REPORTABLE

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO(S). 1880 OF 2022
(Arising out of SLP (C) NO(S). 12817 OF 2020)

THE VICE CHAIRMAN

DELHI DEVELOPMENT AUTHORITY ....APPELLANT(S)

VERSUS

NARENDER KUMAR & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO(S).1881 OF 2022
(Arising out of SLP (C) NO(S). 12666 OF 2020)

CIVIL APPEAL NO(S).1882-1885 OF 2022
(Arising out of SLP (C) NO. 892-895 OF 2021)

CIVIL APPEAL NO(S).1886 OF 2022
(Arising out of SLP (C) NO. 12815 OF 2020)

CIVIL APPEAL NO(S). 1887 OF 2022
(Arising out of SLP (C) NO. 12963 OF 2020)

CIVIL APPEAL NO(S).1888 OF 2022
(Arising out of SLP (C) NO.4288 OF 2022)

(Arising out of SLP (C) DY. NO. 19635 OF 2020)

ORDER

1. Special leave granted, in all these proceedings. With consent of counsel, this batch of appeals was heard finally.

2. In all these appeals, the common question which arises is whether the reasoning adopted by the Delhi High Court to hold, and direct that the Modified Assured Career Progression Scheme ("MACP") had to be applied from 01-01-2006, is correct. The appellant, Delhi Development Authority (hereafter called "DDA" or "the employer") is primarily aggrieved by the ruling of the Delhi High Court[1]. Some of the successful petitioners (respondents in those proceedings, hereafter called "the employees"), have also appealed to this court, contending that the High Court's *directions* were not correct and seek a modification of the relief granted by the impugned judgment. The DDA has preferred another appeal against a subsequent order[2] which followed the previous order (dated 9th January, 2020).

Relevant facts

3. The Government of India introduced the Assured Career Progression Scheme (in short, ACP Scheme), by an office memorandum, in August, 1999[3], to remove stagnation. The salient features of the scheme are extracted below:

> *"1. The ACP Scheme envisages merely placement in the higher pay scale/grant of financial benefits (through financial up-gradation) only to the government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;*

1 Delivered on 9 January, 2020 in WP 5927/2018, WP 5932/2018 and WP 476/2019.
2 Dated 11.02.2020, in WP. 528/2017.
3 OM dated 09.08.1999, which came into force on 09.08.1999

2. The highest pay scale up to which the financial up-gradation under the Scheme was available was to be Rs 14,300-18,300. Beyond this level, there shall be no financial up-gradation and higher posts were filled strictly on vacancy-based promotions;

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4. The first financial up-gradation under the ACP Scheme shall be allowed after 12 years of regular service and the second financial up-gradation after 12 years of regular service from the date of the first financial up-gradation subject to fulfilment of prescribed conditions. In other words, if the first up-gradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc. this would have consequential effect on the second up-gradation which would also get deferred accordingly;

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5.1. Two financial up-gradations under the ACP Scheme in the entire government service career of an employee shall be counted against regular promotions (including in situ promotion and fast track promotions availed through Limited Departmental Competitive Examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial up-gradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by the employee. If an employee has already got one regular promotion, he shall qualify for the second financial up-gradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;"

4. The Sixth Central Pay Commission submitted its report on 24-3-2008. These recommended the salary structure and allowances, conditions of service and retirement benefits of the Central Government employees and other public bodies, personnel belonging to the Defence Forces, Officers and employees of the Audit and Accounts Departments and Chairpersons and Members of Regulatory Bodies, except Reserve Bank of India. By a resolution dated 29-8-2008, the recommendations of the Central Pay Commission concerning civilian employees were accepted by the Central Government with respect to revised

scales of pay and dearness allowances. It was resolved that these pay and allowances benefits would be applicable with effect from 01-01-2006.

5. The Central Government, in supersession of the ACP Scheme, introduced the MACP scheme, by an office memorandum in May, 2019[4]. The MACP was made applicable from an earlier date, i.e. 1st September, 2008, through a specific condition in that scheme. The respondent employees had been appointed as regular Work Charged *Malis*, by the DDA, with effect from various dates, beginning from 03.01.1985. They were granted the first financial up-gradation under the ACP Scheme, w.e.f. 03.01.1997, i.e., on completion of 12 years of regular service. Subsequently, they became eligible for grant of the second financial up-gradation under the ACP Scheme, w.e.f. 03.01.2009, i.e., upon completion of 24 years of service. This benefit was not given to them by DDA. There is no dispute that under the MACP Scheme, the employees were granted the second MACP benefits- later. The employees' grievance was that the DDA introduced the MACP scheme with effect from (01/09/2008) by an order dated 06.10.2009 and according to them, as their eligibility (indeed, as claimed, their entitlement) to claim the second ACP benefit had accrued to them earlier, they should have been granted the benefit of second ACP. Consequently, they approached the Central Administrative Tribunal (CAT) by filing original applications[5].

Proceedings before CAT

6. Before CAT, the employee- respondents contended that the ACP Scheme was more beneficial to them, in comparison with benefits under the MACP Scheme. Therefore, as they had completed 24 years of service on various dates in January, 2009, *before* introduction of the MACP Scheme, (by OM dated

4 OM dated 19.05.2009
5 O.A.No.2005/2014; OA 1945/2014; OA 434/2016

19.05.2009) they were entitled for the second financial up-gradation under ACP Scheme, even though the MACP Scheme was introduced with retrospective date, i.e., w.e.f. 01.09.2008.

7. The DDA contended that since the MACP scheme become operative w.e.f. 01.09.2008, *the employees were not qualified for the second ACP benefits, as they had not completed 24 years of service on that date.* As a result, the grant of second ACP benefits w.e.f. January, 2009 could not arise. The ACP Scheme was valid up-to 31.08.2008. It was urged that the OM dated 19.05.2009 under which the MACP Scheme was introduced in supersession of ACP Scheme of 1999, which categorically stated that financial up-gradations in terms of the earlier ACP Scheme would be granted till 31.08.2008. None of the respondent employees challenged that provision of the MACP Scheme. As a result, they could not claim that their case for granting of second financial up-gradation benefits under ACP Scheme had to be considered w.e.f. January, 2009. DDA also relied on Para 11 of the MACP scheme which is as follows:

> *"11. It is clarified that no past cases would be re-opened. Further, while implementing the MACP Scheme, the differences in pay scales on account of grant of financial up-gradation under the old ACP Scheme (of August 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly."*

8. The DDA's contention was that the MACP scheme clearly envisioned a situation where past benefits, which had actually accrued and been granted to employees, under the ACP scheme, could not be withdrawn; however, the MACP scheme contained nothing enabling the employees to claim that, though it was introduced with effect from 1st September 2008, yet since the

memorandum was issued on 19.05.2009, they would be entitled to the benefits of the previous (i.e. ACP) scheme).

9. The CAT, after considering the submission of parties, noticed judgments of the Delhi, Madras and Bombay High Court and was of the opinion that employees were entitled to the claim. Therefore, it allowed the applications preferred by the employees and directed DDA to consider their cases for granting of the financial up-gradations under the ACP Scheme till 19.05.2009, i.e., the date of issuance of the MACP Scheme, if they were otherwise qualified and eligible, and to grant appropriate pay scales accordingly, with all consequential benefits. Arrears were however, denied to the employees.

Proceedings before the Delhi High Court

10. The DDA's argument before the Delhi High Court, which it approached, being aggrieved by CAT's order, was that with effect from 1st September, 2008, the MACP Scheme had become operational and that the applicants- employees were no longer entitled to receive the benefits under the (erstwhile) ACP scheme. It was contended that the ACP scheme was valid only until 31st August, 2008. By that date the employees had not completed 24 years of service. It was submitted that since the MACP scheme was introduced by the Office Memorandum ("OM") dated 19th May, 2009, superseding the earlier ACP scheme, the question of granting any benefit under the ACP scheme after 31st August, 2008 did not arise.

11. The High Court relied on the decision of this court, in *Union of India v. Balbir Singh Turn*[6] where it was held that Armed Forces Personnel, had to be given the benefit of the MACP from the date of the recommendations of the 6th

6 (2018) 11 SCC 99

Central Pay Commission ('CPC') i.e. 1st January, 2006 and not from 1st September 2008, as decided by the Central Government. Based on this logic, the High Court, in the impugned order, directed that MACP benefits should be extended to the employees of DDA from 1st January, 2006.

Contentions of parties

12. It was argued by Mr. Kailash Vasudev, Senior Counsel for DDA that the MACP scheme came into effect on 01.09.2008 and this should be the criteria with respect to which applicability of whether the old ACP or the MACP should be decided. The employees completed 24 years in January 2009 i.e. after the date of coming into force of the MACP, and hence were not entitled to up-gradation under the old ACP. It was argued that the decision in *Balbir Singh(supra),* relied on by the Delhi High Court, applied only to Armed Forces personnel and not civil establishments like the DDA.

13. Counsel urged that it has been 12 years since the MACP scheme was implemented and a decision such as the impugned judgment would constitute judicial interference in policy matters and result in enormous financial implications. The decision of this court in *Chandi Prasad Uniyal v State of Uttarakhand*[7]was cited to urge that excess payments of public money cannot be permitted to be retained. It was contended that the High Court failed to recognise that the respondents became eligible for the second up-gradation only after the date of issuance of the MACP and consequently were not entitled to an up-gradation under the old ACP scheme.

14. It was emphasized, by citing this court's judgment in *State of U.P. & Ors. Vs. U.P. Sales Tax Officer Grade-II Officer*[8], that :-

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7 2012 (8) SCC 417
8 2003 (6) SCC 250

> *"decision of expert bodies like the pay commission is not ordinarily subject to judicial review, obviously because pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the employees."*

This court's judgment in *Secretary Government (NCT of Delhi) and Ors. Vs. Grade-I officers Associations & Ors*[9], was also relied on. The court had, in that judgment, refused to interfere with the ACP Scheme as it would have violated the government's policy and further held that exercise of judicial review would not be proper. The court upheld the ACP Scheme and the conditions therein.

15. Learned senior counsel also relied on *State of Tamilnadu v Arumugham*[10] where it was observed that the state has the right to frame a policy to ensure efficiency and proper administration and to provide the suitable avenues for promotion to officers working in different departments. The court further observed that the Tribunal cannot substitute its own views for the views of the government or direct new policy based on the views of the tribunal. Likewise, the judgment in *State of Haryana & Anr. v Haryana Civil Secretariat Personal Staff Association*[11] was cited to urge that fixation of pay and determination of responsibilities is a complex matter in the realm of executive decision making and that the courts should approach such matters with restraint. The decision of this court in *Union of India* v. *M.V. Mohanan Nair*[12] was cited to urge that this court had, in its decision, outlined the nature of the MACP benefits, and also held that the scheme fell within the realm of executive decision making.

16. Mr. Saurabh Mishra, who also appeared on behalf of the DDA, relied on the later judgment of this court in *Union of India v. R.K. Sharma*[13], which held

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9 2014 (13) SCC 296
10 (1998) 2 SCC 198
11 2002(6) SCC 72
12 (2020) 5 SCC 421
13 (2021) 5 SCC 579

that the benefits from the MACP scheme could not be given from 01.01.2006, and could be availed of only from 01.09.2008. Counsel also relied on *Himachal RTC v. Retired Employees Union*[14] that in matters of pay structure or promotion, the choice of a cut-off date, when the new policy *regime* has to operate, cannot lightly be interfered with by courts.

17. Mr. M.K. Bhardwaj, learned counsel appearing for some of the employees, urged that the High Court's direction to operate the MACP scheme from 01.01.2006 had not been sought by the employee-applicants. What they in fact, sought was the grant of ACP benefits, which were in force, in January 2009, *before* the MACP scheme was launched – by an order dated 19 May, 2009, *but with effect from* 01-09-2008. In other words, the employees' eligibility and entitlement was crystallized as in January and February, 2009 when the MACP scheme had not been published. It was argued that since on the date of the employees' eligibility-or entitlement, they should be granted benefits in terms of the *existing scheme* which were ACP benefits, - which in turn meant a higher or promotional grade, that right could not be defeated on account of a policy which was adopted later, albeit with effect from an anterior date.

18. Mr. Bhardwaj and other learned counsel stressed that the employees' claim for second ACP was warranted in accordance with the ACP scheme, because it is clearly postulated by the MACP scheme itself, which, by clause 9 stated as follows:

> *"9. Any interpretation/ clarification or doubt as to the scope and meaning of the provisions of the MACP scheme shall be given by the Department of Personnel and Training (Establishment-I)). The scheme would be operational w.e.f. 01.09.2008. In other words, financial up-gradations as per the earlier ACP Scheme (of August, 1999) would be granted till 31-08-2008."*

14 (2021) 4 SCC 502

19. It was further submitted by learned counsel that the right to be considered for the ACP benefits, was in the nature of a vested right, which had to be granted even after the coming into force, of the MACP scheme. In this regard it was argued that the rights which crystallize in accordance with an old scheme, inure and can be enforced by the beneficiary, regardless of the fact that a new scheme replaces it.

Analysis and Conclusions

20. The original scheme, i.e. the ACP scheme, (introduced by the OM dated 9-8-1999) granted career progression to Central Government civilian employees. Its intent was to extend relief for stagnation faced by employees' due inadequate promotional probabilities. The ACP Scheme was introduced by the Central Government -with modifications- based on the recommendations of the Fifth Central Pay Commission. That scheme, granted financial up-gradation after 12 years of regular service and a second, after 12 years of regular service from the date of the first financial up-gradation, subject to fulfilment of prescribed conditions. The relevant conditions, i.e. Nos. 5.1 and 10 are extracted below:

> *"5.1. Two financial upgradation under the ACP Scheme in the entire Government Service career of an employee shall be counted against regular promotions (including in situ promotion and fast track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial up-gradation under the ACP Scheme shall be available only if no regular promotion during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him.*
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> *10. Grant of higher pay scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on*

occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard. However, as and when he accepts regular promotion thereafter, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose. For example, if a person has got one financial upgradation after rendering 12 years of regular service and after 2 years therefrom if he refuses regular promotion and is consequently debarred for one year and subsequently he is promoted to the higher grade on regular basis after completion of 15 years (12+2+1) of regular service, he shall be eligible for consideration for the second up-gradation under the ACP Scheme only after rendering ten more years in addition to two years of service already rendered by him after the first financial up-gradation (2+10) in the higher grade i.e. after 25 years (12+12+1) of regular service because the debarment period of one year cannot be taken into account towards the required 12 years of regular service in that higher grade."

21. As is apparent, financial up-gradation under the ACP Scheme was available only if regular promotion during the stipulated intervals, 12 years and 24 years, were not granted to an employee. A singular feature of the ACP scheme was that while the benefit was pay based, the employee had to fulfil the prescribed criteria (i.e. qualifications, experience, and also possess the requisite service records) to be eligible for the benefits. The ACP benefit was a promotional grade, divorced from the existence or otherwise of any vacancy, and without necessarily being functional in the higher grade, with attendant responsibilities.

22. The MACP scheme, which replaced the ACP scheme, with effect from 01-09-2008 (although the scheme was introduced on 19.05.2009) was preceded by the Sixth Central Pay Commission report dated 24-3-2008. That report dealt with the pay-structure, allowances, conditions of services and retiral benefits of Central Government employees, etc. By a Resolution dated 29-8-2008, recommendations of the Pay Commission concerning civilian employees were accepted by the Central Government regarding revised pay-scales and dearness

allowances with effect from 01-01-2006. As regards revised allowances, (excluding dearness allowance), the effective date designated by the memorandum is 1-9-2008.

23. The noticeable feature of the MACP Scheme- is that three increments are to be granted to employees on completion of 10, 20 and 30 years of service. According to the MACP scheme, financial up-gradation is admissible on completion of 10 years of continuous service -in the same grade pay. The distinction between the ACP and the MACP scheme is not only with respect to the number of benefits (i.e., two under the ACP scheme, and three under the MACP scheme) but also that the former assured the promotional grade, where the latter (MACP scheme) only assured *higher pay.*[15]

24. The first issue which arises, is the correctness of the impugned judgment, in applying the reasoning in *Balbir Singh.* In that decision, the question which arose for consideration was the correct date from which the MACP up-gradation scheme, was applicable to employees (below the rank of officer). This court held that the scheme had to be applied from 01.01.2006, and not the date designated by the concerned order (01.09.2008). The Armed Forces Tribunal (AFT) held that ACP benefits granted to employees is part of the pay structure which not only affects pay but also pension. ACP then ruled that it is not an allowance but a part of pay relied on a Government Resolution to hold that the MACP scheme was payable w.e.f. 01.01.2006. This Court in *Balbir Singh Turn (supra)* upheld that finding recorded by the AFT. Instructions issued on 30-5-2011 were found to be contrary to the Resolution dated 30-8-2008 as, according to the resolution 1-1-2006 was the effective date for implementation

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15 Para 2 of the MACP scheme- through Annexure I to the Office Memorandum, states as follows:

"The 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 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. ln such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organisation will be given only at the time of regular promotion."

of MACPS in matters relating to pay and dearness allowance. There is no such parallel, in the facts of this case.

25. In *M.V. Mohanan Nair* (supra) a three judge Bench of this court held, in the context of a dispute, which asserted that MACP benefits would result in regular promotional advancement, that:

> *"The change in policy brought about by supersession of ACP Scheme with the MACP Scheme is after consideration of all the disparities and the representations of the employees. The Sixth Central Pay Commission is an expert body which has comprehensively examined all the issues and the representations as also the issue of stagnation and at the same time to promote efficiency in the functioning of the departments. MACP Scheme has been introduced on the recommendation of the Sixth Central Pay Commission which has been accepted by the Government of India. After accepting the recommendation of the Sixth Central Pay Commission, the ACP Scheme was withdrawn and the same was superseded by the MACP Scheme with effect from 01.09.2008. This is not some random exercise which is unilaterally done by the Government, rather, it is based on the opinion of the expert body – Sixth Central Pay Commission which has examined all the issues, various representations and disparities. Before making the recommendation for the Pay Scale/Revised Pay Scale, the Pay Commission takes into consideration the existing pay structure, the representations of the government servants and various other factors after which the recommendations are made. When the expert body like Pay Commission has comprehensively examined all the issues and representations and also took note of inter-departmental disparities owing to varying promotional hierarchies, the court should not interfere with the recommendations of the expert body. When the government has accepted the recommendation of the Pay Commission and has also implemented those, any interference by the court would have a serious impact on the public exchequer."*

26. This court, in *R.K. Sharma & Ors.*[16], commented on the effect of *M.V. Mohanan Nair* (supra) on the MACP scheme, especially the date from which it was operative. It was held that:

> *"The judgment in M.V. Mohanan Nair clinches the issue. Benefits flowing from ACP and MACP Schemes are incentives and are not part of pay. The Resolution dated 29-8-2008 is made effective from 1-9-2008 for implementation of allowances other than pay and DA which includes financial upgradation under ACP and MACP Schemes. Therefore, the*

16 (2021) 5 SCC 579

> *respondents and other similarly situated officers are not entitled to seek implementation of the benefits of MACPS with effect from 1-1-2006 according to the Resolution dated 29-8-2008. Moreover, the implementation of MACPS by granting financial upgradation only to the next grade pay in the pay band and not granting pay of the next promotional post with effect from 1-1-2006 would be detrimental to a large number of employees, particularly those who have retired."*

27. It is therefore, quite clear that both *Mohanan Nair(supra)* and *R.K. Sharma(supra)*, examined the MACP scheme; the latter, especially, *ruled that the scheme was operable from 01-09-2008,* and that the respondents *"officers are not entitled to seek implementation of the benefits of MACPS with effect from 1-1-2006 according to the Resolution dated 29-8-2008"*. Having regard to this clearly enunciated principle, which, in this court's opinion, stems from a correct reading of the scheme, the reasoning of the High Court, that the MACP scheme is operative not from 01-09-2008, but from 01-01-2006, is untenable. The mere circumstance that the resolution of the Government which led to adoption of the MACP also contained the effective date for implementation of the pay-benefits of the Pay Commission recommendations, did not obliterate the fact that the date from which the scheme was to be made effective, was another one.

28. The submissions of the DDA, that the executive agency's considerations, while extending a benefit or new *regime* such as the promotion or career advancement program, is to be effective, involves decision making that is complex and nuanced, is justified. The date of operation of new pay scales cannot be *per se* the same when the operation of another scheme (which may also involve pay benefits) need not be the same. The shifting of dates (once settled by the executive after due deliberations) may seemingly have no consequences, but inevitably would have radical financial implications. Given these factors, it has been held, in previous decisions[17] that courts should in the

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17 *Govt of AP v N. Subbarayadu* 2008 (14) SCC 702; *Ami Lal Bhat v State of Rajasthan* (1997) 6 SCC 614*; State of Bihar* v. *Ramjee Prasad* (1990) 3 SCC 368; *Union of India* v. *Sudhir Kumar Jaiswal* (1994) 4 SCC 212 *Union of India* v. *Shivbachan Rai* (2001) 9 SCC 356 and *Council of Scientific & Industrial Research* v. *Ramesh Chandra*

absence of any facially compelling reason disclosing arbitrariness desist from stepping into the arena of decision making, and avoid directing their re-formulation or even requiring such schemes to be administered from any anterior period.

29. The other reason why the High Court went wrong, in holding what it did, is that DDA is an autonomous – a statutory – organization. No doubt, it largely follows the Central Government's policies, in respect of pay and allowances, and other benefits for its employees. However, any revision of pay-structure or revision in other terms and conditions, of Central Government personnel cannot and do not automatically apply to the DDA; it has to consider the new or fresh scheme formulated by the Central Government, and adopt it, if necessary, after appropriate adaptation, to suit its needs. Therefore, the Central Government's MACP scheme did not apply to it automatically. The DDA decided to apply it, through an office order dated 06.10.2009.[18] The High Court has overlooked this aspect, and apparently assumed that the MACP scheme applied automatically, upon its adoption by the Central Government, to the DDA.

30. This brings the court to the next point, which is whether the employees can assert what is termed as a *vested right*. The first submission in this regard is that according to Para 9 of the MACP scheme, those who are in employment on the date when MACP scheme was brought into force and who are entitled to the ACP benefits, especially the second financial up-gradation had a right to insist that their second up-gradation should be granted in terms of the ACP scheme. In this context, the argument advanced is that Rule 9 preserves and protects such a right (for entitlement) to be granted the ACP benefits even after the introduction of the MACP scheme.

Agrawal (2009) 3 SCC 35

18 Establishment Order, dated 6 October, 2009

31. Para 9 recognises the fact that if there is any ambiguity in the interpretation of the MACP scheme it would be resolved by the Department of Personnel and Training. It also clarifies in the last sentence that financial up-gradation would be granted till 31.08.2008 (given that the MACP scheme itself became operative on 01.09.2008), although the office memorandum was issued on 19.05.2009. In the opinion of this Court the undue influence placed upon the last sentence cannot be met much of by the employees given that the ACP scheme itself ended on 31.08.2008. This provision (i.e. Para 9) was made to cater to the situations where the grant of ACP benefits was under process, this would mean both types of benefits i.e. the first and the second up-gradation. Doubtlessly, the first up-gradation under the ACP scheme was to be granted after 12 years. If Para 9 were to be considered in the context of the first up-gradation it is a clarification to the effect that the individual concerned who has crossed 12 years' service (and therefore became eligible and whose case is under active consideration) would get the ACP benefits. However, this provision cannot be understood as an independent transitional provision, enabling all employees awaiting the up-gradation to insist that the benefit of the ACP scheme should indefinitely continue despite its ceasing to exist after 31.08.2008.

32. The second aspect in this regard is the argument that a vested right accrued in favour of the employees who had completed the eligibility for a financial up-gradation to insist that such up-gradation ought to be only under the ACP scheme and not under the MACP scheme.

33. The concept of "vested right" has arisen for consideration before this court in several contexts especially with respect to alteration of service condition of public employees. That the Central Government in the exercise of its legislative powers conferred under provision of Article 309 of the Constitution can frame rules which has the force of law has been settled several decades ago. This court has also held that such rules can be made to operate

from anterior date by giving retrospective effect to them. The determination of an anterior date for the operation of a rule which has the effect of nullifying or refacing intervening events or invalidating benefits which had been granted to public employees was held to be unconstitutional in *State of Gujarat vs Raman Lal Keshav Lal Soni*[19]. Several previous judgments of this Court dealing with the question that what is accrued or vested right were considered in *Chairman, Railway Board v. C.R. Rangadhamaiah*[20] wherein the impugned rule in question sought to disturb the method of calculating the last pay drawn for the purposes of pension and related allowances. This impacted the pension disbursement of a large number of employees who had retired much earlier. The court observed that the amendments applied to employees who had already retired and were no longer in service on the date the impugned notifications were issued, and adversely impacted the pension they were drawing. In such context the court held as impermissible, those benefits which accrued or in other words had been actually enjoyed and were taken away by the devise of giving retrospective effect to the rule. The court observed as follows:

> ***"22.*** *In State of Gujarat v. Raman Lal Keshav Lal Soni [(1983) 2 SCC 33] decided by a Constitution Bench of the Court, the question was whether the status of ex-ministerial employees who had been allocated to the Panchayat service as Secretaries, Officers and Servants of Gram and Nagar Panchayats under the Gujarat Panchayat Act, 1961 as government servants could be extinguished by making retrospective amendment of the said Act in 1978. Striking down the said amendment on the ground that it offended Articles 311 and 14 of the Constitution, this Court said:*
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> *"52. … The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's rights and not*

19(1983) 2 SCR 287
201997Supp (3) SCR63

> *yesterday's. A legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history."*
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> ***23.*** *The said decision in Raman Lal Keshav Lal Soni (1983) 2 SCR 287 of the Constitution Bench of this Court has been followed by various Division Benches of this Court. (K.C. Arora v. State of Haryana (1984) 3 SCR 623; T.R. Kapur v. State of Haryana [(1987) 1 SCR 584]; P.D. Aggarwal v. State of U.P. [(1987) 3 SCR 427] ; K. Narayanan v. State of Karnataka [1994 Supp (1) SCC 44] ; Union of India v. Tushar Ranjan Mohanty [(1994) 5 SCC 450] and K. Ravindranath Pai v. State of Karnataka [1995 Supp (2) SCC 246).*
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> ***24.*** *In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon [(1968) 1 SCR 185] B.S. Vedera [(1968) 3 SCR 575] and Raman Lal Keshav Lal Soni [(1983) 2 SCR 287] .*

34. In the present context, none of the employees actually earned a second financial up-gradation. They undoubtedly became eligible for consideration. However, the eligibility *ipso facto* could not, having regard to the terms of the ACP scheme translate into an entitlement. The eligibility was, to put it differently, an expectation. To be entitled to the benefits, the public employer (here DDA) had to necessarily review and consider the employees' records, to examine whether they fulfilled the eligibility conditions and, based on such review individual orders had to be made by DDA. In other words, second ACP up-gradation was not automatic but dependant on external factors. Furthermore, as held by this Court in *M.V. Mohanan Nair (supra)*, MACP benefits are only an incentive meant to relieve stagnation – framed under the

executive policy. Its continued existence cannot be termed as an enforceable right.

35. Such expectation is akin to a candidate being declared successful in a recruitment process and whose name is published in the select list. That, such candidate has no vested right to insist that the public employer must issue an employment letter, has been held by a Constitution Bench Judgment of this Court in *Shankarsan Dash vs Union Of India*[21]**.** Therefore, it is held that employees' contention that they acquire a vested right in securing the second ACP benefit is insubstantial.

36. The employees in this case approached the High Court, complaining that their *vested right*, which was the assumed entitlement to be given by second ACP, was taken away by the MACP, introduced with effect from 01-09-2008, by an order dated 19-05-2009. No doubt, the MACP scheme is an executive order. Usually, such orders are expressed to be prospective. However, the executive has the option of giving effect to such an order, from an anterior date; especially if it confers some advantages or benefits to a sizeable section of its employees, as in this case. The nature of benefits- as emphasized by this court earlier, were by way of incentives. *They are not embodied under rules.* In such circumstances, a set of employees, who might have benefitted from the then prevailing *regime* or policy, cannot in the absence of strong and unequivocal indications in the later policy (which might be given effect to from an anterior date, like in this case), insist that they *have a right to be given the benefits under the superseded policy.* It is noteworthy that a larger section of employees would benefit from the MACP benefits, because they are to be given after 10-, 20- and 30-years' service (as compared with two benefits, falling due after 12 and 24 years of service) and further that such benefits under MACP scheme are subjected to less rigorous eligibility requirements, than under the ACP scheme.

21(1991) 3 SCC 47

37. The myriad intricate details which the executive has to consider, while framing a scheme applicable generally, to a large section of the employees, may not always admit of one, or one set of solutions. To insist that a particular *kind* of benefit, hitherto applicable, should be continued for a set of employees, while the others should be governed by another, new set or scheme, would be imposing a significant burden on the administration, apart from swelling financial costs as well as administrative energies. Such directions would result in creating different time warps, rendering efficient administration of personnel policies impracticable. *Sans* palpable or facial arbitrariness, the courts should be circumspect in adding conditions, or tampering with such arrangements. In *Ajoy Kumar Banerjee v Union of India*[22] a five judge Bench of this court had emphasized this aspect in the following terms:

> *"46…. The legislature however is free to recognise the degree of harm or evil and to make provisions for the same. Making dissimilar provisions for one group of public sector undertakings does not per se make a law discriminatory as such. It is well-settled that courts will not sit as super-legislature and strike down a particular classification on the ground that any under-inclusion, namely, that some others have been left untouched so long as there is no violation of constitutional restraints…… The same principle was reiterated by this Court in the case of State of Gujarat v. Shri Ambica Mills Ltd., Ahmedabad [1974 (3) SCR 760]. In that case, this Court was of the view that in the matter of economic legislation or reform, a provision would not be struck down on the vice of under-inclusion, inter alia, for the reason that the legislature could not be required to impose upon administrative agencies task which could not be carried out or which must be carried out on a large scale at a single stroke. It was further reiterated that piece meal approach to a general problem permitted by under-inclusive classifications, is sometimes justified when it is considered that legislatures deal with such problems usually on an experimental basis. It is impossible to tell how successful a particular approach might be, what dislocation might occur, and what situation might develop and what new evil might be generated in the attempt. Administrative expedients must be forged and tested. Legislators recognizing these factors might wish to proceed cautiously, and courts must allow them to do so…."*

22(1984) 3 SCR 252

This court is of the opinion that the same considerations apply in the present case. That, some employees could have benefitted more under the ACP benefits, if the MACP scheme had not been introduced from an earlier date, is no ground to hold so and compel an executive agency to grant the claimed benefits.

38. For the foregoing reasons, the impugned judgment and order is set aside. The appeals filed by the DDA are hereby allowed. During the pendency of the proceedings before the CAT, the benefits sought by the employees were granted, under interim orders, but subject to the final outcome. In these circumstances, the benefits claimed by such of the applicant/employees, granted to them under the ACP scheme, can be reversed by the DDA. However, where the applicants were given MACP benefits by DDA, on its consideration that they were entitled to it, from later dates (such as from 2010-2011 or later dates) shall not be disturbed. The appeals preferred by the employees claiming that they ought to be given ACP benefits from the date as claimed by them for the same reasons are hereby dismissed. There shall be no order as to costs.

.....J
[UDAY UMESH LALIT]

.....J
[S. RAVINDRA BHAT]

.....J
[BELA M. TRIVEDI]

New Delhi,
March 8, 2022.