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UNION OF INDIA & ORS.

v.

SHRI C.R. MADHAVA MURTHY & ANR.

(Civil Appeal Nos. 2087--2088 of 2022)

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APRIL 06, 2022

**[M. R. SHAH AND B. V. NAGARATHNA, JJ.]**

*Service Law – Removal of anomaly – Stepping up of pay – Persons who were placed lower in the upgradation list than the respondents, on account of upgradation granted to them under the ACP Scheme, started drawing higher pay – Writ petitions filed by respondents praying for stepping up of pay and for removal of the anomaly and for fixation of their salaries at par with their juniors – High Court, on considering FR 22, which provides for stepping up of pay and removal of anomaly by stepping up of pay of a senior on promotion drawing lesser pay than his junior, allowed the writ petitions – On appeal, held: It was a case of removal of anomaly by stepping up of pay of seniors on promotion drawing less pay than their juniors – High Court therefore rightly relied and/or considered FR 22 and the order issued by the Government of India on removal of anomaly by stepping up of pay – High Court rightly directed the appellants to step up the pay of respondents in view of pay scale which has been granted to the juniors from the date they have started drawing lesser pay than their juniors.*

**Dismissing the appeals, the Court**

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**HELD:1. Considering the facts and circumstances of the case, it cannot be said that the original writ petitioners-respondents were as such claiming the stepping up of the pay under the ACP Scheme. Their grievance was with respect to the anomaly in the pay scale and their grievance was that while granting upgradation under the ACP Scheme, their juniors were getting higher salaries than what they receive. Therefore, it was a case of removal of anomaly by stepping up of pay of seniors on promotion drawing a less pay than their juniors. The High Court has therefore rightly relied and/or considered FR 22 and the order issued by the Government of India on removal of anomaly by stepping up of pay. [Paras 4, 5][25-D-E]**

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**2. It was a case where a junior was drawing more pay on account of upgradation under the ACP Scheme and there was an anomaly and therefore, the pay of senior was required to be stepped up. Hence, in the facts and circumstances of the case, the High Court has rightly directed the appellants to step up the pay of the original writ petitioners-respondents keeping in view of pay scale which has been granted to the juniors from the date they have started drawing lesser pay than their juniors. [Para 6][26-E-F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.2087-2088 of 2022.

From the Judgment and Order dated 31.07.2021 of the High Court of Karnataka at Bengaluru in W. P. Nos. 33038-33039 of 2016 (S-CAT).

Ms. Madhvi Divan, ASG, M. K. Maroria, Ms. Nidhi Khanna, Mukul Singh, Nachiketa Joshi, Advs. for the Appellants.

The Judgment of the Court was delivered by

**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 31.07.2021 passed by the High Court of Karnataka in Writ Petition Nos. 33038-33039/2016, by which the High Court has allowed the said writ petitions, the Union of India and others have preferred the present appeals.

2. The facts leading to the present appeals in a nutshell are as under: -

2.1 That the respondents herein - original writ petitioners were appointed as Lower Division Clerk on 01.02.1973 and 03.08.1973, respectively. Thereafter, they were promoted to the post of Upper Division Clerk on 04.10.1976. That one of the respondents was promoted to officiate as an Inspector w.e.f. 02.04.1981 and the other respondent was promoted to officiate as an Inspector on 13.07.1981. One Shri C.K. Satish was appointed as an Inspector on 17.12.1981 by way of direct recruitment and one Shri B.S. Srikanth was also appointed as an Inspector by way of direct recruitment on 15.05.1982.

In order to provide upgradation to its employees and to remove the stagnation on a particular post, the Union of India introduced “Assured

- A Career Progression Scheme” (ACP Scheme) w.e.f. 09.08.1999. The said Shri C.K. Satish and Shri B.S. Srikanth were granted upgradation under the ACP Scheme. The original writ petitioners were promoted to the post of Superintendent of Central Excise and Customs on 02.07.2000. The employees, juniors to the original writ petitioners were granted upgradation under the ACP Scheme w.e.f. 17.12.2005 and 15.05.2006.
- B However, it so happened that the persons who were placed lower in the upgradation list than the original writ petitioners, on account of upgradation granted to them under the ACP Scheme, started drawing higher pay. Therefore, the original writ petitioners submitted a representation to the Department for stepping up and to remove the anomaly and to fix their salaries at par with their juniors. Thereafter, the original writ petitioners preferred O.A. Nos. 813 & 814/2014 before the Central Administrative Tribunal, Bengaluru Bench, Bengaluru. By the common order dated 04.01.2016, the Tribunal rejected the said applications. Feeling aggrieved and dissatisfied with the common order dated 04.01.2016 passed by the Tribunal, the respondents herein preferred the present writ petitions before the High Court. On considering FR 22, which provides for stepping up of pay and the removal of anomaly by stepping up of pay of a senior on promotion drawing lesser pay than his junior, by the impugned common judgment and order the High Court has allowed the writ petitions and has directed the appellants herein to step up the pay of the respondents
- D herein, keeping in view the pay scale which has been granted to the juniors from the date they have started drawing lesser pay than their juniors.

2.2 Feeling aggrieved with the impugned common judgment and order passed by the High Court, the Union of India and others have preferred the present appeals.

3. Ms. Madhvi Divan, learned ASG, appearing on behalf of the appellants has vehemently submitted that while passing the impugned common judgment and order, the High Court has not at all appreciated and/or properly considered the ACP Scheme.

- G 3.1 It is submitted that the respective original writ petitioners were already promoted to the post of Superintendent of Central Excise and Customs. It is submitted that once the respective writ petitioners were already granted the promotion, thereafter, there was no question of granting any stepping up of pay under the ACP Scheme.

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3.2 It is submitted that the High Court has not at all appreciated the object and purpose of ACP Scheme. It is submitted that as per the catena of judgments of this Court and various High Courts, the purpose of the ACP Scheme/MACP Scheme is to relieve the frustration on account of stagnation and the Scheme does not involve the actual grant of promotional post to the employees, but to merely monetary benefits in the form of next higher grade subject to fulfilment of qualifications and eligibility criteria. It is submitted therefore that when in the present case the original writ petitioners were already promoted to the next higher post – Superintendent of Central Excise and Customs and they were placed in the appropriate pay scale of the promotional post, thereafter, there was no question of any stepping up in the pay.

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4. Having heard Ms. Madhvi Divan, learned ASG and considering the facts and circumstances of the case, which has emerged from the impugned judgment and order passed by the High Court, it cannot be said that the original writ petitioners were as such claiming the stepping up of the pay under the ACP Scheme. Their grievance was with respect to the anomaly in the pay scale and their grievance was that while granting upgradation under the ACP Scheme, their juniors were getting higher salaries than what they receive. Therefore, it was a case of removal of anomaly by stepping up of pay of seniors on promotion drawing a less pay than their juniors.

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5. The High Court has therefore rightly relied and/or considered FR 22 and the order issued by the Government of India on removal of anomaly by stepping up of pay, which reads as under: -

“(22) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior - (a) As a result of application of FR 22 -C. [Now FR 22 (I) (a) (1)]. In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided the in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely: -

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A (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

B (c) The anomaly should be directly as a result of the application of FR-22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.”

C The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR-27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

D [G.I., M.F., O.M. No.F.2 [78]-E.III (A)/66, dated the 4th February, 1966)”.

E 6. Therefore, it was a case where a junior was drawing more pay on account of upgradation under the ACP Scheme and there was an anomaly and therefore, the pay of senior was required to be stepped up. Hence, in the facts and circumstances of the case, the High Court has rightly directed the appellants herein to step up the pay of the original writ petitioners keeping in view of pay scale which has been granted to the juniors from the date they have started drawing lesser pay than their juniors. We are in complete agreement with the view taken by the High Court. No interference of this Court is called for.

F 7. In view of the above and for the reasons stated above, the present appeals deserve to be dismissed and the same are dismissed, accordingly.