(2014) 10 MAD CK 0193

In the Madras High Court

Case No : Writ Petition No. 11535 of 2014 and M.P. No. 1 of 2014

The Union of India APPELLANT

Vs

S. Balakrishnan RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Citation : (2014) 10 MAD CK 0193

Hon'ble Judges : Satish K. Agnihotri, J;K.K. Sasidharan, J

Bench : Division Bench

Judgement

1. This writ petition is directed against the order dated 22 July 2013 in Original Application No. 280 of 2012, whereby and whereunder, the Madras Bench of the Central Administrative Tribunal ("Tribunal" in short) was pleased to quash the orders dated 05 September 2011 and 27 December 2011 on the file of the Director, Directorate of Enforcement and the Joint Director, Directorate of Enforcement, New Delhi, respectively and issued a consequential direction to restore the earlier orders dated 17 November 2009 and 21 January 2010 granting third financial upgradation under the Modified Assured Career Progression Scheme (MACPS in short) with Grade pay of Rs. 6600/- in Pay Band-3 (PB-3 in short) and to re-fix the pension amount appropriately. Background Facts:

2. The respondent Nos. 1 to 3 herein, joined the Directorate of Enforcement as Assistant Enforcement Officers. The first respondent was granted second financial upgradation under Assured Career Progression Scheme ("ACPS" in short) with effect from 29 November 2000 on completion of 24 years of service. He was granted third financial upgradation in the scale of pay under PB-3 with effect from 01 September 2008. The second respondent was given second financial upgradation under ACPS after completion of 24 years of service. He was granted third financial upgradation under MACPS in the grade pay of Rs. 6600/- under PB-3 vide order dated 17 November 2009. Similarly, the third respondent was also granted second financial upgradation under ACPS after completion of 24

years of service. Later, he was granted third financial upgradation under MACPS under the Grade pay of Rs. 6600/- by order dated 17 November 2009.

3. The Directorate of Enforcement, by order dated 27 December 2011, cancelled the orders granting third financial upgradation under MACPS. The respondent Nos. 1 to 3 challenged the orders dated 05 September 2011 and 27 December 2011, before the Tribunal in O.A. No. 280 of 2012.

4. Before the Tribunal, the respondents 1 to 3 contended that the Enforcement Department has earlier fixed their pay correctly by granting third financial upgradation under MACPS at PB-3 in the pay-scale of Rs. 15600-13100 with grade pay of Rs. 6600/-. The grant of third financial upgradation under MACPS at PB-3 was cancelled on account of the alleged audit objection. It was their contention that they were given two promotions as Enforcement Officer and Assistant Director and got their second financial upgradation under ACPS with effect from 29 November 2000, 02 August 2000 and 05 December 1999 respectively. It was further contended that the third financial upgradation under MACPS on completion of 30 years was correctly given in PB-3 along with Grade Pay of Rs. 6600/-. However, the Grade Pay was revised on a misinterpretation of Clause 8(1) of Annexure II of MACPS.

5. The Enforcement Department, in its reply statement filed before the Tribunal, contended that consequent upon the implementation of VI Pay Commission recommendations, Grade Pay of Rs. 5400/- was given in two pay bands viz., PB-2 and PB-3. According to the Enforcement Department, the Grade pay of Rs. 5400/- in PB-2 and Rs. 5400/- in PB-3, shall be treated as separate Grade Pays for the purpose of financial upgradation under MACPS. The Directorate of Enforcement, accordingly, justified the orders impugned in the Original Application.

6. The Tribunal was of the view that Clause 8(1) of the Office Memorandum should be treated as a corollary to Clause 8. According to the Tribunal, Clause 8(1) would be applicable only to those Departments, which provide for promotion to the post carrying the same Grade Pay. The Tribunal held that unless the respondent Nos. 1 to 3 are granted Grade Pay of Rs. 6600/- in PB-3, it cannot be construed that they have been given the third financial upgradation. The Tribunal allowed the Original Application and quashed the impugned orders and issued consequential directions. Feeling aggrieved by the said order, the petitioners who were the respondents before the Tribunal, are before this Court.

7. We have heard the learned Senior Panel Counsel for the Central Government and the learned counsel for respondents 1 to 3.

Discussion:

8. The respondents 1 to 3 were given financial upgradation under ACPS. They were also granted third financial upgradation under MACPS in the Grade Pay of Rs. 6600/- under PB-3. The order granting them third financial upgradation

under MACPS in the Grade Pay of Rs. 6600/- under PB-3 was later withdrawn, presumably, on account of audit objection.

9. The Government of India framed the MACPS, pursuant to the recommendations made by the VI Central Pay Commission. As per the recommendation, financial upgradation will be available in the next higher Grade Pay, whenever an employee has completed 12 years of service in the same Grade. However, it was stipulated that not more than two financial upgradations shall be given in the entire career. The MACPS, which is the subject matter of this writ petition, provides that there shall be three financial upgradations counted from the Direct Entry Grade on completion of 10, 20, 30 years of service, respectively. The MACPS envisages placement in the immediate next higher Grade Pay in the hierarchy of the recommended revised pay bands and Grade Pay. Therefore it is clear that financial upgradation under the scheme will be available whenever an employee has spent ten years in the same Grade Pay.

10. Financial upgradation given to respondents 1 to 3 in the subject case was revised solely on the ground that Grade Pay of Rs. 5400/- in PB-2 and Rs. 5400/- in PB-3 shall be treated as separate Grade Pays for the purpose of financial upgradation under MACPS. Such a view was taken by taking a literal interpretation of Clause 8(1) of MACPS without taking into account the purpose for which the very scheme was evolved.

11. Enforcement Officers were given Grade Pay of Rs. 5,400/- in PB-2 on non-functional basis after completion of four years of regular service. The officer is eligible for MACPS, which carries the Grade Pay of Rs. 5,400/- in PB-3. The immediate next higher Grade of Pay to the Grade Pay of Rs. 5,400/- is Rs. 6,600/-. Therefore, respondent Nos. 1 to 3 were correctly granted Grade Pay of Rs. 6,600/- in PB-3 on completion of thirty years of continuous service. The petitioners proceeded as if Grade Pay of Rs. 5,400/- in PB-3 is higher Grade Pay to the Grade Pay of Rs. 5,400/- in PB-3.

12. The following table with regard to promotion in the Directorate of Enforcement would make the position clear:

S. No.

Stage

Grade Pay

1.

Grade Pay of Assistant Enforcement Officer (Entry Grade) In

Rs. 4600/-

2.

Grade Pay of AEO on promotion to Enforcement Officer

Rs. 4800/-

3.

GP of EO after completing 4 years service in the grade pay of Rs. 4800/-

Rs. 5400/- in PB-2

4.

GP of EO after promotion/ACP to the post/Cadre of CEO (re-designated as AD-II

Rs. 5400/- in PB-3

5.

GP after rendering 30 years of service counting from the entry grade of AEO

Rs. 6600/-

13. While interpreting the Scheme introduced for the purpose of giving financial upgradation to the employees on account of stagnation, the authorities are expected to consider the factors which actually contributed for evolving such a beneficial scheme. The scheme should be interpreted in a meaningful manner. The provisions should be given a workable interpretation. When it is made out that the intention was to give financial upgradation, the attempt should be to grant the benefit rather than to restrict it by taking a too technical view of the matter.

14. The preamble to the Scheme contained the intention of the Government to give financial upgradation to the employees pursuant to the recommendations made by VI Pay Commission. While considering a scheme like this, the preamble also should be taken note of by the Courts.

15. The Supreme Court in Prabhudas Damodar Kotecha and Others Vs. Manhabala Jeram Damodar and Another, observed that while interpreting the provisions of a Statute, the statements of objects and reasons are also relevant.

16. Since the MACP Scheme was framed in the larger interest of employees, Court should give a liberal construction. The primary attempt in such cases should be to achieve the purpose and object of the policy and not to frustrate it.

17. The Grade Pay in this case was initially granted on non-functional basis. The Grade Pay of Rs. 5400/- in PB-2 being non-functional scale, the same cannot be a functional Grade to Assistant Director-II, who got promotion from the post of Enforcement Officer.

Conclusion:

18. The Central Administrative Tribunal correctly interpreted clauses 8 and 8(1) of the MACPS and quashed the impugned orders and restored the earlier orders granting benefit to respondents 1 to 3. Similar view was taken by the Central

Administrative Tribunal, Chandigarh Bench in O.A. No. 1038 of 2010 and it was upheld by the High Court of Punjab and Haryana by judgment dated 19 October 2011 in CWP No. 19387 of 2011. We are therefore of the considered view that the impugned order does not call for interference by exercising the power of judicial review.

19. In the upshot, we dismiss the writ petition. Consequently, the connected MP is closed. No costs.

