



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 147 of 2023

Date of Decision: 29.08.2025

Smti. Anamika Dutta,
D/o (Late) Gitendu Narayan Dutta,
R/o Quarters No. G-73, Raj Bhavan, Shillong-793001,
East Khasi Hills District, Meghalaya **.... Petitioner(s)**

- Versus -

1. State of Meghalaya represented by
The Chief Secretary, Government of Meghalaya,
Shillong, Meghalaya.
 2. Commissioner & Secretary to the Governor of Meghalaya,
Raj Bhavan, Shillong, Meghalaya
 3. Deputy Secretary to the Governor of Meghalaya,
Raj Bhavan, Shillong, Meghalaya
 4. Secretary to the Government of Meghalaya,
Personnel & AR Department.
 5. Deputy Secretary to the Government of Meghalaya,
Personnel & AR(B) Department
Shillong, Meghalaya
 6. Managing Director,
Meghalaya Tourism Development Corporation Ltd.,
Shillong, Meghalaya **... Respondent(s)**
-



Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s)	:	Mr. H. Buragohain, Adv. with Ms. S. Langstieh, Adv.
For the Respondent(s)	:	Mr. A.M. Tripathi, GA with Ms. R. Colney, GA (For R 1-5) Mr. S. Sen, Adv. with Mr. M.U. Ahmed, Adv. (For R 6).

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|--|--------|
| i) Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) Whether approved for publication
in press: | Yes/No |
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JUDGMENT AND ORDER

1. The brief facts are that the petitioner had initially joined the office of the respondent No. 6, as a Contractual Management Trainee from 1991 to 1993, on a monthly stipend, and on 01.05.1993, was appointed as Supervisor with a basic pay of Rs. 1750/-. After serving in that capacity for nearly 17(seventeen) years, she was then appointed as an Assistant Manager in 2010, though at a lower pay scale than of her previous post. To compensate



the same, the respondent No. 6 granted her a notional increment under FR 23(1). Thereafter, in 2011, the petitioner was deputed to the Governor's Secretariat (Raj Bhavan), as Comptroller of Household, and was permanently absorbed into the Governor's Secretariat in the year 2014.

2. The petitioner by the instant writ application claims that though she is entitled to financial upgradation under the Assured Career Progression (ACP) Scheme, for her 21(twenty-one) years of service in the MTDC (1993-2011), and under the Modified Assured Career Progression (MACP) Scheme, following absorption in 2014 in the State Government, the same has been rejected by the respondents, which has prompted her to file this writ petition.

3. Mr. H. Buragohain, learned counsel for the petitioner in his written arguments has put forward the following points for determination, which are as follows:

- (i) Whether the MTDC Authorities could deny the claim of the petitioner under the ACP Scheme, i.e. the 1st ACP benefit upon completion of 12(twelve) years of service



i.e. (1993-2005), when the said scheme had been adopted by the MTDC on 05.07.2011.

- (ii) Whether the one increment of Rs. 460/- received as financial upgradation on her appointment to the post of Assistant Manager can be construed to be under the ACP Scheme.
- (iii) Whether the petitioner would be eligible to benefits under the ACP Scheme adopted by the State of Meghalaya vide its O.M. dated 22.02.2010, and thereafter, by the MTDC vide notification dated 05.07.2011.
- (iv) Whether the petitioner is eligible to benefits under the MACP Scheme brought into effect by O.M. dated 19.12.2017, by the State of Meghalaya.

4. The learned counsel on the first point has submitted that the respondents have clearly ignored the fact that the writ petitioner has a continuing cause of action from the date of the adoption of the ACP Scheme by the State of Meghalaya, and thereafter, by the MTDC. It is submitted that due to the inaction of the MTDC, the petitioner was denied her 1st ACP



benefit, which she had become entitled to in the year 2005, after completion of 12(twelve) years of service in a regular post. In support of his arguments, the learned counsel has cited the following decisions.

- (i) *Union of India vs. Ramakrishnan, (2005) 8 SCC 394***
- (ii) *State of Punjab vs. Jagjit Singh, (2017) 1 SCC 148***
- (iii) *Union of India vs. Balbir Singh Turn, AIR 2018 SC 206***
- (iv) *Union of India & Ors. vs. M.V. Mohanan Nair, AIR 2020 SC 5107***
- (v) *Chairman Railway Board & Ors. vs. C.R. Rangadhamiah, AIR 1997 SC 3828***

5. On the second point of determination, the learned counsel submits that though the MTDC Authorities admit that Rs.460/- was a notional increment, and that the next increment of the petitioner was due on 01.09.2011, the stand taken that such notional increment is a financial upgradation to reject the claim of the petitioner of the benefits under the ACP Scheme, is unsustainable. It is further submitted that the denial of the benefits is misplaced, inasmuch as, the same is opposed to the terms of the ACP Scheme. In support of this contention that notional increment given to create a parity or absorption cannot be treated as financial upgradation under promotional schemes, and to show the difference between pay protection and



actual progression under ACP/MACP Schemes, the learned counsel has placed the following two decisions:

- (i) ***K.K. Agarwal vs. State of Haryana, (2013) 15 SCC 523***
- (ii) ***Balbir Singh vs. Union of India, (2015) 4 SCC 204***

6. On the third point, it is submitted that it is an admitted fact that the writ petitioner entered her service as Supervisor in the year 1993, and continued to render her service till 07.08.2011, as Assistant Manager in the MTDC, whereafter she was deputed to the Governor's Secretariat, and is continuing till date. It is contended that the petitioner till date, has not been offered any promotion to any post, and that there has been stagnation in her service career, without any financial upgradation, which is about to cross 30(thirty) years. The stand taken by the State respondents, he submits, that the ACP Scheme is not applicable to the case of the petitioner, as she is hit by Clause 5 of the said scheme, and therefore, not entitled to receive any benefits, runs contrary to the stand taken by the MTDC that the petitioner being covered by the scheme, her case had already been considered in the year 2011, when on being appointed to the post of Assistant Manager received a notional increment of Rs. 460/- as financial upgradation. The learned counsel contends that apart from the respective stands of the



respondents, a plain reading of both the schemes i.e. ACP and MACP Schemes, clearly show that since the date of joining in 1993, the petitioner has not received any promotion or financial upgradation, in spite of the two schemes squarely covering the case of the petitioner, the eligibility of which has to be considered as per the provision, and from the date of her joining to a regular post on a regular basis.

7. On the fourth point, the learned counsel reiterates the fact that the writ petitioner had entered into service as Supervisor in the year 1993 in MTDC, and continued till 07.08.2011 as Assistant Manager, whereafter, she was deputed to the Governor's Secretariat, and therefore, should have been considered by the Screening Committee to be eligible for the benefits of both the schemes, as the date of the implementation of both the schemes cover the case of the petitioner. It is also submitted that the ACP scheme was adopted by the State of Meghalaya on 22.02.2010, and the MTDC adopted the same on 05.07.2011, which was made enforceable from 07.07.2011, and thereafter, the MACP scheme was adopted by the State of Meghalaya on 19.12.2017, replacing the earlier ACP scheme, and that the petitioner although in service, was never extended any benefits under the ACP and MACP schemes. The entitlements/benefits of the petitioner it is asserted,



under the schemes continued to subsist as the authorities under the terms of the ACP scheme, were required to examine the cases of all the eligible candidates from time to time by constituting Screening Committees. The learned counsel has also contended that though the MTDC have put forward the case that the petitioner having approached this Court, after a lapse of over 11(eleven) years, no subsisting right or cause of action exists, the same cannot be sustained, in view of the facts and circumstances of the case, wherein, it is evident that her grievances are continuing since adoption of the said schemes. As such, he submits, it cannot be said or held that there has been any delay and laches on the part of the petitioner in approaching this Court. In this context, the learned counsel has cited the decisions of; *(i) Union of India vs. Tarsem Singh, (2008) 8 SCC 648* and *(ii) Karnataka Power Corporation Ltd. vs. K. Thangappan, (2006) 4 SCC 322.*

8. The learned counsel has then submitted that it is not in dispute that during the period taken together from 1993 till the date of filing the instant writ petition in the year 2023, the petitioner was ever extended with any benefits under the ACP and MACP, and though she had filed representations from 2021 onwards, the same were rejected. As such, he submits the claim of the petitioner is continuing to subsist due to the inaction



of the respondent authorities in addressing the grievances of the petitioner. The learned counsel has again cited the case of *Union of India & Ors. vs. Tarsem Singh* (supra) and has submitted that this decision covers the case of the petitioner and that the claim made in the writ petition is still alive and subsisting and the same cannot be construed to be a dead claim. On the point that has been raised by the respondents that the writ petition is hit by the non-joinder of a necessary party i.e. the MTDC, the learned counsel submits that the Managing Director of the MTDC, who has been arrayed as the respondent No. 6, is an authorized representative of the Corporation and has also filed the affidavit-in-opposition on a representative capacity before this Court. He contends that the respondents therefore, cannot raise this ground and submits that the Supreme Court in various judgments, allows the High Court to exercise its extra-ordinary powers without being constrained by procedural formalities. The learned counsel, has also asserted that it has been a consistent judicial approach that where the CPC is not strictly applicable, its principles are implied by selective application and in support of this argument, has placed reliance on the judgment of *Poonam vs. State of U.P. (2016) 2 SCC 779*. He has then concluded his submissions, by praying that the reliefs as prayed be allowed, as the respondents have wrongfully



deprived the benefits due to the writ petitioner without any justifiable cause or reason.

9. In reply Mr. A.M. Tripathi, learned GA with Ms. R. Colney, learned GA for the respondents Nos. 1 to 5 submits that the petitioner was on the rolls of the MTDC as its employee with lien on her post in MTDC till 25.11.2014 and that on her appointment to the post of Assistant Manager in MTDC, her pay as Supervisor, which was higher than that of Assistant Manager was protected under Rule 2 of the FR & SR, and that she was given an increment of Rs. 460/- as a one-time measure by the MTDC. Most importantly, it is submitted that the petitioner became a government employee only on 25.11.2014, and therefore, will be entitled to all benefits as available to her in law with effect from 25.11.2014. Her past service however, he submits is being counted for the purposes of her pension as per the Office Memorandum of the Government of India dated 29.08.1984, and adopted by the Government of Meghalaya vide O.M. dated 25.01.1990.

10. The learned counsel then submits that the ACP benefit, is available only as per the Scheme dated 22.02.2010, and in this context, to urge this point, has referred to the relevant clauses of the ACP Scheme



namely clauses 2(3), clause 3 and clause 5, which are reproduced hereinbelow: -

“Clause 2(3)- Casual workers (including those with temporary status or those conferred with regular casual worker status and employees appointed under ad-hoc basis. Regulation 3(f) and contract service shall not be eligible for the benefits under the scheme. [Pg. 65]

Annexure-Conditions for grant of Financial Upgradations under the ACPS:

Clause 3 – Counting of Regular service for the purpose of the ACP scheme shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. however, past continuous service in another department of the government of Meghalaya in a post carrying identical scale of pay prior to regular appointment through proper channel in a new Department, without break, shall also be counted towards qualifying regular service for the purpose of the Scheme only (and not for regular promotions).

.....

5. Past services rendered by an employee in another State Government. Statutory body/Autonomous body/Public Sector organization before appointment in any Department of the Government of Meghalaya shall not be counted towards regular service.”

11. As per the Scheme, the learned counsel submits that the ACP benefits are available to an employee only after absorption in services on a regular basis which is 26.11.2014 in the present case, and that the Scheme does not permit the counting of past services in a PSU for calculation of qualifying service under the ACP Scheme. It is submitted that an employee



of a PSU even in cases where the PSU is owned 100% by the Government, is not an employee of the Government as the Government has no control over the sanction of his post, eligibility of his post, or any stage of recruitment of his post. In support of this argument, the learned counsel has placed the following authorities: -

- i) A.K. Bindal vs. Union of India (2003) 5 SCC 163*
- ii) State of Bihar & Ors. vs. Baban Sharma (order dated 22.03.2023 in LPA No. 160 of 2018, Patna High Court)*
- iii) O.M. No. 35034/3/2008/Estt.(D) dated 19.05.2009 issued by DoPT Government of India notifying MACP Scheme, clause 10- 'Past Service', Annexure-1.*

12. The learned counsel then submits that it is an admitted fact that the petitioner was not an employee of the State Government before 26.11.2014 and therefore, cannot claim any ACP/MACP benefit from the State Government. This fact is clear he submits, from the representations addressed to the MTDC dated 29.06.2022, 22.11.2022 and 07.12.2022, where ACP benefits was sought from the MTDC and not from the State Government, which shows that the petitioner admitted and understood her legal position, and it was only on the rejection of her claim by the MTDC, that she filed a representation dated 06.02.2023, requesting for ACP from the State respondents for the first time. The MTDC rejection letter dated



19.12.2022, the learned counsel submits, is solely based on the fact that as the petitioner having been granted an increment of Rs. 460/- on 01.11.2010, hence ACP could not be granted to her and it is not that the MTDC took the stand that the petitioner had no claim over ACP benefits, as she had been absorbed by the State Government.

13. The learned counsel has then contended that the writ petition is hit by delay and laches, as she has approached this Court only in the year 2023, when admittedly the cause of action or the claim of ACP had arisen in the year 2003 and 2013 itself. The petitioner therefore, he submits is entitled for counting of her past services in MTDC only for the purposes of pension, and her past services in MTDC, have been specifically excluded for being counted for grant of any ACP/MACP benefits by a Policy decision of the State Government which is universally applicable to all its employees. The petitioner's claim for ACP/MACP prior to 26.11.2014 he contends, lies with the MTDC and her eligibility is to be decided by that organization as per the Scheme. He lastly submits that there is no legal right in favour of the petitioner to institute the present writ petition to seek the reliefs prayed for against the State respondents Nos. 1 to 5, which are without any basis in law and in fact.



14. On behalf of the respondent No. 6, Mr. S. Sen, learned counsel has submitted that the petitioner had consciously abandoned the post of Supervisor and applied for the post of Assistant Manager, and on her being selected and appointed in order to ensure her last drawn pay in the post of Supervisor which was not higher than the new post, she was given an increment in order to rationalize the pay scale. Any stagnation of pay scale he submits, occurred while she was in the post of Supervisor much before the implementation of the ACP Scheme and that there is no denial that the stagnation if any, ceased after she left the post of Supervisor, inasmuch as, on her appointment as Assistant Manager, she entered into a new cadre and was provided a new job profile and higher pay scale.

15. The learned counsel submits that the ACP Scheme has been introduced to deal only with existing cases of stagnation and the Scheme was implemented by the MTDC with effect from 07.07.2011 prospectively, whereas the petitioner's alleged stagnation occurred in the post of Supervisor with effect from 1993 till 2010, whereafter, she applied for the post of Assistant Manager, thereby ending the stagnation on her own volition. The petitioner he submits, cannot claim benefit of the Scheme to apply post stagnation, and if her claim for benefit under the ACP Scheme is permitted



for past stagnation in a post she willfully quit, it will open a flood gate of such claims. The MTDC he submits, never intended for the Scheme to apply to any case of past stagnation.

16. The learned counsel has then submitted that notwithstanding the petitioner's eligibility or entitlement to the benefit as per the Scheme, she would have become eligible after the first milestone of 12 years' service in 2005, considering her joining year of 1993, but however, the ACP Scheme was implemented by the MTDC only with effect from 07.07.2011, and has since been superseded by the MACP Scheme. The petitioner he contends cannot now claim benefit for the service period of 1993 to 2005 in 2023 under a replaced/superseded Scheme, that too as such a belated stage, coupled with the fact that there is no vested right in the ACP Scheme. The learned counsel has placed reliance in the judgment of the ***Union of India vs. S. Ranjit Samuel, 2022 SCC OnLine SC 368***. It is further submitted that there has been an inordinate delay in seeking redressal on the part of the writ petitioner considering that the claim is for the service period of 1993-2010, and the ACP Scheme implemented with effect from 07.07.2011, and her first representation was made only on 29.06.2022. The learned counsel has reiterated the aspect of delay, and submits that delay and laches has rendered



the claim of the writ petitioner stale; and in this context, has relied upon the judgment in the case of ***CEO vs. S. Lalitha 2025 SCC OnLine SC 916*** and judgment dated ***06.03.2024*** passed in ***WP (C) 246 of 2022 (Amanda Basaiawmoit vs. State of Meghalaya)***.

17. On another point in issue, it has been submitted that there has been non-joinder of necessary parties and MTDC being a corporation has to sue and be sued in its own name. It is further submitted that no relief has been sought against the MTDC, though representation of the writ petitioner was rejected by a letter dated 19.10.2022, which has not been specifically challenged and the petitioner had all through addressed representations for ACP/MACP to the State under the impression that upon being absorbed by the Raj Bhavan, she is that State Government employee and her total services shall be reckoned from the date of joining MTDC in 1993. The prayers he contends are inconsistent and all reliefs are sought from the Deputy Secretary, Governor of Meghalaya and no relief sought from the MTDC. The learned counsel on this point has also placed reliance on the following judgments: -

- i) ***Chief Conservator of Forests vs. Collector (2003) 3 SCC 472***
- ii) ***Praveen Bethapudi vs. Savithramma 2010 SCC OnLine Kar 2294***



iii) *Bharat Amratlal Kothari vs. Dosukhan Samadkhan Sindhi*
(2010) 1 SCC 234

18. The learned counsel has also reiterated the submissions made by the counsel for the State respondents that the Corporation is not a Department of the Government and submits that regular service only includes service in another Department of the Government of Meghalaya and that the Corporation is a distinct entity and its affairs are managed and controlled by a Board of Directors and not by the State Government. He therefore submits, the petitioner is not entitled to the reliefs claimed and that the writ petition is hopelessly barred by delay and laches.

19. Heard learned counsel for the parties. The issue in question simply put, is whether the writ petitioner in the course of her service firstly in the MTDC, and later under the State Government would be eligible to avail of the benefit of ACP and MACP, taking into account the course of her career, and also the other attendant facts and circumstances, such as the question of delay and laches and non-joinder of necessary parties.



20. As per the materials on record, the petitioner was appointed in a regular post of Supervisor in the MTDC, a Public Sector Undertaking on 01.05.1993, and thereafter, after serving for nearly 17(seventeen) years was selected and appointed to the post of Assistant Manager by order dated 15.11.2010. As per the ACP Scheme, which was formulated to address career stagnation for employees in isolated posts with no promotional avenues, the same provided for two financial upgradations the first being after 12(twelve) years of service and the second after 24(twenty-four) years of service. The ACP Scheme was implemented in the State of Meghalaya on 22.02.2010 and was adopted by the MTDC on 05.07.2011, and as such, if the Scheme was applied retrospectively the petitioner would have completed the first milestone on 30.04.2005 and would have been entitled to the benefit of financial upgradation. However, due to her appointment to the post Assistant Manager on 15.11.2010, her stagnation in the post of Supervisor ceased before the ACP Scheme was implemented, which would not have been the case had she continued to stagnate in the post of Supervisor, as she then would have become eligible for a second financial upgradation under the ACPS in 2017.



21. The Modified Assured Career Progression Scheme (MACPS) was implemented in the State of Meghalaya on 01.01.2017 and replaced the ACPS, by providing for quicker career progression benefits and was designed to further reduce the waiting period by provisioning for 3(three) financial upgradations, instead of the earlier 2(two), at an interval of 10 years. The petitioner at the time of the implementation of the MACPS, had rendered 6(six) years of service under the State respondents having joined the Governor's Secretariat initially on deputation on 08.08.2011 and thereafter, was permanently absorbed on 26.11.2014. It is also relevant to note that since her joining into permanent service under the State respondents, the petitioner has already received a financial upgradation in the pay scale from Level-15 to Pay Level-16 on 04.08.2021. As such, the petitioner for her services under the State Government will also not be eligible for any benefit under the MACPS.

22. It would also be apt to refer to the arguments that have been advanced with regard to whether the one increment of Rs. 460/- received as financial upgradation on her appointment to the post of Assistant Manager can be construed to be under the ACP Scheme. This to the mind of this Court, has little relevance in the discourse and cannot be construed to be a benefit



under the ACP Scheme, inasmuch as, the same was in the nature of pay protection and not a financial upgradation, on her being appointed to the post of Assistant Manager in the MTDC.

23. Coming to the contention of the petitioner that for her past service in the MTDC, an autonomous corporate body, the State respondents were liable to allow her the benefit of the ACPS, the same as placed by the counsel for the State would not be available, in view of clause-5 of the ACP Scheme which does not allow the counting of past service rendered by an employee in another State Government, Statutory Body/Autonomous Body/Public Sector Organization before appointment in any Department of the Government of Meghalaya. In the opinion of this Court, the watershed moment in the service of the petitioner was the transition from the MTDC to the State Government and are two distinct chapters in her service, that cannot be reconciled for the purposes of counting of her past service to vest in her any right to claim a cumulative benefit from the two Schemes i.e. ACP and MACP. This aspect is also fortified by the fact that the petitioner had addressed her representations, filed in the year 2022, seeking the benefit of the ACP only from the MTDC, and on the rejection thereof, had then prayed for benefits under the ACP from the State respondents by a representation



dated 06.02.2023 for the first time. The petitioner therefore, having left the service under the MTDC before the implementation of the ACPS, cannot now seek to maintain her claim for consideration for grant of retrospective benefit under the said Scheme which has since been replaced by the MACPS. Further, having entered regular service under the State Government in 2014 and having been given a financial upgradation in 2021, the petitioner is also not eligible or entitled to any further relief as claimed.

24. It may be further noted herein also that ACP or MACP Schemes have been introduced to address only existing cases of stagnation and as observed earlier, had been implemented by the MTDC with effect from 07.07.2011 prospectively, whereas the petitioner's stagnation had occurred in the post of Supervisor with effect from 1993 to 2010, and on her appointment as Assistant Manager in 15.11.2010, i.e. before the implementation of the Scheme, the petitioner was no longer stagnant in the post of Supervisor. On the aspect of claim and retrospective application of Career Progression Schemes, the Supreme Court in the case of ***Union of India vs. S. Ranjit Samuel & Ors.*** reported in ***2022 SCC OnLine 368*** at Para 12 has held as follows:-



*“12. The issue is no more res integra. Recently this Court, in the case of [Vice Chairman Delhi Development Authority](#) (supra), decided on 8th March, 2022, has considered a similar challenge with regard to the employees of the Delhi Development Authority. In the said case also, the employees had contended that they had completed 24 years of service in January, 2009 and as such, they were entitled to get the second benefit/financial upgradation under the ACP Scheme. This court, relying on its earlier judgments in the cases *Union of India vs. M.V. Mohanan Nair* and *Union of India vs. R.K. Sharma* observed thus:*

*“35. 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 upgradation 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.*

36. 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 v. Union of India](#) [(1991) 3 SCC 47]. Therefore, it is held that employees' contention that they acquire a vested right in securing the second ACP benefit is insubstantial.



37. 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, 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."

[emphasis supplied]

25. What can be gleaned from the above quoted judgment is that employees cannot claim a vested right to benefits under an old ACP Scheme once it was replaced by the MACP Scheme even if the new Scheme was applied retrospectively, and that eligibility did not guarantee entitlement as the Scheme was merely an incentive based policy, rather than a statutory right. The judgment cited by the counsel for the petitioner on retrospective entitlement i.e. the case of *Union of India & Ors. vs. Balbir Singh Turn &*



Ors. (supra) will have no application and is on a different footing, as in the instant case, the grant of ACP/MACP is not part of the pay structure in the service of the writ petitioner.

26. Much has also been made as to whether the alleged deprivation of the benefit of the ACP Scheme to the petitioner would constitute a continuing wrong and as such would not be hit by delay and laches and in this regard, both sides have tendered their arguments. This Court has perused the judgments cited by the writ petitioner especially the case of *Union of India & Ors. vs. Tarsem Singh (supra)* wherein it has been held that where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy with a rider that the reopening of the case should not affect the settled rights of said parties and for example should only relate to payment or fixation of pay or pension. In the considered view of this Court, in the instant case the ACP/MACP Schemes not being linked to any pay structure being only an incentive, and the entitlement to pension of the petitioner having been reckoned cumulatively taking into account her past services in MTDC also, as allowed by this Court by order dated 13.04.2022 in WP(C) No. 101 of 2019, the writ petition seeking benefit under the ACP Scheme is also hit by delay and laches, as no injury persists.



27. The issue that has been raised by the respondent No. 6, as to non-joinder of necessary parties is also another vital point that deserves some attention, inasmuch as, the MTDC is a corporation having its independent corporate identity and has to sue or be sued in its own name. Though the petitioner had addressed her representations to the MTDC in 2022 from whom relief was sought, she however has not arrayed the Corporation as a necessary party in the proceedings, which surely cannot be said to be a mere procedural lapse or a technicality that can be overlooked. In this context, it would be useful to refer to the judgment in the case of *Chief Conservator of Forests vs. Collector* (*supra*) cited by the counsel for the respondent No. 6, where at paragraphs 12 &13, it has been held at follows:-

“12. It needs to be noted here that a legal entity - a natural person or an artificial person - can sue or be sued in his/its own name in a court of law or a Tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/proceedings permit correction of the cause-title so that the party before the court is correctly described; however a misdescription of a party will not be fatal to the maintainability



of the suit/proceedings. Though Rule 9 of [Order I CPC](#) mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of [Order I CPC](#) provides remedy when a suit is filed in the name of the wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings.

13. The question that needs to be addressed is, whether the Chief Conservator of Forest as the appellant-petitioner in the writ petition/appeal is a mere misdescription for the State of Andhra Pradesh or whether it is a case of non-joinder of the State of Andhra Pradesh - a necessary party. In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in [Article 300](#) of the Constitution and [Section 79](#) of CPC viz. in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the Government set-up, from the lowest to the highest, is not recognised as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or Tribunal. We make it clear that this principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceeding in its name because in that event, it will not be a suit or proceeding for or on behalf of a State/Union of India but by the statutory authority as such.”



28. The other judgments which have been cited by the petitioner namely; case of *Udit Narain Singh Malpaharia vs. Additional Member Board of Revenue, AIR 1963 SC 786* and *Poonam vs. State of U.P. (2016) 2 SCC 779* being of no assistance to the case of the petitioner are not elaborated or discussed.

29. As such, in the totality of the circumstances, the case of the petitioner fails on all fronts firstly, on the question of entitlement, the delay in seeking legal remedy and also for non-joinder of necessary parties, and accordingly writ petition is dismissed, however with no order as to costs.

JUDGE

Meghalaya
29.08.2025
"V. Lyndem-PS"