

Jacob Thomas vs Union of India

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Court : Kerala

Decided On : Feb-26-2021

Judge : Honourable Mr. Justice Alexander Thomas, Honourable Mr. Justice K. Babu

Appeal No. : WA/76/2021

Appellant : Jacob Thomas

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS
& THE HONOURABLE MR. JUSTICE K. BABU FRIDAY, THE 26TH DAY
OF FEBRUARY 2021 / 7TH PHALGUNA, 1942 W.A.No.70 OF 2021
(AGAINST THE COMMON JUDGMENT DATED 9.3.2020 IN WP(C)
26358/2015(T) OF HIGH COURT OF KERALA)
APPELLANTS/PETITIONERS: 1 K.V.G.ACHARI, AGED 68 YEARS,

DEPUTY DIRECTOR -EIC (RETD), SREEDARSH HOUSE,
PULLEPPADI ROAD, KATHRIKKADAVU, ERNAKULAM DISTRICT,
KERALA-682 017. 2 JACOB CHANDA PILLAI, DEPUTY DIRECTOR-

EIC (RETD), PLOT NO.109, GCDA COLONY, THOTTAKKATTUKARA P.O., ALUVA, ERNAKULAM DISTRICT, KERALA-683 108. 3 J.SUDHIRANJAN, DEPUTY DIRECTOR-EIC (RETD), ANJANAM HOUSE, KARUMOM, THIRUVANANTHAPURAM DISTRICT, KERALA-691 002. 4 C.C.CHANDRAMOHAN, DEPUTY DIRECTOR-EIC (RETD), DARPAN HOUSE, VADAKKUMTHALA P.O., KARUNAGAPPALLY, KOLLAM DISTRICT, KERALA-690 536. BY ADV. SHRI.JOHN T.PAUL
RESPONDENTS/RESPONDENTS: 1 UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF COMMERCE AND INDUSTRY, UDYOG BHAVAN, NEW DELHI-110 007. 2 THE CHAIRMAN, EXPORT INSPECTION COUNCIL OF INDIA,

3RD FLOOR, NDYMCA CULTURAL CENTRE BUILDING, 1 JAI SINGH ROAD, NEW DELHI 110 001. 3 THE DIRECTOR, EXPORT INSPECTION COUNCIL OF INDIA, 3RD FLOOR, NDYMCA CULTURAL CENTRE BUILDING, 1 JAI SINGH ROAD, NEW DELHI 110 001. R1-3 BY ADV. SRI.T.V.VINU, CGC THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 26.02.2021, ALONG WITH WA.76/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS & THE HONOURABLE MR.JUSTICE K. BABU FRIDAY, THE 26TH DAY OF FEBRUARY 2021 / 7TH PHALGUNA, 1942 W . A.No.76 OF 2021 (AGAINST THE COMMON JUDGMENT DATED 9.3.2020 IN WP(C) 35360/2016(T) OF HIGH COURT OF KERALA)
APPELLANT/PETITIONER: JACOB THOMAS, AGED 70 YEARS, S/O.LATE V.C.THOMAS, VALYATHU HOUSE, KAYAMKULAM P.O., ALAPPUZHA DISTRICT, KERALA-690 205, NOW RESIDING AT WING-4, 005 L, ARATT FELICITA APPARTMENTS, MYLASANDRA ROAD, BEGUR, BANGALORE, KARNATAKA-560 068. BY ADV. SHRI.JOHN T.PAUL
RESPONDENTS/RESPONDENTS 1 UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF COMMERCE

AND INDUSTRY, UDYOG BHAVAN, NEW DELHI-110 007. 2 THE CHAIRMAN, EXPORT INSPECTION COUNCIL OF INDIA, 3RD FLOOR, NDYMCA CULTURAL CENTRE BUILDING, 1 JAI SINGH ROAD, NEW DELHI-110 001. 3 THE DIRECTOR, EXPORT INSPECTION COUNCIL OF INDIA, 3RD FLOOR, NDYMCA CULTURAL CENTRE BUILDING, 1 JAI SINGH ROAD, NEW DELHI-110 001. 4 THE JOINT DIRECTOR, EXPORT INSPECTION AGENCY-KOCHI, PANAMPILLY NAGAR SOUTH, ERNAKULAM, KERALA-682 035. R1-4 BY SRI.KRISHNADAS P.NAIR, CGC THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 26.02.2021, ALONG WITH WA.70/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.A.No.70 /2021 & W. A.No.76/ 2021 ALEXANDER THOMAS & K.BABU, JJ.
----- Writ Appeal Nos.70 of 2021 & 76 of 2021 (arising out of the common judgment dated 9.3.2020 by the learned single judge in W.P.(C).Nos.26358/2015 & 35360/2016)
----- Dated this the 26th day of February, 2021

COMMON JUDGMENT

Alexander Thomas, J The above writ appeals have been filed by the partially successful petitioners in W.P.(C)No.26358/2015 and W.P. (C)No.35360/2016 dated 9.3.2020 to challenge the impugned

judgment rendered by the learned single judge in the afore said

writ petitions to the limited extent to denies arrears of pay and allowances to them for the period from the grant of Modified Assured Career Progression (MACP) Scheme, (for short 'MACP' Scheme), in the post of Deputy Director, held by them prior to the retirement from service of the 2nd respondent/Export Inspection Council of India.

2. Heard Sri.John T.Paul, learned counsel appearing for the appellants in the above two cases and Sri.T.V.Vinu, learned Central Government Counsel (CGC), appearing for the respondents in the writ appeals.

3. It is common law that the 'MACP' Scheme in question was introduced and enforced (implemented) in the services under the respondent/Union Government of India on

19.5.2009 with effect from 1.9.2008 as per Ext.P1 proceedings dated 19.5.2009 (para No.9 of Ext.P1). The said scheme as per Ext.P1 was then applicable only to the officials working in various services covered therein under the Union Government. Later the 2nd respondent/Export Promotion Council of India has adopted the provisions contained in Ext.P1, MACP Scheme on 6.10.2010 and has implemented the same with effect from 1.9.2008.

4. All the appellants/writ petitioners herein have retired from service on various periods i.e., between 2009 and

2014. The four appellants in W.A.No.70/2021 have retired

from service on 31.5.2012, 30.9.2009, 30.11.2013 & 30.11.2014 respectively, whereas the sole applicant in W.A.No.76/2021 has retired from service on 30.6.2010. The

appellants were holding the post of Deputy Director at the relevant time. It is common law that the norms for either regular promotion from the category of Deputy Director or for grant of 'MACP' Scheme in that post are that the official concerned should have at least 'very good' gradings in their respective ACRs for the five year period prior to the due date claimed shown in the 3rd MACP (as per clause 17 of the MACP Scheme). Further for the purpose of grant of the 3rd MACP, in the post of Deputy Director, the incumbents should have completed 30 years total service reckoned from the initial entry level post. Even incumbents in the post of Deputy Director in the service of the respondent council, have been granted the MACP benefit only after satisfying that they had secured 'very good' entries for all the five years in question. The said benefit has been denied to the appellants on the ground that they have not secured 'very good' entries for all the five years in question.

5. The case of the writ petitioners/appellants herein is to the effect that, their gradation only as 'good' in their respective ACRs had not been communicated to them and

since the requisite bench mark for either regular promotion or the 3rd MACPs in the post of Deputy Director is 'very good' entries for the five years period in question, their gradation as 'good' and not as 'very good', should be taken as having adverse civil consequences to the individual concerned for the purpose of either regular promotion or for the purpose of 3 rd MACPs. The case of the appellants is to the effect that, none of them were informed about the so-called gradation as 'only good' and not as 'very good' for the relevant years in question by the Competent Authority concerned and that the said un- communicated lower gradation as 'only good' and not as 'very good' should be ignored and it that be so, they are entitled for grant of MACP Scheme. The learned Singe Judge in the impugned judgment found that, in the decision rendered by the Two Judge Bench of the Apex Court in the case in Dev Dutt Vs. Union of India and others [(2008) 8 SCC 725], it has been held that, the obligation of the Competent Authority of the employer is to communicate not only adverse entries in the register but also to communicate all entries in the ACRs and that many of time promotion to the higher post

in a clerical post may be depended upon having 'very good' higher gradation/entries in the ACR and merely because the gradation period of them is 'good' and not as 'very good' etc., cannot be said to be one, as it is the defect of having any adverse civil consequences and that in such cases, it is only to be held that non-communication of the entries of only lower gradation, as 'good' and not as 'very good' etc., will certainly

have adverse civil consequences on the incumbents concerned, especially matters of promotion on the basis of selection posts, wherein the criteria proceeds could be merit of suitability etc. More over, it was held by the Apex Court in the said decision that, even if the entries in the ACR are 'very good' or 'excellent' etc., the employees should be notified for that, they have sufficient knowledge that the superiors, who were closely supervising them have appreciated them so that it will

give more incentive for them to be more efficient in future.

6. However, in the facts of the case, the Two Judge Bench of the Apex Court in Dev Dutt's case (supra), after having noted that the lower gradation was not communicated

to the petitioners therein and held that the said non- communication of the lower gradation compared to the higher gradation, would amount to an illegality and therefore liable to be quashed and thus had remitted the matter to the competent

Authority/the employer concerned to consider the representation of the employee concerned for up-gradation of the ACR for the relevant year and then, the Governmental Authority/employer was directed to take a considered decision on the said plea for up-gradation and if the plea for up- gradation is allowed, then the promotion should be considered afresh on that basis. The afore said decision of the Three Judge Bench of the Apex Court in Dev Dutt's case (supra) has been followed in a subsequent Two Judge Bench decision of the Apex Court's case in Abhijit Ghosh Dastidar Vs. Union of India and others [(2009) 16 SCC 146]. In the said case in Dastidar's case, the appellant was Post Master General during the relevant period and his eligibility to be promoted as to the Higher Grade Group-A of the Indian Postal Service and then it to be posted as the Chief Post Master General etc. A reading of paragraph No.3 of the above said judgment of the

Apex Court in Dastidar's case, (supra) would show that in the said case, the Central Administrative Tribunal, Patna Bench, by an earlier order rendered on 27.5.2002, had directed the Authority not to consider the impugned order of caution dated 22.9.1997' and 'the order of adverse remarks dated 9.6.1998' for the period in question for the year 1997, while considering the case of the appellant therein for promotion. In the light of the said order, the appellant contended that these two adverse entries should not have been considered by DPC. The Apex Court in para No.7 again considered the above said decision in Dastidar's case (supra) and thereafter, the Apex Court held that, though the appellant had retired from service and so he is not entitled to any pay and allowances for the period for which he had not worked in the Higher Grade Group-A, but his retrospective promotion from 28.8.2000 shall be considered for the benefit of his pension and

other retrial benefits as per rules.

7. The learned counsel for the appellant pointed out that in the facts of the said case in *Abhijit Ghosh Dastidar Vs. Union of India and others* [2009 (16) SCC 146], the higher promotion/grade sought for therein was Higher Administrative Grade Group-A which involved change of duties and responsibilities and since the officials had not actually performed their duties and responsibilities and as they had already retired from service, the Apex Court has limited the actual relief only for consideration of refixation of pension and other retirement benefits etc., as per rules.

8. In the instant case, the learned Single Judge after

noting the above said rulings found that, since the writ petitioners have already retired from service and the period in question for which ACRs may have to be redone etc., pertain to a period which is long before their retirement etc., it may not be equitable to remit the matter to the competent Authority for redoing the ACR process by considering the plea of the appellants/petitioners for up-gradation of their un- communicated 'good' entries. Accordingly after harmonizing the rival contentions, learned Single Judge held that, non- communication of the lower gradation 'good' in comparison to the higher gradation 'very good', is illegal and the entire process of redoing ACR for the period which had occurred

long ago need not be done, as it will be inequitable and therefore directed the respondents in the writ petition to grant the MACP benefits to the petitioner on a notional basis for the purpose of pension and to refix the last pay of the petitioners on the basis of such conferred ACPS benefits so that the pensionary benefits will be revised, on such revised last pay refixed. Thus the learned Single Judge has declined the relief of actual grant of pay and allowances for the period from the grant of MACP benefits to the appellants and has confined it only to the benefit of revised pension, etc. Later, before the filing of these appeals, the respondents had fairly come forward and complied with the judgment of the learned Single Judge by issuing proceedings and directions in Annexure-R1(a), whereby the MACP benefits are given to the writ petitioners on a notional basis and their last pay has

4	Sh.C.C.Chan	B.Sc.	T0-	31	15600-	III	27.07
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V.Good DETAILS OF EX-OFFICERS OF EIC/EIAs FOR MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPs)

S.No.	Name,	Qualifi	Post	Total	Presen	Eligib
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1st	Sh.K.V.G	B.Tech	T0-	37	15600-	III
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2nd	Sh.Jacob	B.Sc.	T0-	32	15600-	III
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3rd	Sr.J.Sud	M.Sc.	T0-	31	15600-	III
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Sole	Sh.Jacob	M.Sc.	T0-	32	15600-	III
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10. The due dates for consideration of the 3 rd MACP

benefits in the post of Deputy Director for the four appellants in W.A.No.70/2021 are 1.9.2008, 6.4.2011 and 27.7.2011 and that for the sole appellant in W.A.No.76/2021 is 1.9.2008. The first appellant has secured 'very good' entry only for one year, for all the other four years, he had secured the ACR entry only 'good'. The 3rd appellant in W.A.No.70/2021 has secured only 'good' entries for all the five years in question. The 4 th appellant has secured 'good' entry only for one year and 'very good' entries for the other four years in question. The sole appellant in W.A.No.76/2021 secured 'good' entries for three years and 'very good' entries for two years, whereas the 2 nd appellant in

W.A.No.70/2021 has secured 'very good' entries for the four years and for the first year in question his gradation is shown as 'good'/'very good'. He had requested Sri.John T.Paul-learned counsel appearing for the appellants as to whether the parties would insist that the matter be

remitted to the competent authority concerned for redoing the ACR process after considering the plea for upgradation etc. Sri.John T. Paul, learned counsel appearing for the appellants pointed out that, the said exercise may not preferred by the appellants at this distance of time and most of them have also retired from service at the relevant time and only fresh superior officers were retained in service in a mechanical manner and at this distance of time it will not be equitable to do that exercise. Moreover, after hearing both sides, it appears that, if this Court orders that exercise and it is found that all or any of the appellants may not get 'very good' entries for all the five years in question, then the plea for grant of the 3rd MACP benefits on merits will have to be repelled in totality, which would imply that what is now being

secured by them by way of partial relief of revisionary/pensionary benefits by grant of the notional MACP benefits may also be taken away from them.

11. After hearing both sides, we are of the firm view that, more particularly, in view of the above said submissions made by the appellants that the course of action taken by the

learned Single Judge in the impugned judgment in this case is harmonizing the rival pleas and taking care of the rights and interests of both sides, is to be upheld. Therefore, we are of the considered view that the impugned directions and orders given by the learned Single Judge in W.P.(C) in exercise of well considered discretion, may not be reversed. However, one thing of the matter is that, the second appellant in W.A.No.70/2021 has secured 'very good' entries for all the four years from 2005 - 08 and for the first year in question, in 2004, he has secured 'good' entry, it is classified as 'good' as well as 'very good'. Therefore the above said entry in the ACR of the 2nd appellant in W.A.No.70/2021 both as 'good' and 'very good' is to be reckoned only as 'very good', as the ambivalent classification given by the officer cannot be used to detriment of the incumbent

and the ambiguity should be construed in favour of the second appellant and not in favour of the competent Authority. Hence the 2 nd appellant in W.A.No.70/2021 should be treated as having 'very good' entries for all the five years in question, from 2004 up to

2008. Hence we order and declare that the 2 nd appellant in W.A.No.70/2021 is entitled for grant of 3 rd MACP benefits in the post of Deputy Director, from the due date

(1.9.2008), and Annexure-R1(a) proceedings dated 24.6.2020 issued by the 2nd respondent produced along with the dates on 4.2.2021 filed by respondents 1 to 3 in W.A, will stand modified to the limited extent that, the second appellant in W.A.No.70/2021 will get not only the revised pensionary benefit as ordered in Annexure-R1(a), but will also get the actual arrears of pay and allowances due to him consequent to the conferment of the 3 rd MACP benefits, with effect from the due date, i.e., 1.9.2008. Orders in that regard should be passed by the 2nd respondent, giving the benefit of the actual 3 rd MACP promotion to the 2nd appellant in W.A.No.70/2021 in the post of Deputy Director with effect from 1.9.2008 and also granting him the arrears of full pay and allowances, consequent to such MACP benefits in that post should be ordered and sanctioned in his favour and disburse to him within a period of two months from the date of receipt of a

copy of the judgment. With these observations and directions the above Writ Appeals will stand disposed of. Sd/- ALEXANDER THOMAS, JUDGE Sd/- K. BABU, JUDGE ss

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