

\$~

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Reserved on: 06.07.2017**  
**Pronounced on: 20.12.2017**

+ W.P.(C) 9357/2016

HARI RAM & ANR ..... Petitioners

Through : Ms. Jyoti Singh, Sr. Advocate with  
Sh. Padma Kumar S., Sh. Amandeep Joshi and  
Sh. Himanshu Gautam, Advocates.

versus

REGISTRAR GENERAL, DELHI HIGH COURT..... Respondent

Through : Sh. Sanjoy Ghose, Sh. Rhishabh  
Jetley, Ms. Pratishtha Vij and Sh. Urvi Mohan,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE S.P.GARG**

**S. RAVINDRA BHAT, J.**

1. Complaining of unjustified denial of third financial upgradation under the Modified Assured Career Progression Scheme (hereafter called "MACPS", for convenience), the writ petitioners approach this Court under Article 226 of the Constitution for appropriate directions.

2. Both the petitioners joined the establishment of the High Court initially in the cadre of Upper Division Clerk [UDC] (the first petitioner on 05.09.1998 and the second petitioner on 22.10.1984) from which they

were promoted to the cadre of UDC (again on 05.09.1998 and 13.05.1999 respectively) and finally to the cadre of Reader (first petitioner on 09.10.2007 and second petitioner on 18.07.2008). The action impugned is the denial of their claim for a third financial upgradation. The petitioners challenge an order of the Screening Committee of the High Court which rejected their claim for third financial upgradation. In terms of the MACPS, an employee is entitled to assured career progression at 10 years' intervals – thus, the first financial up-gradation is after 10 years of service; the second after 20 years of service and the third, on completion of 30 years of service.

3. The MACPS had its precursor in Assured Career Progression Scheme (ACP), formulated by the Central Government and brought into force with effect from 09.08.1999. The ACP guaranteed career progression after completion of 12 years of service. The precondition for the applicability of ACP and MACPS is that the concerned officer or employee should not have been promoted. As corollary, in the event of promotion, the concerned career progression benefit at the appropriate stage was to be denied. For instance, if an individual is promoted before the completion of 10 years, she or he cannot avail the ACP/MACPS benefit upon completion of 10 years and would instead have to wait for the completion of 20 years for the second upgradation, provided she/he is not promoted a second time in the career. Initially, upon the publication of the ACP, several queries were urged and doubts sought to be allowed, through an Office Memorandum containing clarifications to *Frequently*

*Asked Questions.* The first of these – applicable to the ACP was published on 01.02.2000. The second was made applicable after the MACPS was brought into force, i.e. 01.09.2008 (through the OM dated 19.05.2009).

4. A related development relevant to the facts of this case is that the Fifth Central Pay Commission [hereafter “the Fifth CPC”] introduced, for the first time, the concept of “Grade Pay” applicable to each of the Central pay or pay band. This principle applied to the recommendations of the Sixth Central Pay Commission [hereafter “the Sixth CPC”] which were implemented by the Central Government through the rules formulated in 2008. From time to time, various departments in the Central Government; other establishments such as the Delhi High Court, which follows the pattern of pay applicable to Central Government employees and the applicable rules were based upon felt needs, and having regard to the exigencies or peculiarities of the departments and their functioning recommended the “upgradation” of pay to certain classes or categories of officers.” These upgradations could be performance based or purely based upon fulfillment of certain conditions.

5. The petitioners’ claim is that upon completion of 30 years of service given that they were promoted only twice in their careers, the third upgradation assured to them under the MACPS had to be granted. In support of their contention, they argued that they had fulfilled conditions for the application of the relevant conditions under the MACPS:

...“6.1 In the case of ACP upgradations granted between 01.01.2006 and 31.08.2008, the Government servant has the option under the CCS (RP) Rules, 2008 to have his pay fixed in the revised pay structure either (a) w.e.f. 01.01.2006 with reference to his pre-revised scale as on 01.01.2006; or (b) w.e.f. the date of his financial upgradation under ACP with reference to the pre-revised scale granted under ACP. In case of option (b), he shall be entitled to draw his arrears of pay only from the date of his option i.e. the date of financial upgradation under ACP.

6.2 In cases where financial upgradation had been granted to Government servants in the next higher scale in the hierarchy of their cadre as per the provisions of the ACP Scheme of August, 1999, but whereas as a result of the implementation of Sixth CPC's recommendations, the next higher post in the hierarchy of the cadre has been upgraded by granting a higher grade pay, the pay of such employees in the revised pay structure will be fixed with reference to the higher grade pay granted to the post. To illustrate, in the case of Jr. Engineer in CPWD, who was granted 1<sup>st</sup> ACP in his hierarchy to the grade of Asstt. Engineer in the pre-revised scale of Rs.6500-10500 corresponding to the revised grade pay of Rs.4200 in the pay band PB-2, he will now be granted grade pay of Rs4600 in the pay band PB-2 consequent upon upgradation of the post of Asstt. Enggs. in CPWD by granting them the grade pay of Rs.4600 in PB-2 as a result of Sixth CPC's recommendation. However, from the date of implementation of the MACPS, all the financial upgradations under the Scheme should be done strictly in accordance with the hierarchy of grade pays in pay bands as notified vide CCS (Revised Pay) Rules, 2008.

XXX

XXX

XXX

*8. Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.*

*8.1 Consequent upon the implementation of Sixth CPC's recommendations, grade pay of Rs. 5400 is now in two pay bands viz., PB-2 and PB-3. 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 grant of upgradations under MACP Scheme."*

6. The petitioners' request was considered by a Screening Committee, which after deliberations rejected it on 28.01.2016. The Screening Committee reasoned as follows:

*"13. The MACP Scheme in para 28 makes things amply clear that the placement is required to be made in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, para A of the Ist Schedule of the CCS(revised pay) Rules, 2008. Thus, it may be a case that when a person gets the benefit of MACP Scheme, he is placed in the next grade pay as given in the Schedule which may be lower as compared to the person getting regular promotion in which eventuality he may get a higher grade pay. The illustrations read as under:-*

*"28. Illustrations:*

*B. If a Government servant (LDC) in PB-I in the grade pay of Rs.1900 is granted 1<sup>st</sup> financial upgradation under the MACPS on completion of 10 years of service in the PB-I in the Grade Pay of Rs.2000 and 5 years later he gets 1<sup>st</sup> regular promotion (UDC) in PB-I in the grade*



*Pay of Rs.2400, the 2<sup>nd</sup> financial upgradation under MACPS (in the next Grade Pay w.r.t. Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-I in the grade Pay of Rs.2800. On completion of 30 years of service, he will get 3<sup>rd</sup> ACP in the Grade Pay of Rs. 4200. However, if two promotions are earned before completion of 20 years, only 3<sup>rd</sup> financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date of 2<sup>nd</sup> promotion or at 30<sup>th</sup> year of service, whichever is earlier.”*

*14. Illustration under Para 28(B) makes it clear that for a person working under Grade Pay of Rs.1900, the first MACP on completion of 10 years is in the grade pay of Rs.2000 which is not a grade pay if a person gets promotion in the hierarchy which is, Grade Pay of Rs. 2400 granted on 1<sup>st</sup> promotion. Meaning thereby, a person completing 10 years gets a grade pay of Rs.2000 which is mentioned in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008, whereas if the same person gets promotion before 10 years, he gets a grade pay of Rs. 2400 which is the grade pay given on promotion from the grade pay of Rs. 1900.*

*15. Going a step further, the frequently asked questions on the Modified Assured Career Progression Scheme in its para 16 make things clearer, where the question is the same which reads as under:*

*“16. Whether non-functional scale of Rs. 8000-13500 (revised to grade pay of Rs.5400 in PB 3) would be viewed as one financial upgradation for the purpose of MACPS.”*

*16. The answer is a categorical “Yes”, in terms of para 8.1 of Annexure I of MACPS dated 19.05.2009”. If*

*we have a look at para 8.1 of Annexure I, it is clarified as under:*

*“Consequent upon the implementation of Six CPC’s recommendations, grade pay of Rs. 5400 is now in two pay bands viz., PB-2 and PB-3. 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 grant of upgradations under MACP Scheme.”*

*17. If we look at the statement showing pay scales in the Delhi High Court w.e.f. 1.1.2006 also, the categories of SJA, SJT, Sr. Asst. Librarian, Reader, SPA and Court Officer have kept in Group-B, PB-2 Rs.9300-34,800 plus grade pay of Rs.4800 which changes to PB-3 in the scale of Rs.15,600-39100 plus grade pay of Rs.5400 on completion of 4 years. This change of Pay Band-3 on completion of four years’ service was conveyed vide letter No.F.6/24/08-Judl. Suptd law/1264 dated 19.11.2013.*

*XXX XXXX*

*21. The applicants herein referred to the report of the Screening Committee of Delhi District Courts apart from some judgments stated to be on the issue. The Screening Committee report has discussed the provisions of the ACP Scheme which clearly states that financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre. The basic difference between the ACP and the MACP scheme is that the ACP Scheme provided for next higher grade in accordance with the existing hierarchy in a cadre/category of posts whereas MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section I, Part-A of the first*

*schedule of the CCS (Revised Pay) Rules, 2008. The said Schedule of MACPS provides for next higher grade pay from Rs. 4800 as Rs. 5400 and not Rs. 6600. Further, it may also be pointed out that the ACPS provided for two financial upgradations on completion of 12 years and 24 years of regular service whereas the MACPS provides for three financial upgradations on completion of 10, 20 and 30 years. The judgments discussed in the Screening Committee Report of District Courts as referred to by the applicants belong to the period when the MACP Scheme was not introduced as the new Scheme only in the year 2009 and the Report came immediately soon thereafter i.e. on 21.9.2010. The judgments referred to by the applicants relating to CAT and Hon'ble Punjab and Haryana High Court are not on the issue of non-functional scale of Rs. 5400 but on lower scales. Moreover, the judgements relied upon by the applicants are in personem and not in rem. These do not lay down any guidelines for all the cases of similarly placed persons nor has the DOPT come out with any OM on the issue enveloping all similarly placed persons in the Government of India. Rather, DOPT has come out with a clarification in the form of FAQs which is available on the website of the DOPT that the non-functional grade pay is to be treated as upgradation. Thus, the argument of the applicants that MACP is to be granted on promotional hierarchy and not on next higher Grade Pay does not hold good.*

22. *If we analyze the four cases placed before us for grant of III MACP, we find that all of them have got two promotions and one upgradation on different dates, viz. Mr. Yugesh Mohan was appointed as LDC on 03.05.1984, he got promotion as UDC on 01.04.1994 notionally and on 05.09.1998 on actual basis. Second promotion was in the shape of SJA on 13.07.2004 and on*



*13.07.2008 he was given third upgradation in the Grade Pay of Rs. 5400/-. Mr. Hari Ram was appointed as 02.09.1981 as temporary LDC, on 01.04.1994 became UDC notionally and on 05.09.1998 actually, got his second promotion on 09.10.2007 and third upgradation on 09.10.2011. Likewise, Mr. Mahesh Kumar also was appointed on 12.03.1984 as LDC, got first promotion as UDC on 01.04.1994 on notional basis and on 05.09.1998 on actual basis. He got second promotion on 24.11.2006 and third upgradation in the grade pay of Rs. 5400 on 18.08.2004 on completion of penalty imposed vide this court's order dated 04.09.2012. Mr. C.P. Vig got his appointment on 22.10.1984 as LDC, on 13.5.1999 as UDC, as SJA on 18.07.2008 and in the end, got third upgradation on 18.07.2012.”*

7. Ms. Jyoti Singh, learned senior counsel for the petitioners, argued that the denial of the third financial upgradation/MACP in the circumstances is not justified. She urges that employees of the District Courts were granted the MACPS benefit disregarding the non-functional scale of ₹8000-13500 in the Grade Pay of ₹5400/- which the petitioners now have been denied, thus resulting in discrimination.

8. Learned senior counsel highlights that the MACPS never visualized that the post could have two grade pays as in this case and that the entry of an employee into the second higher grade pay should be treated as an upgradation. It was emphasized that the grant of non-functional pay scale i.e. a higher grade pay of ₹5400/- is not dependent upon fulfillment of any condition by the officer; nor is there – like in the

case of selection grade, a stipulation as to the number of posts that can be granted such higher grade pay. Plainly, every Reader, upon completion of four years' service automatically becomes entitled to ₹5400/- Grade Pay. Thus, this is an integral part of the pay structure rather than as an upgradation as was concluded by the Screening Committee, resulting in denial of the benefit.

9. Learned counsel highlighted that the higher Grade Pay of ₹5400/- was in fact recommended as part of the post of Section Officer/Private Secretary by the Sixth CPC and was accepted as part of the pay in the Central Civil Services (Revised Pay) Rules, 2008 [hereafter called “the Pay Rules”]. The said Grade Pay has not been ordinarily granted in other posts because of stagnation. Thus, the four year stipulation is not or never was considered a stagnation period, entitling the incumbents to the higher grade pay.

10. Learned senior counsel relied upon the judgment of the Division Bench of this Court in *UOI v. FC Jain* [W.P.(C) 4664/2001, decided on 18.04.2002] which had indicated broadly how a beneficial scheme such as the ACP ought to be construed and stated further that the fitment into a higher scale of pay *ipso facto* did not amount to promotion orders to result into a deprivation of ACP benefit. A similar approach was indicted by the Division Bench judgment of the Madras High Court in *UOI v. S. Balakrishnan* [W.P.(C) 11535/2014, decided on 16.10.2014]. The Court had then observed that:

*“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.”*

11. Mr. Sanjay Ghose, learned counsel for the Delhi High Court submitted that the claim in these proceedings is not merited. He argued that the decision whether to grant or not deny the pay benefit is a matter of executive policy based upon an interpretation given by the concerned agency or department. In the present case, the Screening Committee, which considered the petitioners’ representations, rendered its conclusions by an elaborate and reasoned order. There is no flaw in the reasoning or conclusions calling for interference under Article 226 of the Constitution.

12. It is urged besides that the petitioners’ claim is based upon a narrow reading of the MACPS and the clarifications made applicable to it. The benefit of a higher Grade Pay (“GP” hereafter) of ₹5400/- which they enjoyed after completion of four years service in the existing lower grade was in fact an upgradation which coincided wholly with the concept of MACPS. Elaborating further, it was submitted that the MACPS did not envision a third financial upgradation to the next

*promotional scale*, but rather to the next higher grade (in the next higher grade to that of the Reader), with the same pay scale. The basic pay scale of the Reader – to which the petitioners were promoted, is in the scale of pay of ₹9300-34800 with ₹4800/- as GP. The succeeding higher grade is the same pay band or scale but with a higher GP of ₹5400/-. But for the four year automatic upgradation, the benefit, in the normal circumstances, to which the petitioners would be entitled, (as the third financial upgradation benefit under the MACPS) is a 3% increase of their existing pay scale. That would have meant a higher GP of ₹5400/-. Having thus received that benefit six years in advance, their claim was not justified and was correctly rejected.

13. Learned counsel relied upon the decision of a Division Bench of this Court in *Swaran Pal Singh and Ors. v. UOI and Ors.* 2015 (3) AD Del 432 where it was stated that in similar circumstances, the grant of the demand for a higher Grade Pay as a third benefit under the MACPS was rejected. Learned counsel also relied upon a clarification issued by the Central Government on 20.06.2016 regarding the counting of non-functional Grade Pay of ₹5400/-. That was in respect of a query made to the Ministry of Finance, Central Board of Excise and Customs. The clarification was as follows:

*“2. The matter regarding counting of non-functional Grade Pay of Rs. 5400/- in Pay Band-2 to the Superintendents as one financial upgradation for the purpose of MACP Scheme has been re-examined in*

*consultation with Department of Personnel & Training (DoP&T). DoP&T has now advised in consultation with Department of Expenditure that the grant of non-functional grade pay of Rs.5400 in PB-2 to the Superintendents needs to be counted as one financial upgradation for the purpose of MACP Scheme. DoP&T has drawn attention to the specific provision in Para 8.1 of Annexure-1 of OM No.35034/3/2008-Estt. (D) dated 19<sup>th</sup> May, 2009 read with FAQ No.16 (copy enclosed) which indicate that the Non-functional scale in Grade Pay of Rs.5400 in PB-2 is to be treated as a financial upgradation under MACP Scheme. DoP&T has also advised that court cases including the case of R. Chandrasekaran may be agitated/defended as per the MACP Scheme vide DoP&T O.M. dated 19.5.2009.*

*3. The Board's letter of even number dated 26.05.2015 addressed to Chief Commissioner of Central Excise, Chennai Zone in the case of Shri R. Chandrasekaran has been treated as withdrawn."*

Sh. Ghose, learned counsel, relied upon the following query and clarification applicable to the MACPS.

"16.	<i>Whether 'Non-functional scale' of Rs.8000-13500 (revised to grade pay of Rs.5400 in PB-3) would be viewed as one financial upgradation for the purpose of MACPS.</i>	<i>Yes, in terms of para 8.1 of Annexure-I of MACPS dated 19.05.2009."</i>
------	---	--



### *Analysis and Conclusions*

14. The factual account which led to the dispute in this case shows that the petitioners complain firstly of discrimination, because their counterparts in the District Courts, due to the administrative decision of the District Judge, have been granted the relief. It is secondly urged that the grant of ₹5400/- GP is an integral part of their pay scale and cannot be construed as placement in a higher scale, as to preclude their claim for the grant of third financial upgradation. The respondents rely on Para 16 of the clarification issued by the Central Government in its FAQ through a memorandum, to justify their position in declining the relief they claim.

15. In *Swarn Pal Singh* (supra) this court had examined a somewhat similar claim for grant of financial upgradation under the MACP, in the background of an employee's previous placement in a higher GP; it had relied on two previous decisions, and declined relief. The court had reasoned as follows:

*“18. The grievance of the petitioners rests on the premise that their counterparts who have got the benefit under the ACP Scheme have been placed in the pay scales of the next higher posts on completion of 12 and 24 years service. Whereas the petitioners by implementation of MACPS, have been granted second financial upgradation confined only to Grade Pay. Resultantly, the petitioners would be getting lesser pay than those whose pay is fixed with reference to the pay scales granted to them under the ACP Scheme.*

19. The grievance of the petitioners as made, is however, contrary to the fundamental concept on which MACPS introduced through the 6<sup>th</sup> Central Pay Commission operates. A bare reading of paragraph 2 of the MACPS would make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post, as was available under the ACP Scheme with reference to the pay scale of the next above hierarchical post. It is not in dispute that MACPS supersedes ACP Scheme which was in force till August 31, 2008. Therefore, after August 31, 2008 any financial upgradation would be confined to placement in the immediate next higher grade pay in the hierarchy of the recommended revised Pay Band. The use of word 'merely' in para 2 of the Scheme supports this interpretation. Paragraph 2 further clarifies that the higher Grade pay attached to the next promotional post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion. Therefore, the claim that the petitioners should also be placed in the replacement Pay Band applicable to the next promotional post in the hierarchy as was available under the ACP Scheme is misplaced.

20. This very issue had come up for consideration before this Court in W.P (C) No. 3420/2010 R.S Sengor v. Union of India decided on April 04, 2011. In said case the petitioners were in PayBand-1 and had a corresponding grade pay of Rs. 1900/-. The next hierarchical post was also in PayBand-1 but had a grade pay of Rs. 2400/-. The petitioners therein claimed that since the next hierarchical post had a pay band of Rs. 2400/-, they should, on financial upgradation, under the MACPS, be granted the grade pay of Rs. 2400/-. However, what the respondents in that case had done

*was to grant the petitioner therein the grade pay of Rs. 2000/- which was the next higher grade pay though, not the grade pay corresponding to the next hierarchical post. Dismissing the writ petition the Division Bench held as under:-*

*“10. The question would be whether the hierarchy contemplated by the MACPS is in the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay Band.*

*11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of Annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay Grade Pay after 10 years in the sum of Rs. 4800/- and not Rs. 5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts.”*

*21. This view has since been followed by another Division Bench of this Court in the decision reported as 193 (2012) DLT 577 Union of India v. Delhi Nurses Union (Regd.)*

*22. Therefore, merely because others who have been financial upgradation the pay scale of the promotional post in the hierarchy under the ACP Scheme and by*

*operation of para 6 of MACPS, their pay is fixed with reference to the pay scale granted to them under the ACP Scheme, the petitioners would not get any right to be placed in such scales, since the language of the scheme makes it clear that the financial upgradation under ACP/MACPS are different than regular promotions in the grade.*

*23. Even otherwise, as held in R.S Sengor's case (supra) the MACPS requires the hierarchy of grade pay to be adhered to and not the grade pay in the hierarchy of posts. Both the schemes conferred benefit of financial upgradation to tide over the problems of stagnation and operate in their respective fields. Though, there is no challenge to the MACPS or any part thereof, yet it is beyond any cavil that the Courts by judicial review cannot interfere with a policy decision of a State unless it is shown to be patently arbitrary, discriminatory or mala-fide. In this case, there is no such claim made by the petitioners.”*

It is noticed that in a recent judgment (*Union of India v V.K. Sharma* 2017 SCC OnLine Del 8415) the issue was gone into, by a Division Bench. In that case, the officials were from the Central Secretariat Stenographer's Service (CSSS). They joined the Cabinet Secretariat (SW) in 1970s, also known as Research and Analysis Wing (R&AW) as Personal Assistants and were superannuated in ranks of Private Secretary (PS)/Principal Private Secretary (PPS)/ Under Secretary (US) at different points of time. During their tenure, they were once promoted as PS and with a pay scale equivalent to PB-2 with Grade Pay ₹4800/- before the

Assured Career Progression Scheme (ACP) was introduced by the Government w.e.f. 09.08.1999. They were given second financial upgradation on completion of 24 years of service under the ACP scheme and were placed in the pay scale equivalent to PB-3 with Grade Pay of ₹6600/-. In terms of recommendations of the 5th Central Pay Commission (CPC), at the time when they were given the second financial upgradation to the rank of PPS/US under the ACP scheme, there was no concept of Grade Pay and the financial upgradation under the ACP scheme was to the next higher rank available in the hierarchy. Upon implementation of the MACP, 3rd financial upgradation was given to them on 22.10.2009 placing them in PB-3 in the scale of ₹15,600-39,100 with Grade Pay of ₹7600/-. This was sought to be recalled; their application before the Central Administrative Tribunal succeeded. The court held that:

*“11. As per the admitted facts of the case, the respondents were covered under the ACP scheme when it was introduced. Since they had already earned one promotion, they were given 2nd ACP on completion of 24 years of the service. As per the scheme of the ACP, they were put in the next scale in the hierarchy. After the 5th Pay Commission, their existing scales were revised and as per their existing scale, the 5th Pay Commission put them in the category of PB-3 in the scale Rs. 15600-39100 with the Grade Pay of Rs. 6600/-. It, therefore, is clear that they earned the Grade Pay of Rs. 6600 by virtue of their existing pay scale at the time when the 5th Pay Commission was implemented. They had earned that*



*Pay Scale by virtue of grant of 2nd ACP. The MACP scheme was introduced w.e.f. 01.09.2008. Under MACP scheme, the employees covered under the scheme became entitled for upgradation to the next Grade Pay after 10 years, 20 years and 30 years of the service. The respondents, who were already in the category of PB-3, demanded the benefits under 3rd MACP to which they become entitled after completion of 30 years of their service. First it was granted, and then it was withdrawn on the advice of PAO and DOP&T.*

*12. The plea of the petitioners is that since the Pay Band Scale PB-3 starts with the Pay Band Scale Rs. 15600-39100- with the Grade Pay of Rs. 5400/- , therefore, when their scale was revised, it should be presumed that they were entitled for the Grade Pay of Rs. 5400 on grant of 2nd ACP is totally fallacious. It is equally fallacious for the petitioners to claim that the grant of Grade Pay of Rs. 6600/- tantamounted to grant of the benefits of 3rd MACP.*

*13. Admittedly, on the grant of 2nd ACP, the respondents were put in the Pay Scale of Rs. 10,000-15200/- (5th CPC) and under the 5th Pay Commission, the corresponding scale that was given to them in PB-3 was Rs. 15,600-39,100 with the Grade Pay of Rs. 6600/-. It, therefore, is clear that they were getting the Grade Pay of Rs. 6600 by virtue of them being placed in the said corresponding Pay Scale equivalent to Rs. 10000-325-15200 pursuant to grant of 2nd ACP. They, therefore, has earned Grade Pay of Rs. 6600/- on revision of their pay by virtue of 5th Pay Commission and without reference to upgradation of 3rd MACP. The respondents, therefore, were entitled for the benefits under 3rd MACP after they become eligible for it.*

14. Learned counsel for the respondents has drawn our attention to the Notification of Ministry of Finance, G.S.R. 622 (E) dated 29.08.2008, the First Schedule, Part-A, Section I which clearly shows that PB-3 which contains the Pay Scale Rs. 15600-39100 also contains the next Grade Pay of Rs. 7600. Therefore, it is clear that the respondents, under 3rd MACP, were entitled for upgradation to the next Grade Pay which is Rs. 7600/-. It is also a fact that initially the petitioners had given the Grade Pay of Rs. 7600/- to the respondents, but subsequently on the basis of communications of PAO and advice of DOP&T, it was withdrawn, which act of petitioners was illegal and unjustified.”

16. In another previous decision (*Suresh Chand Garg v Govt. of NCT of Delhi* 2016 SCC Online 3124) the court firstly noticed the illustration in para 28.(B) of the MACPS, which is as follows:

“If a Government servant (LDC) in PB-1 in the Grade Pay of Rs. 1900 is granted 1<sup>st</sup> financial upgradation under the MACPS on completion of 10 years of service in the PB-1 in the Grade Pay of Rs. 2000 and 5 years later he gets 1<sup>st</sup> regular promotion (UDC) in PB-1 in the Grade Pay of Rs. 2400, the 2<sup>nd</sup> financial upgradation under MACPS (in the next Grade Pay w.r.t Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-1 in the Grade Pay of Rs. 2800. On completion of 30 years of service, he will get 3<sup>rd</sup> ACP in the Grade Pay of Rs. 4200. However, if two promotions are earned before completion of 20 years, only 3<sup>rd</sup> financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date 2<sup>nd</sup> promotion or at 30<sup>th</sup> year of service, whichever is earlier.”

The court analyzed the effect of the provision as follows:

*“Illustration in paragraph 28(B) reflects that where an employee has earned two promotions before completion of 20 years, he would be entitled to a third financial upgradation on completion of 10 years of service in the grade pay from the date of the second promotion or on 30 years of service, whichever is earlier. An employee need not, therefore, have worked in the grade pay/pay scale applicable to the second promotion for a period of 10 years, provided he had already worked for a period of 30 years on or after the MACP Scheme became applicable. As on 1<sup>st</sup> September, 2008, the petitioner had already put in more than 35 years of service. Therefore, the petitioner would meet the qualifying continuous regular service requirement and was entitled to a third financial upgradation under the MACP Scheme.”*

17. The court reasoned as follows, and allowed the claim for upgradation:

*“7. As noticed above, the petitioner was promoted as Vice-Principal on 8th January, 2008, but the pay scale given to him was the same as that was granted to him under the ACP Scheme of Rs.7500-12000. After implementation of the Sixth Pay Commission, the petitioner was given grade pay of Rs.5400 in PB-3. Thus, the first factor noticed in paragraph 17 though relevant, was not a factor, which would deny and deprive the petitioner of the benefit under the MACP Scheme. The second factor recorded by the Tribunal in paragraph 17 refers to the existing pay scales/grade pay applicable to*

*TGT and PGT after implementation of the Sixth Pay Commission and holds that the petitioner would not be entitled to include and count the period from 21st November, 1973 to 14th February, 1992. It is difficult to accept the said reasoning. The question of financial upgradation is not to be examined with reference to the pay scale prescribed as a result of the Sixth Pay Commission. The question and factual position is to be examined by referring to actual facts, and whether or not the government servant was granted financial upgradation or higher pay after he was appointed with reference to the regular service rendered by the employee. According to the factual position, the petitioner on appointment as PGT (Maths) on 15th February, 1992 was already enjoying TGT senior scale of Rs.1640-2900 granted with effect from 1st January, 1986 and, therefore, on appointment as PGT on 15th February, 1992, he did not draw an enhancement or increase in pay scale. His pay scale continued to remain Rs.1640-2900. The issue of review of pay scale may become relevant in case there is merger of posts, etc. Albeit, such a case is not made out by the respondents or stated in the aforesaid paragraph of the impugned order. With regard to paragraph 18, we have already referred to paragraphs 1 and 2 of the MACP Scheme and paragraph 28(B) and the appended illustration. It may also be noted that the promotion earned by the petitioner to the post of Vice-Principal from 8th January, 2008 was inconsequential and without any financial upgradation, for the petitioner was already enjoying the pay scale of Rs.7500-12000 since 9th August, 1999 upon financial upgradation under the ACP Scheme.*

*9. No other point or issue was raised and argued before us.*

10. For the aforesaid reasoning, we would allow the present writ petition and set aside the order dated 6th November, 2012 passed by the Tribunal and hold that the petitioner would be entitled to a third financial upgradation with effect from 1st September, 2008. As per Section 1, Part-A of the first schedule of the Central Civil Services (Revised Pay) Rules, 2008, the petitioner would be entitled to grade pay of Rs. 6600 in PB-3 with effect from the said date. The respondents will accordingly calculate the arrears, including arrears of pension, consequent to the petitioner's retirement on 28th February, 2011 and pay the same to the petitioner within a period of three months from the date a copy of this order is made available to them. In case the said payment is not made within three months, the respondents will be liable to pay interest @ 8% per annum on the aforesaid amount from the date of this judgment till payment is made. The petitioner is also entitled to costs, which are assessed at Rs.10,000/-. The writ petition is accordingly allowed and disposed of in the aforesaid terms."

18. In the present case, it is noticed that the petitioners' counterparts were granted the third financial upgradation, although they, like them were given the GP of ₹5400/-; they perform similar, if not identical functions. *FC Jain* (supra) is an authority that if such broadly identical functions are involved, both categories ought to be treated alike in regard to interpretation of pay norms, by the organization. Therefore, the principle of parity would result in acceptance of the petitioner's claim. The second aspect which this court would emphasize is that unlike "stagnation" or performance based increments, or placement in higher



scales, the grant of ₹5400/- is automatic, after the happening of a certain event, i.e. completion of four years' service. This is quite different from promotion or placement in the selection grade, which is performance dependent or based on the availability of a few slots or vacancies (usually confined to a portion of the entire cadre: say 20%). The last reason is that both *V.K. Sharma* (supra) and *Suresh Chand Garg* (supra), in somewhat similar circumstances, accepted that the grant of a higher grade pay did not preclude the grant of the third financial upgradation.

19. In view of the foregoing analysis, the court is of opinion that the petition has to succeed. As a consequence, the respondents are directed to revise and fix the pay scales by granting the third financial upgradation, to the petitioners. They shall be entitled to consequential arrears and all consequential benefits; the payments shall carry interest @ 9 per cent per annum. The payouts shall be made to the petitioners within 8 weeks. The petition is allowed, in these terms.

  
S. RAVINDRA BHAT, J

S.P.GARG, J

**DECEMBER 20, 2017**