



Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.394 OF 2024**

Ms Antonia Furtado

Aged 60 years,

R/o H.No.178, Gonvall, Cottombi,

Quepem Goa,

Presently working

In the Court of Senior Civil Judge and CJM,

Margao Goa.

... Petitioner

Versus

1. Hon'ble Principal District and Session
Court, Margao Goa.

2. Senior Civil Judge & C.J.M. Margao.

The Administrative Judge,

Margao Goa.

...Respondents

Mr Laban Carvalho, Advocate for the Petitioner.

Mr Nitin Sardesai, Senior Advocate with Ms Neha A.
Shirodkar, Advocate for the Respondents.

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

DATED : 31st JULY 2024

JUDGMENT (Per M. S. Karnik, J)

1. Invoking the jurisdiction of this Court under Article 226
of the Constitution of India, the Petitioner prays for quashing

and setting aside a letter dated 18.03.2024 of Respondent No.1- Principal District and Sessions Court, Margao and for a writ of Mandamus directing Respondents to grant Modified Assured Career Progression-II scheme (MACP-II for short) to the Petitioner from 2018. The Petitioner has also prayed for a writ of Mandamus directing the Respondents to conduct a DPC without considering any adverse remarks in ACRs till 2019 and grant the MACP-II to the Petitioner.

2. It is the case of the Petitioner that she was appointed as Lower Division Clerk (LDC) on 26.06.1998. She was granted her first MACP scheme benefit on 15.02.2011 after completing 12 years of service. Upon completing 20 years of service in the year 2018, the Petitioner should have received either a promotion or the second MACP, but the same has been denied to her. The Petitioner accordingly made a representation on 01.04.2019 for the grant of second MACP on completion of 20 years of service. By communication dated 18.06.2022, the Petitioner was informed that the Presiding Officer/Reporting Officer has recorded adverse remark in her ACR for the year 2021-2022 and the Petitioner was asked to submit her explanation to the said adverse remark. The

Petitioner made representation against the said adverse remark on 01.07.2022. Respondent No.1 accepted and considered the said representation. As of today, there are no adverse remarks in the Petitioner's service record. The Petitioner retired on 30.04.2024.

3. Respondents No.1 and 2 filed an affidavit in reply opposing the petition. We find that at Para 16 of the affidavit in reply, it is stated that the “Good” remark contained in the 2016-2017 ACR was communicated to the Petitioner. According to learned Senior Advocate for Respondent Nos.1 and 2, the Petitioner never made any representation against the said remark which was communicated to her. Learned Senior Advocate submitted that the petition be dismissed as the decision has been taken after considering all the relevant materials on record. Learned Senior Advocate further submitted that if this Court is of the opinion that based on the adverse remark the MACP was denied to the Petitioner and as the representation made against such remark has now been accepted, then in that case, the Petitioner’s case should be sent back for reconsideration by the DPC.

4. Heard learned counsel for the Petitioner and learned Senior Advocate for the Respondents. We have perused the memo of the petition, annexures attached to the petition and affidavit in reply filed by the Respondents. We find that there are no adverse remarks recorded against the Petitioner except for adverse remark in the year 2021-2022. This adverse remark could not have been the basis for denying the Petitioner's claim for MACP-II which she was entitled to in the year 2018 upon completion of 20 years of service to be eligible for the second MACP. The rejection of the Petitioner's claim was completely based on the adverse remark in the year 2021-2022 which material ought not to have been taken into consideration. In any case, the representation against this remark was accepted and hence the denial of MACP will have to be held illegal. In any case, we find that the only material against the Petitioner is the "Good" remark communicated to her in the year 2016 which learned Senior Advocate wants us to persuade as an adverse remark.

5. In the ordinary course, we would have accepted the submissions of the learned Senior Advocate and referred the matter to the DPC for fresh consideration. The facts of the

present case and also considering that the Petitioner has now retired from service on 30.04.2024, we deem it appropriate to pass appropriate orders in this petition. There is nothing adverse reported against the Petitioner or any adverse remarks on record to deny her benefit of the second MACP. The purpose of the MACP scheme is to remove the stagnation due to the lack of adequate promotional avenues to the employees. In our opinion, there is no reason to deny the benefits of the second MACP to the Petitioner on completion of 20 years of service especially if there is nothing adverse against her which can be seen from the record. We allow the petition in terms of prayer clause (a). No order as to costs.

6. It is informed that the pensionary benefits of the Petitioner are not yet released. Though this is not the scope of the petition, in the interest of justice, Mr Sardesai, learned Senior Advocate is requested to inform the concerned to look into the matter and do the needful at the earliest.

VALMIKI MENEZES, J

M. S. KARNIK, J