



Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.589 OF 2019

Shri Jagpal Singh Chaudhary
Assistant Engineer (Retired),
Electricity Department,
Government of Goa,
Son of Shri Nabab Singh Chaudhary,
65 years of age, Indian National,
Resident of House No.45/2-A,
Kamle Niwas, Tribhu Nagar,
Bethoda Road, Curti, Ponda Goa.

... Petitioner

Versus

1 State of Goa,
Through Chief Secretary,
Secretariat, Alto-Porvorim,
Bardez Goa.
2 The Chief Electrical Engineer,
Electricity Department,
Government of Goa, Vidyut Bhavan,
3rd Floor, Panaji Goa.

... Respondents

Mr J. P. Supekar, Advocate for the Petitioner.

Mr P. Arolkar, Additional Government Advocate for Respondents.

**CORAM: M. S. KARNIK &
 VALMIKI MENEZES, JJ**

DATED : 27th JUNE 2024

JUDGMENT (Per M. S. Karnik, J.)

1. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the Petitioner challenges the

impugned communications dated 05.10.2018 and 08.04.2019 denying the grant of third financial upgradation under the Modified Assured Career Progression Scheme ('MACPS' for short) with effect from 16.04.2014.

2. The facts in brief are as under: -

3. The Petitioner was working as a Junior Engineer, Electricity Department, Division X, Curti, Ponda Goa. He retired from the services as Assistant Engineer on 31.07.2014. The grievance of the Petitioner is that he has been denied the benefit of a third financial upgradation under the MACPS. The Petitioner was appointed by the Chief Electrical Engineer as Junior Engineer (Electric) on ad-hoc basis in the Electricity Department. In the appointment order, it was stated that such an appointment will not bestow on the official a claim for regular appointment/promotion and the services rendered on ad-hoc basis in the grade will not count for the purpose of seniority in that grade for eligibility for promotion to the next higher grade.

4. By a letter dated 13.04.1983, the Assistant Engineer, Sub-Division III, Daman, informed the Petitioner that he has been declared unfit by the medical authorities under the medical certificate dated 04.03.1983.

5. It is the case of the Petitioner that though the order dated 27.03.1984 made reference to the appointment as being on ‘*ad-hoc basis*’, in fact, the same was a regular appointment. According to the learned counsel, the services rendered thereon is liable to be regarded as ‘*Regular Service*’ particularly, since there existed a regular vacancy to which the Petitioner came to be appointed, the appointment was made as per the recruitment rules and the appointment was made on recommendations of the duly constituted Departmental Promotion Committee (DPC) and all the candidates as sponsored by the Employment Exchange were duly considered.

6. By an order dated 07.08.1987, the Petitioner along with other Junior Engineers who were appointed on an ad-hoc basis came to be appointed on temporary basis with immediate effect.

7. The State of Goa introduced the Time Bound Promotional Scheme with effect from 01.06.1989 entitling the employees to the Pay Scale in the next higher post on completion of 12 years of service in the post subject to the condition that the employees should possess requisite qualification for the next higher post. At this stage, the learned counsel referred to the Notification dated 11.04.1988 to contend that ad-hoc service shall be counted for the purposes of determining 12 years qualifying service, provided such

ad-hoc service was consistent with the Notification dated 11.04.1988. It is the submission of the learned counsel that the Petitioner complied with the criteria and as such considering the ad-hoc service from 16.04.1984 to 07.08.1987 as regular service for determination of qualifying service of 12 years, the Petitioner was granted the benefit of Time Bound Promotional Scheme vide Order dated 23.04.1997.

8. From the year 2001 onwards, the Time Bound Promotional Scheme (TBPS) has been replaced by the Assured Career Progression Scheme (ACPS). In terms of the ACPS, employee is entitled to two financial upgradations on completion of 12 and 24 years of service. It is the Petitioner's contention that he should have been granted the benefit of the second Financial Upgradation with effect from 16.04.2008 as by that date the Petitioner had completed 24 years of service.

9. The Petitioner made representations for the grant of second financial upgradation with effect from 16.04.2008 along with all consequential benefits. By a communication dated 10.02.2010, such a benefit of second financial upgradation was denied to the Petitioner. The Petitioner approached this Court by way of Writ Petition No.350 of 2011 for the relief of second financial upgradation. The matter was placed before the Lok Adalat. The

settlement resulted in the order dated 11.03.2016 whereby Respondent No.2 granted second financial upgradation to the Petitioner under the ACPS with effect from 16.04.2008.

10. By a Circular dated 06.08.2009, Respondent No.1 implemented the Modified Assured Career Progression Scheme. In terms of the said scheme, an employee was now entitled for three financial upgradations i.e. upon completion of 10, 20 and 30 years of service. It is the Petitioner's case that in terms of MACPS, the Petitioner became entitled to the third financial upgradation upon completion of 30 years of service with effect from 16.04.2014 and was entitled to draw the Pay Band of Rs.15,600-39,100, GP of Rs.7600/-. The learned counsel submits that Clause 9 of Annexure-I of OM dated 19.05.2009 provides that '*Regular Service*' for the purposes of MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. It is further provided that the service rendered on ad-hoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning.

11. It is the submission of the learned counsel for the Petitioner that a bare perusal of Clause-9 indicates that service which is rendered on ad-hoc or contractual basis before regular

appointment shall not be taken into reckoning for extending the benefits of the scheme. The learned counsel submits that though the appointment order mentions the initial appointment on ad-hoc basis, however, the same will have to be treated as regular service in view of the Notification dated 11.04.1988, thereby, entitling the Petitioner to the benefits under the MACPS for the third financial upgradation upon completion of 30 years of service.

12. The learned Additional Government Advocate vehemently opposed the petition. Our attention is invited to the affidavit in reply filed on behalf of Respondent Nos. 1 and 2 to contend that denial of the benefit of third financial upgradation to the Petitioner is justified. It is painstakingly urged by learned AGA that the initial order of appointment dated 27.03.1984 clearly stipulates that the appointment of the Petitioner is on ad-hoc basis and that such appointment will not bestow on the official a claim for regular appointment/promotion and the services rendered on ad-hoc basis in the grade will not count for the purpose of seniority in that grade for eligibility for promotion to the next higher grade. The learned AGA therefore, submitted that the ad-hoc service rendered under the order dated 27.03.1984 cannot be considered as '*Regular Service*'. It is submitted that as per the Notification dated 11.04.1988, ad-hoc service cannot be treated as regular service for the purposes of granting MACPS. Reliance is placed on the OM

dated 21.06.2011 issued by the Personnel Department, Government of Goa, which clarified that only continuous regular service is counted towards qualifying service for the purpose of MACPS. It is submitted that regular service shall commence from the date of joining the post in direct entry grade on a regular basis. The Petitioner was initially appointed on ad-hoc basis in 1984 and later it is only on 07.08.1987 the Petitioner was appointed on a temporary basis. He submitted that the services of the Petitioner, for the benefit of MACPS will be counted from 07.08.1987. According to learned AGA since the Petitioner retired on 31.07.2014, it follows that on the date of his retirement, the Petitioner has not completed 30 years of regular service as required under the Point No.8 of the OM dated 21.06.2011, to be eligible for third financial upgradation under the MACPS.

13. Heard learned Counsel. The Petitioner had retired on 31.07.2014. For him to seek entitlement of the third financial upgradation, only if his service on ad-hoc basis since 27.03.1984 is treated as regular service, can the petition succeed. However, if the Petitioner's service from 27.03.1984 up to 07.08.1987 is to be treated as on purely ad-hoc basis, then the petition must fail. The question before us is whether the services rendered by the Petitioner from 27.03.1984 to 07.08.1987 be regarded as on '*ad-hoc basis*' or is it a '*regular service*'.

14. No doubt, the initial order of appointment dated 27.03.1984 stipulates that the Petitioner is appointed on ad-hoc basis and that such appointment will not bestow on him a claim for regular appointment/promotion and the service rendered on ad-hoc basis in the grade will not count for the purpose of seniority in that grade for eligibility for promotion to the next higher grade. In this context, it is significant to note the relevant provisions of OM dated 19.05.2009 of the MACPS. There is no dispute that such a scheme has been adopted by the State of Goa.

15. Clause 3 of the MACPS reads thus:

*“3. The Scheme would be known as “MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES. This Scheme is in supersession of previous ACP Scheme and clarifications issued there under and shall be applicable to all regularly appointed Group “A”, “B”, and “C” Central Government Civilian Employees **except officers of the Organised Group “A” Service.** The status of Group “D” employees would cease on their completion of prescribed training, as recommended by the Sixth Central Pay Commission and would be treated as Group “C” employees. Casual employees, including those granted ‘temporary status’ and employees appointed in the Government only on adhoc or contract basis shall not qualify for benefits under the aforesaid Scheme. The details of the MACP Scheme and conditions for grant of*

the financial upgradation under the Scheme are given in Annexure-1.”

(emphasis supplied)

16. It is pertinent to note that the Personnel Department issued OM dated 09.09.2010 providing for clarifications regarding MACPS. The point of doubt was whether the benefits of MACPS would be granted from the date of entry grade or from the date of their regular service/approved service counted under various service rules. The clarification issued to the aforesaid query is that ‘*the benefits under the MACPS would be available from the date of actual joining of the post in the entry grade*’. It is also important to note that OM dated 21.06.2011 provided further clarification to the MACPS. This was necessitated as one of the points of doubt at Point No.8, was whether ad-hoc appointment would be counted towards qualifying service for MACPS. The clarification issued is “*No. Only continuous regular service is counted towards qualifying service for the purpose of MACPS. The regular service shall commence from the date of joining of a post in direct entry grade on a regular basis*”.

17. It is thus clear that only continuous regular service is counted towards qualifying service for the purpose of MACPS. It is then specified that the regular service shall commence from the date of

joining of post in direct entry grade on a regular basis. The service spent purely on an ad-hoc basis by the employee cannot be counted for regular service.

18. The Supreme Court in *Punjab State Electricity Board and others Vs Jagjiwan Ram and others*¹ has observed in Para 20 that the use of the term “regular service” in various paragraphs of the scheme shows that service rendered by an employee after regular appointment could only be counted for computation of 9/16/23 years’ service and the service of a temporary, ad-hoc or work-charged employee cannot be counted for extending the benefit of time-bound promotional scales or promotional increments.

19. In such view of the matter, we otherwise would have no hesitation in dismissing the petition. The MACPS thus embodies the requirement of 30 years regular service as a condition for grant of benefit. According to us, what weighs in favour of the Petitioner is the Notification dated 11.04.1988 issued by the State of Goa which reads thus:

“No.2/38/75-PER (Vol.II)
Government of Goa,
Department of Personnel,
Secretariat, Panaji Goa.

¹ (2009) 3 SCC 661

Dated: 11th April, 1988

NOTIFICATION

In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Government of Goa hereby amends all the rules, relating to recruitment to all Group 'C' and 'D' posts under this Administration (hereinafter called the 'said Rules') as follows, namely: -

In the Schedule appended to the said Rules, after the existing entry in column 11, the following note shall be added, namely: -

"Note: In computing the regular service in the grade the ad-hoc service, if followed without break by regular appointment, shall be treated as regular service for the purpose of promotion:

Provided that where any official is considered for promotion, all persons senior to him in the grade who have successfully completed the period of probation shall also be considered notwithstanding the length of service rendered by them in the grade.

Provided further that the ad-hoc appointment referred to above has been made after having complied with the following criteria:-

- i) there existed a regular vacancy;*
- ii) the appointment was made as per then notified Recruitment Rules;*
- iii) the appointment was made on the recommendations of a duly constituted DSC/DPC and all eligible candidates as sponsored by Employment Exchange or falling in the zone of*

consideration, as the case may be, were considered.”

*By order and in the name of the
Governor of Goa*

Sd/-

(A. V. Pimenta)

Under Secretary (Personnel)”

20. No doubt, the initial appointment order dated 27.03.1984 of the Petitioner stipulates that he is appointed on an ad-hoc basis. According to the Respondents, the regular service of the Petitioner has to be counted from 07.08.1987. It is the contention of learned Counsel for the Petitioner that he fulfils all the requirements of the aforesaid Notification for treating the service on ad-hoc basis to be regular service for the purpose of promotion. Let us consider if the Petitioner has complied with the criteria stipulated in the Notification dated 11.04.1988. There is no serious challenge to the appointment of the Petitioner initially on ad-hoc basis fulfilled the below mentioned conditions : -

- (a) There existed a regular vacancy;
- (b) The appointment was made as per then notified Recruitment Rules;
- (c) The appointment was made on the recommendations of a duly constituted DSC/DPC and all eligible candidates as

sponsored by Employment Exchange or falling in the zone of consideration, as the case may be.

21. We, thus, find that the ad-hoc appointment of the Petitioner was followed without a break by a regular appointment. The Notification dated 11.04.1988 of the Government of Goa clearly stipulates that in computing regular service in the grade an ad-hoc service if followed without break by regular appointment shall be considered as regular service for the purpose of promotion. The initial appointment order dated 27.03.1984 undoubtedly provided that ad-hoc appointment will not bestow on the Petitioner a claim for regular appointment/promotion and the service rendered on ad-hoc basis in the grade will not count for the purpose of seniority in that grade for eligibility for promotion to the next higher grade. However, for the purpose of considering the claim of the Petitioner for promotion, his claim will be governed by the Notification dated 11.04.1988 which clearly covers the case of the Petitioner. In this view of the matter, we have no hesitation in holding that the service rendered by the Petitioner from 27.03.1984 to 07.08.1987 will have to be counted as regular service for the purpose of seniority in that grade.

22. The decisions of the Supreme Court in *Punjab State Electricity Board and others* (supra) and *State of Rajasthan and*

*others Vs Jagdish Narain Chaturvedi*² are distinguishable on facts. The Notification dated 11.04.1988 of the Government of Goa has to be factored in which is a circumstance in favour of the Petitioner. When for the purpose of promotion, the service rendered on ad-hoc basis can count for seniority in view of the Notification dated 11.04.1988 subject to fulfilment of conditions, there is no reason why the said service should not be treated as regular service for the benefit of MACPS. It needs to be borne in mind that the basis and rationale of the MACPS scheme is to relieve the employees of their frustration on account of stagnation in the same post.

23. In the facts of this case, we therefore have no hesitation in concluding that the service rendered by the Petitioner on an ad-hoc basis from 1984 to 1987 will have to be reckoned as regular service for the purpose of determining the qualifying service of 30 years. We are of the considered opinion that the regular service of the Petitioner has commenced from the date of joining of the post i.e. 1984 which has to be regarded as direct entry grade on a regular basis.

² (2009) 12 SCC 49

24. The petition therefore succeeds and is accordingly allowed by making the rule absolute in terms of prayer clauses (A) and (B) which read thus:

- (A) That this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus, or a writ, order or direction, commanding the Respondents to quash/withdraw the Impugned Order/Communication dated 5/10/2018 and 8/4/2019 denying the grant of 3rd financial upgradation under the MACPS to the Petitioner with effect from 16/4/2014;
- (B) That this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus, or a writ, order or direction, directing the Respondents to recommend/direct the grant of 3rd financial upgradation under the MACPS to the Petitioner with effect from 16/4/2014 in the pay scale of PB-3 Rs.15,600-39,100 + GP Rs.7600 along with all consequential benefits.

25. No order as to costs.

VALMIKI MENEZES, J

M. S. KARNIK, J