been prescribed are progressively 4200, 4600, 4800 and 5400. In the Pay Band-III having revised scale of Rs. (15,600-39,100) the Grades Pay are 5400, 6600 and 7600 respectively. The petitioners' scale of pay after pay revision was fixed in the scale of Pay Band-II Rs. 9300-34,800/- with grade pay of Rs. 5400 w.e.f. 1st January 2006 and upon grant of 1st M.A.C.P they have been given the scale of Rs. 15,600-39,100/- in Pay Band-III with Grade Pay Rs. 5400/-i.e., first hierarchy of grade pay in Pay Band-III. This also appears to have been done upon grant of M.A.C.P. by notification dated 30th April, 2012. It indicates that upon grant of 1st M.A.C.P. Pay Band -III pay scale Rs. 15,600/-39,100/- and Grade Pay Rs. 5400 would be admissible; on grant of 2nd M.A.C.P. in same Pay Band-III in the same pay scale of Rs. 15,600/-39,100/- with grade pay Rs. 6600/- would be admissible while on grant of 3rd M.A.C.P. Pay Band-III in the same pay scale of Rs. 15,600-39,100/- with grade pay Rs. 7600 would be admissible. Petitioners admittedly having been granted 1st M.A.C.P. and consequently got the up-gradation in their scale of pay from 9300-34800/-, grade pay Rs. 5400/- to the next higher scale pay of Rs. 15,600-39,100/- in the Pay Band-III, but in the same grade pay Rs. 5400. This apparently is in the scheme of M.A.C.P. as is also apparent from the stand of the Finance Department contained in their counter affidavit. Paras 7 and 8 thereof are being quoted hereunder:

"7. That the petitioner has basically confused himself and has not been able to appreciate the difference between the scheme of ACP and the MACP. Under the scheme of ACP an employee was entitled to the grade pay payable to the next higher post provided that there are at least two promotional posts in the same cadre. However, under the scheme of MACP an employee is entitled to the next higher grade pay irrespective of their respective cadre and the promotional avenues.

8. That it is humbly stated and submitted that under the scheme of MACP, P.B. III 15600-39100 with grade pay of Rs. 5400/- is considered next higher grade pay to PB-II 9300-34,800/- with grade pay of Rs. 5400/-. The next higher scale payable to the petitioner of the instant case is Rs. 15,600/-39,100/- with grade pay of Rs. 5400/-. The fact that grade pay remains the same does not mean that the employee does not stand to gain anything in so far as he shall be entitled to 3% of the basic salary payable to him as pecuniary benefit on account of grant of MACP."

10. From perusal of the stand of the Finance Department, it is evident that under A.C.P. Scheme, an employee was entitled to the grade pay payable to the next higher post provided that there are at least two promotional posts in the same cadre. However, under the scheme of M.A.C.P, an employee is entitled to the

next higher grade pay irrespective of their cadre and the promotional avenues. Since Pay Band of the petitioners have been upgraded from Pay Band-II to Pay Band -III upon grant of 1st M.A.C.P., they are placed in the scale of Rs. 15,600/-39,100/- with grade pay Rs. 5400/- as is evident from the corrigendum at Annexure-4 issued by Animal Husbandry Department. This appears to be in conformity with the different grade pay prescribed for Pay Band-III as per pay revision vide notification dated 28th February 2009, Annexure-5/A. Upon grant of 1st M.A.C.P brought in effect from 1st September, 2008, grade pay in Pay Band-III would be 5400/- while grade pay Rs. 6600/- in Pay Band-III upon grant of 2nd M.A.C.P. and Grade Pay Rs. 7600/- would be admissible in the same Pay Band-III upon grant of 3rd M.A.C.P successively on completion of 10, 20 and 30 years. It is apparent that there is conscious departure from A.C.P Scheme as referred in the stand of the Finance Department hereinabove.

11. The case of the petitioners is also based upon Jharkhand Animal Husbandry Service (Recruitment, Promotion and other Service Conditions) Rules, 2013, Rule 3.3. provides for cadres structure. The petitioners claimed to be in the basic entry cadre have Pay Band Rs. 9300-34,800/- Grade Pay Rs. 5400/- and they ought to have been granted the next higher scales and grade pay indicated thereunder as is permissible upon substantive promotion to the post of Deputy Director or its equivalent post i.e. 15,600-39,100/- and grade pay of Rs. 6600/- in the Pay Band-III. However, the distinction is evident from difference in A.C.P and M.A.C.P Scheme on comparison to a case of substantive promotion to the next higher post under the Promotional Rules i.e. 2013 Rule. It is to be borne in mind that financial up-gradation is granted when incumbent has remained for a number of years without getting any substantive promotion to the next higher post. It in any way is not equivalent to substantive promotion depending upon fulfillment of the laid down conditions for such promotion in any service rules. Financial up-gradation otherwise is granted to an employee upon completion of requisite number of years without getting any substantive promotion to the next higher post subject to his satisfactory service. It does not affect the seniority of the person in any grade, to which he belongs. Neither he gets next higher post upon grant of financial up-gradation. Since the scheme of A.C.P which was prevalent conceived of a situation where an employee would be given the grade pay to the next higher post upon grant of such financial up-gradation, consequences arising out of grant of A.C.P were different, as it appears to be in cases of such incumbents, who qualify for the same before cut off date 1st September, 2008. Petitioners however are covered by M.A.C.P scheme which provides for the aforesaid hierarchical structure of financial up-gradation where they are placed in Pay Band -III in the scale of Rs. 15,600- 39,100/- with the grade pay of Rs. 5400/- and the successive Grades Pay Rs. 6600/- and 7600/- upon grant of 2nd and 3rd M.A.C.P upon fulfillment of necessary number of years in service without any substantive promotion. The scheme of M.A.C.P is not under challenge admittedly in the present writ application, though the petitioners have assailed the corrigendum dated 22nd June, 2012, Annexure-4 issued by

Animal Husbandry Department in consultation with Finance Department and pursuant to M.A.C.P Scheme itself, where different grade pays in Pay Band-III are prescribed upon grant of 1st, 2nd and 3rd M.A.C.P on completion of 10, 20 and 30 years of service.

12. In such circumstances, though the petitioners have tried to make out a case of discrimination and unreasonable classification vis-?-vis incumbents, who were granted the benefit of A.C.P with higher grade pay of Rs. 6600/- before coming into force of M.A.C.P scheme w.e.f. 1st September, 2008 but that would not help the petitioners as M.A.C.P scheme is not under challenge in the present writ application. The petitioners are covered by M.A.C.P Scheme and have been granted due scale of pay and the grade pay upon such grant of 1st M.A.C.P. The A.C.P and M.A.C.P Schemes as well the pay revisions are adopted by the State Government on the recommendations of financial experts and the Fitment Committee constituted for the purpose. In matter relating to the claim for financial up-gradation under the A.C.P. Scheme where the respondent employees sought for financial up-gradation in a scale higher than the next grade, the Hon"ble Supreme Court in the case of *Secr.,Govt. of NCT of Delhi Vs. Grade-I Dass Officers Association*, (2014) 9 SCALE 25 held that the scheme being a policy decision of Government, it would not be proper to exercise power of judicial review to modify the policy decision of the Government. Para-15 of the judgment is quoted hereunder:

"15. Besides being grossly unfair to the regular promotees, the view taken by the High Court would also violate the government policy reflected by the stipulations in ACPS and the conditions attached to the same. In the facts of the case, it would not be proper to exercise power of judicial review so as to reverse or modify the policy decision of the Government concerned. The judgment in *S. Arumugham* has rightly been relied upon by the learned Senior Counsel for the appellants on the aforesaid issue."

13. Similarly in the case of *Union of India (UOI) Vs. S.D. Bhangale*, (2014) 10 SCJ 655 , the Hon"ble Supreme Court held that classification of posts and determination of pay structure comes within the exclusive domain of the Executive. The opinion of the Hon"ble Supreme Court at para-26 is being quoted hereunder:

"26. The classification of posts and determination of pay structure comes within the exclusive domain of the executive and the Tribunal cannot sit in appeal over the wisdom of the executive in prescribing certain pay structure and grade in a particular service. There may be more grades than one in a particular service."

14. In such circumstances, the judgment rendered by Central Administrative Tribunal in case of employee of different State Government relied upon by the petitioners would not come to their aid in the wake of the aforesaid background and the M.A.C.P scheme being followed in the State of Jharkhand.

15. Resultantly, the petitioners have failed to make out a case for interference in

the impugned corrigendum dated 22nd June, 2012. As such, the writ petitions being devoid of merit warrants dismissal and accordingly all the writ petitions are dismissed.