

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. OF 2025
(ARISING OUT OF SLP(C) NOS. 10491-10492 OF 2022)

K. V. GOPALAKRISHNAN ...**APPELLANT**

VERSUS

UNION OF INDIA & OTHERS ...**RESPONDENTS**

O R D E R

- 1.** Leave granted.
- 2.** The High Court of Karnataka at Bengaluru, *vide* its judgment and order dated 3rd March, 2020¹, allowed a writ petition² of the respondents and thereby reversed the judgment and order dated 13th February, 2019 of the Central Administrative Tribunal, Bengaluru Bench³. The Tribunal allowed an original application⁴ filed under Section 19 of the Administrative Tribunals Act, 1985 by the appellant. Such reversal is the subject matter of challenge in the lead appeal.
- 3.** The appellant applied for a review⁵ of the impugned order (dated 3rd March, 2020). Although it was sought to be pointed out on behalf of the appellant that there was an error apparent on the face of the record (because the

¹ impugned order

² WP No. 14295 of 2019 (S-CAT)

³ Tribunal

⁴ OA No. 170/00178/2018

⁵ Review Petition No.86 of 2022

High Court had considered Office Memorandum⁶ dated 19th May, 2009 and that the appellant had been granted Grade Pay of Rs.6600 long before such office memorandum was brought into effect), the High Court proceeded to dismiss the review by an order dated 1st April, 2022 resting on the law declared by this Court in **Kamlesh Verma v. Mayawati**⁷. The order dated 1st April, 2022 is under challenge in the connected appeal.

4. The facts giving rise to the original application before the Tribunal, in a nutshell, are these:
 - (i) The appellant was appointed under the respondents as a Quality Assurance Officer on 2nd November, 1979. He did not earn promotion to a higher post ever, during his long tenure of about 37 years.
 - (ii) Upon introduction of the Assured Career Progression Scheme⁸ by the Government of India with effect from 9th August, 1999, the appellant earned the first financial upgradation on 9th August, 1999, i.e., on completion of more than 12 years' service. He earned the second financial upgradation on 3rd November, 2003, upon completion of 24 years' service.
 - (iii) As a result of the first financial upgradation, the appellant was placed in the pay scale of Rs.8000-275-13500 (pay scale for Assistant Director) from the pay scale of Rs.5500-175-9000. The second financial upgradation led to placement of the appellant in the pay scale of Rs.10,000-325-15200 (pay scale for the post of Deputy Director).

⁶ O.M.

⁷ (2013) 8 SCC 320

⁸ ACPS

(iv) Consequent upon the Cabinet's acceptance of the Sixth Central Pay Commission Recommendations, the Director, Textiles Committee, by an office order dated 11th December, 2008, ordered that the pay of the appellant be fixed in the corresponding revised scale as per his option dated 25th September, 2008, with effect from 1st January, 2006. In such office order, serial nos. 6 & 8 read as follows:

6.	Revised pay band and grade any corresponding to the pre-revised scale shown at Sr.No.4 above. (In the case of HAG + and above the appropriate scale may be mentioned)		Rs.15600-39100(PB-3) + Rs.6600
8.	Grade pay to be applied in terms of Rule 4 of CCS (RP) Rules, 2008		Rs.6600

(v) With effect from 19th May 2009, the ACPS stood replaced by the Modified Assured Career Progression Scheme⁹. With the introduction of the MACPS, an office order dated 5th March, 2012 was issued by the Assistant Secretary, Textiles Committee (Government of India, Ministry of Textiles) reading as follows:

"Consequent upon grant of 3rd Financial upgradation to the next higher grade pay of Rs.7600/- w.e.f. 02.11.2009 under the Modified Assured Career Progression Scheme and the option exercised vide his letter dated 15.02.2012, the pay of Shri K.V. Gopalakrishnan, Quality Assurance Officer (EP & QA) posted at Regional Office, Textiles Committee, Bangalore, is fixed as per rules as under:

MACP Due and effective date	PF and GP on due date of MACP	Pay and GP on due date of MACP	Next GP granted under MACP	Option	Pay to be fixed under MACP	
					Pay	GP
3 rd MACP on 02.11.2009	Rs.15600-39100 + Rs.6600 (PB-3)	Rs.24500 + Rs.6600	Rs.7600	Date of upgradation	Rs.25440	Rs.7600

⁹ MACPS

Summary of fixation						
Pay as on 02.11.2009					Rs.25440	Rs.7600
Increment of 01.07.2010					Rs.26440	Rs.7600
Increment of 01.07.2011					Rs. 27470	Rs.7600

This is issued in supersession of office order dated 01.03.2012."

- (vi) The respondents granted the appellant Rs.7600 as Grade Pay on their own. Such act was not triggered by any persuasion on his part.
- (vii) More than 5 years after the appellant earned the third financial upgradation with effect from 5th March, 2012, with Grade Pay of Rs.7600, a notice dated 4th August, 2017 was issued to the appellant calling upon him to show cause within 14 days why action should not be initiated for recovery of excess payment made to him on wrongful grant of Grade Pay of Rs.7600 instead of Rs.6600/- under III MACP w.e.f. 02.11.2009 till date.
- (viii) The appellant duly responded to the notice on 21st August, 2017, explaining why no deduction ought to be made. Incidentally, it was the contention of the appellant that his entitlement to Rs.7600 as Grade Pay was perfectly in accordance with law and justified and, therefore, no further action ought to be taken towards recovery of any amount.
- (ix) The appellant was due for retirement on superannuation on 30th November, 2017. On 30th November, 2017 itself, an office order was issued by the Secretary, Textiles Committee. Paragraphs '5' and '6' of the said office order read as follows:

"5. Without prejudice and pending action from the Textiles Committee on the directions of the Ministry vide its letter dated

11.05.2016 and advice of Ministry of Textiles, it has been decided to clear the pension and pensionary benefits to Shri K.V.Gopalakrishnan, Assistant Director (EP & QA), ROTC Bangalore. Provisionally as if his Grade Pay is being regulated at Rs.6600/- . Accordingly the calculation of excess drawal of pay from the date of grant of 3rd MACP till the date of retirement is worked at Rs.1,90,547/- (Annexure-I) and the same has been withheld from the DCRG in the interest of Textiles Committee as well as to minimize the pensioner's hardships.

6. Nevertheless, the release of pension and the pensionary benefits being provisional subject to the pending action from the Textiles Committee on the directions of the Ministry vide its letter dated 11.05.2016 and advice of Ministry of Textiles, it shall have no legal impact otherwise. Accordingly, this office order is released withholding Rs.1,90,547/- from the Gratuity payable to Shri K.V. Gopalakrishnan, Assistant Director (EP & QA), ROTC Bangalore."

(x) Aggrieved by the office order dated 30th November, 2017, the appellant invoked the jurisdiction of the Tribunal. Considering decisions rendered by the Calcutta, Guwahati and Chandigarh Benches as well as the Principal Bench of the Central Administrative Tribunal on similar issue, as well as placing heavy reliance on O.M dated 9th September, 2010, issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, the Tribunal held that the appellant was eligible for Grade Pay of Rs.7600 under the MACPS. While allowing the original application, it was directed as under:

"7. Therefore, we hold and declare that applicant is eligible for Grade pay of Rs.7600 benefit to be extended to him within one month next. The benefit which was available to the applicant and granted earlier will be restored to him within two months next without interest and thereafter at the interest at the rate of GPF which is normally available."

(xi) Dissatisfied with the order of the Tribunal, the respondents invoked the jurisdiction of the High Court under Articles 226 and 227 of the Constitution successfully, as noticed at the beginning of this judgment.

5. We have heard Ms. Bina Madhavan, learned counsel for the appellant and Mr. Brijender Chahar, learned Additional Solicitor General, representing the respondents at some length.
6. Ms. Madhavan invites our attention to O.M. dated 9th September, 2010 and the clarification provided by the appropriate ministry in answer to question no.3, forming part of the annexure to such memorandum. According to her, if the contention of the respondents that the appellant was erroneously granted Grade Pay of Rs.7600 be treated as correct and their contention that the appellant was entitled to Rs.6600 as Grade Pay is accepted, in reality, since the appellant was granted Grade Pay of Rs.6600 at the stage he earned the second financial upgradation, he would be deprived of the third financial upgradation upon completion of 30 years of service as envisaged in the MACPS. This, according to her, would defeat the object of the MACPS.
7. Having regard to the clarification provided in the O.M. dated 9th September, 2010, she urges that the order of the Tribunal be restored and the appeals be allowed by quashing the impugned orders.
8. On the contrary, Mr. Chahar refers us to the decision of this Court dated 27th March, 2018 in ***Union of India and Others v. Mukti Singha***¹⁰ to contend that the appellant could not have become entitled to a grade pay higher than what he would have got on actual promotion in the hierarchy. He invites our attention to a clarification issued on 13th December, 2012, extracted in ***Mukti Singha*** (supra) to the following effect:

¹⁰ C.A. No.3321 of 2018

"Thus, financial upgradations under ACP/MACP Schemes cannot be to higher Grade Pay than what are be allowed to an employee on his normal promotion, in such cases financial upgradation under MACP Scheme would be granted to the same Grade Pay."

9. According to Mr. Chahar, the coordinate Bench of this Court upon consideration of such clarification as well as the decision of this Court in ***Secretary, Government (NCT of Delhi) and Other v. Grade-I Dass Officers' Association and Others***¹¹ held as follows:

"5. In our opinion, the view taken by the High Court that the respondents are entitled to grade pay higher than what they may get on actual promotion in the hierarchy cannot be sustained. The High Court erred in distinguishing the judgment on the ground that the same related to ACP Scheme. We do not find any reason to exclude the principle laid down therein for interpretation of MACP. Moreover, clarification referred to above fully supports this interpretation."

10. It is, therefore, the contention of Mr. Chahar that the claim of the appellant is squarely covered by the view expressed in ***Mukti Singha*** (supra) and, therefore, the impugned order of the High Court does not merit any interference.

11. Introduction of the MACPS brought with it multiple queries from various quarters. In order to clear the doubts, which were found worthy of being examined, clarification was necessitated. O. M. dated 9th September, 2010 was a clarification issued by the Government of India on

"SUBJECT:- MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES - CLARIFICATIONS REGARDING."

¹¹ (2014) 13 SCC 296

12. The pointwise clarification was indicated in the annexure to the said memorandum. Insofar as it is relevant for the purpose of a decision on the lead appeal, such clarificatory memorandum reads as follows:

S.NO.	Point of doubt	Clarification
1.	***	***
2.	***	***
3.	<u>How will the benefits of ACP be granted if due between 01.01.2006 and 31.08.2007?</u>	<p>The new MACPS has come into existence w.e.f. 01.09.2008 However, the pay structure has been changed w.e.f. 01.01.2006 Therefore the previous ACPS would be applicable in the new pay structure adopted w.e.f. 01.01.2006. Para 6.1 of Annexure-1 of MACPS is only for exercising option for coming over to the revised pay structure and not for grant of benefits under MACPS. The following illustrations would explain the position.</p> <p>(A) ***</p> <p>(B) In case of normal promotional hierarchy:</p> <p>Date of appointment in entry Grade in the pre-revised pay scale of Rs.5500-9000: 01.10.1982</p> <p>1st ACP granted on 09.08.1999: Rs.6500-10500</p> <p>(pre-revised) 2nd ACP due on 01.10.2006 (as per the existing hierarchy): Rs.10000-15200 (pre-revised).</p> <p>Therefore, 2nd ACP would be in PB-3 with Grade Pay of Rs.6600 (in terms of hierarchy available):</p> <p><u>3rd financial upgradation under MACPS would be due on 01.10.2012 in the immediate next higher grade pay in the hierarchy of recommended revised pay band and grade pay of Rs.7600.</u></p>

(emphasis ours)

13. Contention of Mr. Chahar, resting on the decision in ***Mukti*** (supra), is misconceived. The view of the coordinate Bench extracted (supra) was based on consideration of an office order dated 13th December, 2012. This office order was not issued by the Ministry of Personnel, Public Grievance and Pensions, Government of India but issued by the Railway Board on behalf of the Ministry of Railways. It was the decision of the Ministry of Railways that financial upgradation under ACPS/MACPS cannot be to a higher grade pay than what can be allowed to an employee on his normal promotion and that in such cases, financial upgradation under MACPS would be granted to the same grade pay. The office order dated 30th December, 2012, issued by the Railway Board, Ministry of Railways would be applicable for Railway employees but not employees under the Ministry of Textiles. Pertinently, such office order does not supersede O.M. dated 9th September, 2010, issued by the Ministry of Personnel, Public Grievance and Pensions. The respondents can, therefore, derive no benefit from the decision in ***Mukti Singha*** (supra) since it dealt with employees of the Railways.

14. The High Court in the impugned order harshly commented that though the appellant was not entitled to Grade Pay of Rs.7600, he took the benefit of the same for over 5 years from 2012. Such an observation defies logic and reason. The appellant having been granted Grade Pay of Rs.6600 at the time of second upgradation under ACPS, he would naturally consider grant of Rs.7600 as Grade Pay under the MACPS at the time of third upgradation to be in order. More importantly, it was the respondents who had proceeded to grant him Grade Pay of Rs.7600 on 5th March, 2012. Any sharp practice has

not been and could not be attributed to the appellant. It would have been desirable if the High Court were a bit more courteous in its expression.

15. Further, the High Court was of the view that any payment made by the employer in excess of entitlement of the employee could be recovered by the employer subject to the condition that the employee is heard before an order for recovery is made. Since public money is involved, it was open to the respondents to rectify the mistake committed and direct recovery of excess payment made to the appellant. While it is true that the appellant was issued a notice to show cause, mere issuance of such notice was not enough. The High Court was required to consider whether the appellant's claim with reference to O.M. dated 9th September, 2010 was justified. In this behalf, we have noticed a glaring omission in the impugned order of the High Court. It seems inexplicable that the High Court failed to consider the scope, effect and import of O.M. dated 9th September, 2010, which was quoted *in extenso* by the Tribunal in its order dated 13th February, 2019. We are constrained to observe that the omission of the High Court to refer to O.M. dated 9th September, 2010, even remotely, does suggest non-application of mind.

16. In course of hearing, obviously, we had the occasion to peruse the writ petition filed by the respondents before the High Court in between the lines. Although, several documents forming part of the writ petition were marked as annexures **A to K & K1 to K5**, for reasons best known to them, the respondents did neither refer to nor annex a copy of O.M. dated 9th September, 2010. Mr. Chahar could not provide a satisfactory explanation as

to why the respondents had not chosen to place the said office memorandum on record or, to even cursorily refer to it in the pleadings.

17. Having noticed such failure/neglect of the respondents, we are of the considered opinion that the point in issue as to whether the appellant should have been entitled to Grade Pay of Rs.7600 or Rs.6600 need not detain us any longer. The respondents did not approach the High Court by making a full disclosure of all the relevant data/information and have been successful in obtaining a favourable order in a manner which cannot but be frowned upon. The officers, who were the 2nd and 3rd petitioners before the High Court, must be blamed for such failure/neglect, which prompts us to hold that the High Court not having been approached with clean hands, the writ petition itself should have been dismissed at the threshold.

18. We record Mr. Chahar's submission that steps to recover Rs.1.9 lakh from the appellant's gratuity will not be taken forward since the process to recover such sum has been initiated more than 5 years after the third financial upgradation was earned by the appellant on 5th March, 2012. We are of the opinion that this approach would be in accord with the decision of this Court in ***Rafiq Masih v. State of Punjab***¹². However, it is Mr. Chahar's contention that the appellant's retiral benefits may be permitted to be worked out considering Rs.6600 as his Grade Pay on the date of his retirement, i.e., 30th November, 2017.

19. The respondents by their aforesaid conduct of not having approached the High Court upon making a full disclosure of all the relevant

¹² (2015) 4 SCC 334

memoranda/circulars issued by the appropriate ministry in the Government of India, more particularly the clarification provided by the Ministry of Personnel, Public Grievances and Pensions *vide* O.M. dated 9th September, 2010, did not satisfy one of the pre-conditions for entertainment of a writ petition. In view thereof, we are not inclined to accept Mr. Chahar's prayer. It needs no emphasis that a pensioner should not be made to suffer unnecessarily for the remissness of his employer. We expect the Government/employer to uphold pensioners' rights and bring smiles on their faces, not force them to seek intervention of the Court. Pensioners being forced to approach the Court against the Government/employer is the last resort that we expect.

- 20.** We set aside the impugned order of the High Court. The withheld amount of Rs.1.90 lakh shall be credited in the bank account of the appellant within a month from date together with interest @ 6% per annum.
- 21.** The retiral benefits of the appellant shall be worked out treating Rs.7600 as Grade Pay drawn by him on the date of his retirement, i.e., 30th November, 2017. The differential amount on account of unpaid retiral benefits shall also be released in favour of the appellant with identical rate of interest within a period of two months from date.
- 22.** The lead appeal stands allowed.
- 23.** However, the connected appeal is dismissed as no appeal lies against an order dismissing a review petition in view of the provision in Order XLVII

Rule 7, Code of Civil Procedure, 1908. We may refer to the decision of this Court in ***Sandhya Educational Society v. Union of India***¹³ in this regard.

24. Since the core issue has not been determined by us, this order shall not be treated as precedent.

.....J.
(DIPANKAR DATTA)

.....J.
(MANMOHAN)

NEW DELHI.
APRIL 30, 2025.

¹³ (2014) 7 SCC 701

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petitions for Special Leave to Appeal (C) No(s) . 10491-10492/2022

[Arising out of impugned judgment and order dated 03-03-2020 in WP No. 14295/2019 (S-CAT) 01-04-2022 in RP No. 86/2022 passed by the High Court of Karnataka at Bengaluru]

K V GOPALAKRISHNAN

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(WITH IA No.83822/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES AND IA No. 83822/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 30-04-2025 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE MANMOHAN

For Petitioner(s) : M/S. Lawyer S Knit & Co, AOR
Ms. Bina Madhavan, Adv.
Mr. Nimesh Thomas, Adv.
Mr. Yashovardhan Choudhri, Adv.

For Respondent(s) : Mr. Brijender Chahar, A.S.G.
Ms. Rajeshwari Shankar, Adv.
Mr. Raman Yadav, Adv.
Ms. Vaishali Verma, Adv.
Ms. Vimla Sinha, Adv.
Ms. Rekha Pandey, Adv.
Dr. N. Visakamurthy, AOR

UPON hearing the counsel the Court made the following

O R D E R

1. Leave granted.
2. The lead appeal i.e., civil appeal arising out of SLP (Civil) No. 10491/2022 is allowed and the connected appeal i.e., SLP (Civil) No. 10492/2022 is dismissed in terms of the signed order.
3. The operative part of the order reads as under:

"22. The lead appeal stands allowed.

23. However, the connected appeal is dismissed as no appeal lies against an order dismissing a review petition in view of the provision in Order XLVII Rule 7, Code of Civil Procedure, 1908. We may refer to the decision of this Court in ***Sandhya Educational Society v. Union of India***¹ in this regard.

24. Since the core issue has not been determined by us, this order shall not be treated as precedent."

4. Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS

(SUDHIR KUMAR SHARMA)
COURT MASTER (NSH)

(Signed order is placed on the file)