

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.(s). 3321 OF 2018
(Arising out of SLP(C)No.36946 OF 2017)

UNION OF INDIA & ORS.

Appellant(s)

VERSUS

MUKTI SINGHA

Respondent(s)

WITH

CIVIL APPEAL NO.(s). 3324-3327 OF 2018
(Arising out of SLP(C)No(S).6964-6967/2018)

CIVIL APPEAL NO.(s). 3328-3329 OF 2018
(Arising out of SLP(C)No(S).6969-6970/2018) (XVI)

D

O R D E R

CIVIL APPEAL NO.(s). 3321 OF 2018
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1. Leave granted. We have heard learned counsel for the parties and perused the record.

2. The Central Government introduced Assured Career Progression Scheme (ACPS) w.e.f. 9th August, 1999, the same was thereafter modified on 10th June, 2009 in the form of Modified Assured Career Progression scheme (MACP).

3. Interpreting the ACPS, as introduced in 1999, this Court in Secretary, Government (NCT of Delhi) and Others v. Grade-I Dass Officers' Association and Others (supra) held that the Scheme offers higher pay-scale/financial benefits only to those eligible

government servants who remain deprived of regular promotions and for such deprivation they are granted monetary benefits on personal basis. The same does not amount to functional/regular promotion and does not require creation of new post. The financial upgradation is counted against regular promotion. Financial upgradation is admissible in the next higher grade only in accordance with the existing hierarchy in a cadre/category of posts. A clarification to this effect was issued on 13th December, 2012 as follows:

"Thus, financial upgradations under ACP/MACP Schemes cannot be to higher Grade Pay than what are be allowed to an employee on his normal promotion, in such cases financial upgradation under MACP Scheme would be granted to the same Grade Pay."

4. Relevant Paras 11 and 14 of the said judgment are reproduced as follows:

"11. On going through the ACPS and the relevant stipulations and conditions it is evident that the Scheme offers higher pay scale/financial benefits only to those eligible Government servants who remain deprived of regular promotions. For such deprivation, they are compensated by grant of monetary benefits on personal basis but the same does not amount to functional/regular promotion and does not require creation of new posts. The financial upgradations under the Scheme are to be counted against regular promotions in the service career of the concerned Government employee. The two financial upgradations under the Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. As per Condition No.7, financial upgradation is admissible in the next higher grade only in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. Practical solution has been indicated in case of isolated posts where there is no defined hierarchical grades. The condition emphasizes that financial upgradation 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. Condition No.7 fortifies the view taken by the Tribunal through the clear stipulation in the last two sentences - "Posts which are part of a 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."

14. In view of stipulations and conditions in the ACPS noticed above, it can be safely concluded that the financial upgradation under the ACPS is not only in lieu of but also in anticipation of regular promotion. In such a situation, the contention advanced on behalf of Appellants that financial upgradation claimed by the Respondents cannot be granted because the same would be much in excess of what the officer would gain on actual promotion in the hierarchy, is found to have substance. As a corollary, such claim of the Respondents must be rejected on the ground that persons having better claims on actual promotion could be fitted only in the promotional post of Grade II (Group B) of DANICS, i.e. Rs.6500-200-10500/- whereas the Respondents, on their claims being accepted, would get much higher pay scale of Rs.10000-325-15200/- available only to Grade I (Group A) in the DANICS. Such a situation would be violative of rules of fairness and Articles 14 and 16 of the Constitution of India. The claim of the Respondents had to be rejected as was done by the Tribunal in view of Clause 7 of the ACPS read with other relevant clauses as well as on the basis of aforementioned ground. Fairness on part of State is a constitutional obligation and hence a pay scale, which regularly promoted employee earlier belonging to Grade I (DASS) could not get due to established hierarchy for promotion, cannot be granted to those like the Respondents on the plea that the financial upgradation to which they are found entitled as per existing hierarchy is too meagre. In case Respondents' claim was to be allowed on the ground accepted by the High Court that financial upgradation must be real and substantial, in case of regular promotion in future, employees like the Respondents would have to be reduced in their pay scale because actual or functional promotion as per established hierarchy can be only on a post in Grade II (Group B) in DANICS."

5. In our opinion, the view taken by the High Court that the respondents are entitled to grade pay higher than what they may get on actual promotion in the hierarchy cannot be sustained. The High Court erred in distinguishing the judgment on the ground that the same related to ACP Scheme. We do not find any reason to exclude the principle laid down therein for interpretation of MACP. Moreover, clarification referred to above fully supports this interpretation.

Accordingly, the impugned order(s) is set aside and the appeals filed by the Union of India are allowed.

However, we make it clear that no payments already made will be recovered from the respondents.

.....J.
(ADARSH KUMAR GOEL)

.....J.
(ROHINTON FALI NARIMAN)

New Delhi,
March 27, 2018.

ITEM NO.2

COURT NO.11

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 6807-6808/2016

(Arising out of impugned final judgment and order dated 24-04-2015 in CPAN No. 1791/2014 24-04-2015 in CPAN No. 1792/2014 24-04-2015 in CWP No. 498/2013 24-04-2015 in CWP No. 497/2013 passed by the High Court At Calcutta)

PRABIR SINGH ROY

Petitioner(s)

VERSUS

SUNITY CHAKRABORTY & ANR.

Respondent(s)

WITH SLP(C) No. 6964-6967/2018 (XVI)SLP(C) No. 36946/2017 (XVI)

(FOR ADMISSION and I.R. and IA No.132384/2017-CONDONATION OF DELAY IN FILING and IA No.23919/2018-I/A FOR DE- TAGGING WITH SLP)

SLP(C) No. 6969-6970/2018 (XVI)

(FOR CONDONATION OF DELAY IN FILING ON IA 2714/2018)

Date : 27-03-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. A.N.S. Nadkarni, ASG
Ms. Asha G. Nair, Adv.
Mr. D.L. Chidananda, Adv.
Mr. A.K. Srivastava, Adv.
Mr. Raj Bahadur, Adv.
Ms. Nivedita Nair, Adv.
Mr. S.S. Rebello, Adv.
Mr. Amogh Prabhudesai, Adv.
Ms. Sneha Fendulkar, Adv.
Ms. Dimple Nagpal, Adv.
Mrs. Anil Katiyar, AOR
Mr. Mukesh Kumar Maroria, AOR

For Respondent(s) Mr. Sidhesh Kotwal, Adv.
Mr. Sandip Kumar De, Adv.
Mr. Raghunatha Sethupathy, Adv.

Mr. Ashok Chakraborty, Adv.
Mr. P.C. Das, Adv.

Mr. Brun Chatterjee, Adv.
Mr. Chiradip Sinha, Adv.
Mr. Sukesh Ghosh, Adv.
Ms. Shashi Kiran, AOR

Mr. Shekhar Kumar, AOR

Ms. Astha Sharma, AOR

Mr. Rauf Rahim, AOR
Mr. Nikhil Mishra, Adv.

UPON hearing the counsel the Court made the following
O R D E R

SLP(C) No. 6964-6967/2018

SLP(C) No. 36946/2017

SLP(C) No. 6969-6970/2018

Delay condoned.

Leave granted.

In terms of the signed order, the appeals are allowed.

Pending applications, if any, shall also stand disposed of.

SLP(C) No. 6807-6808/2016 :

Heard.

We do not find any ground to interfere with the impugned order.

The special leave petition is accordingly dismissed.

Pending applications, if any, shall also stand disposed of.

(MAHABIR SINGH)

COURT MASTER

(Signed order in SLP(C) No. 6964-6967/2018 and connected matters is placed on the file)

(PARVEEN KUMARI PASRICHA)

BRANCH OFFICER