

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 515 OF 2013

CORAM: *Thursday*, this the *21st* day of January, 2016

HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER

1. C.K. Viswanatha Kurup, S/o. Krishnan Kaimal K (late)
(Retd. Post Graduate Teacher, Kendriya Vidyalaya No. 1,
Calicut – 673 005.), Residing at : 1/3135A,
"Viswaragam", East Hill, West Hill, Kozhikode – 673 005.
2. K.U. Indira, W/o. P. Gopalakrishnan,
(Retd. Trained Graduate Teacher
Kendriya Vidyalaya No.1, Kochi – 682 004.)
Residing at : "Vandana" House No. 1/45,
Thyaazhuthu Vazhi (West), Nayarambalam,
Ernakulam District – 682 509.
3. Elsamma Ulahannan, W/o. M.K. Ulahannan
(Retd. Trained Graduate Teacher
Kendriya Vidyalaya No. 1, Cochin – 682 004.)
Residing at : 33/3364A, Madathil House,
Payyattil Lane, Vennala (P.O), Cochin – 682 028.
4. Manoharan K, S/o. Krishnan K,
Trained Graduate Teacher (Sanskrit),
Kendriya Vidyalaya No. 1, Calicut – 673 005.
Residing at : "RITHAM", Palat Nagar,
Thiruvannur Nada (P.O), Kozhikode – 673 029.
5. Krishnan T.K, S/o. Raman T.K,
Librarian, Kendriya Vidyalaya No. 2,
Calicut – 673 016. Residing at: Thazhe Kuni House,
Mudadi Post, Calicut – 673 307.
6. Sureshkumar V.K, S/o. Kuttan Ezhuthachan,
Primary Teacher, Kendriya Vidyalaya,
Malappuram. Residing at : Vellaya Kadavathu House,
Vilayur West (P.O), Palghat District – 679 309.
7. K. Sugumaran, S/o. B. Kolappa Pillai
Post Graduate Teacher, Kendriya Vidyalaya,
AFS, Akkulam, Trivandrum. Residing at :
ARA 297, Thoppil Lane, Anayara, Trivandrum – 695 029.
8. T. Selvamony, S/o. Theivanayaga Perumal,
Retired Trained Graduate Teacher,
Kendriya Vidyalaya, Kadavanthra,
Kochi – 20. Residing at : Sooraj Apartments,
GA – I – 44/1202 – A,
Kaippilly Madrasa Lane, LFC Road,
Kaloor, Kochi – 682 017.



9. Padma Panicker, W/o. D.K. Panicker,
Retired Trained Graduate Teacher
Kendriya Vidyalaya, Kadavanthra,
Kochi – 682 020. Residing at : Krishna Kripa,
No. 221-A, Kaniampuzha Road, Eroor North,
Trippunithura, Ernakulam – 682 306.
10. V. J. Sasidharan Asari, S/o. Kuttappan
Retired Trained Graduate Teacher,
Kendriya Vidyalaya, Kadavanthra,
Kochi – 682 020. Residing at : No. 5/507,
Ashiana, Near Bhaskar Saw Mill,
Udayamperur, Ernakulam – 682 307.

- Applicants

(By Advocate Mr. T.C. Govindaswamy)

Versus

1. Union of India represented by
Secretary to the Government of India,
Ministry of Human Resource Development
Department of School Education & Literacy
UT-2 Section, Ground Floor, B-Wing,
Shastri Bhavan, New Delhi – 110 001.
2. The Secretary to the Government of India
Ministry of Finance, New Delhi – 110 001.
3. The Secretary to the Government of India,
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training, North Block,
New Delhi – 110 001.
4. The Commissioner,
Kendriya Vidyalaya Sangathan,
No. 18. Institutional Area, Shahed Jeet Singh Marg,
New Delhi – 110 016.
5. The Deputy Commissioner
Kendriya Vidyalaya Sangathan,
Regional Office, Kadavanthra,
Ernakulam, Kochi – 682 020.

- Respondents

(By Advocate Mr. N. Anil Kumar, Senior PCGC for R- 1 to 3
M/s. Iyer & Iyer for R- 4 and 5.)

The application having been heard on 11th December 2015 the
Tribunal on 21st January 2016 delivered the following :

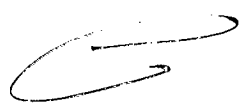
ORDER**Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER**

The applicants herein are teaching staff of the Kendriya Vidyalayas
under the 4th and 5th respondents. The 1st applicant superannuated as a
Post Graduate Teacher and the 2nd and 3rd applicants superannuated as



Trained Graduate Teachers. Applicants 8, 9 and 10 are retired Trained Graduate Teachers. Applicants 4, 5, 6 and 7 are still in service. In this application, the grievance of the applicants relate to extending the benefit of the Modified Assured Career Progression Scheme (MACPS) to the teaching staff, including the applicants. The applicants submit that the teaching staff of the KVS are at par with all other Central Government Civilian Employees and, therefore, they are also entitled to all the benefits as applicable to the other Central Government civilian employees, including the benefit of the ACPS/MACPS. The applicants submit that the National Commission on Teachers was constituted under the Chairmanship of Dr. D.P. Chattopadhyaya with the sole purpose of advancing career prospects of the teaching staff and it was based on those recommendations that Annexure A-1 order for 12 and 24 year promotion was issued. Annexure A-1 did not provide benefit of fitment under FR. 22(I)(a)(1) and hence grant of senior scale was only just a revision of scales of pay and selection to the scale is granted only after completion of another 12 years and subject to the availability of posts to the extent of 20% of the posts in senior scale.

2. On the pretext that Annexure A-1 would constitute a time bound promotion, the benefit of ACPS was not extended to the teaching staff of the KVS whereas the same was granted to the non-teaching staff. Similarly, on the same analogy when MACPS has now been introduced, the benefit of the same is not being extended on the pretext that there is some form of time bound promotion for the teaching staff. The teaching staff of the KVS now stand discriminated in the matter of extension of the benefit of the Time Bound Promotion Scheme implemented in acceptance of the recommendations of the V / VI Central Pay Commission. The applicants submit the Government of Pondicherry and the National Capital Territory of Delhi, have extended the ACP scheme to its teaching staff. The applicants



submit that the KVS and its Board of Governors have already concluded that the teaching staff of the KVS are to be extended the benefit of the MACPS and the issue is now pending with the 1st respondent.

3. The reliefs sought for by the applicants are:

"(i) declare that the applicants are entitled to the benefits of ACPS/MACPS, as introduced by the Government of India with effect from 09.08.99/01.09.2008, or from the dates from which the applicants became due for the benefits of the schemes, whichever is later and direct the respondent accordingly.

(ii) to grant the benefit of the ACPS/MACPS from the date from which the applicants would have received the same had these schemes been made applicable at par with the Central Government employees and grant all the consequential benefits, including arrears of pay and allowances emanating therefrom."

4. The respondents in their reply state that Kendriya Vidyalaya Sangathan is an autonomous body under Ministry of Human Resources Development (HRD) registered under Societies Registration Act of 1860 fully funded by Government of India. The Assured Career Progression Scheme (ACPS) for the Central Government Civilian Employees was made effective vide Department of Personnel and Training (DoPT), O.M No. F. 35034/1/97-Estt. (D) dated 09.08.1999 based on the recommendations of the Fifth Central Pay Commission (5th CPC). The scheme is meant primarily to deal with problems of genuine stagnation and hardship being faced by the employees due to lack of adequate promotional avenues. Benefits under this scheme are to cover Groups B,C and D employees and also such of the Group A employees who are working on isolated posts having neither feeder grade nor promotional grade. The scheme provides for two financial upgradations to teaching staff, without any change in designation, on completion of 12 years and 24 years of regular service. At the time of implementing the Assured Career Progression Scheme (ACPS), the Sangathan was following a scheme of three tier pay scale scheme for the teaching staff of Sangathan:-



Group B

Vice Principal	Entry Scale (Grade II)	Senior Scale (Grade I)	
Post Graduate Teacher	Entry Scale (Grade III)	Senior Scale (Grade II)	Selection Scale (Grade I)

Group C

Trained Graduate Teacher/Headma ster/PET/WET/ Drawing/Home Science Teacher/ Librarian/Yoga Teacher	Entry Scale (Grade III)	Senior Scale (Grade II)	Selection Scale (Grade I)
PRT/ Music Teacher	Entry Scale (Grade III)	Senior Scale (Grade II)	Selection Scale (Grade I)

5. The Assured Career Progression Scheme (ACPS) is meant primarily to deal with problems of genuine stagnation (in a post) and hardship faced by the employees due to lack of adequate promotional avenues. The teaching staff of the Sangathan are not facing lack of adequate promotional avenues due to the three tier scheme referred above. The KVS teachers recognized association (AIKVTA) was called for a hearing wherein the then General Secretary, AIKVTA vide their letter No. F. AIKVTA (8)/2003/1474 dated 04.08.2003 had chosen to remain in the existing scheme viz. Three Tier Pay Scale and accordingly the Ministry of Human Resources Development (MHRD) was apprised of the opinion of the teachers association. Accordingly, the Ministry of Human Resources Development (MHRD) vide their letter No. F.12-10/2001-UT-1 dated 07.01.2005 conveyed that the Government has decided not to extend Assured Career Progression Scheme (ACPS) to teachers and they will continue in the existing scheme of three tier pay scales. No one raised any issue or dispute with regard to the said position until 2010. Based on the recommendations of 6th Central Pay



Commission (6th CPC), the Central Civil Service (Revised Pay) Rules, 2008 have been made effective in Kendriya Vidyalaya Sangathan (KVS). The 6th Central Pay Commission (6th CPC) had also recommended revised Modified Assured Career Progression Scheme (MACPS) with the provision of three financial upgradations during the entire period of service of a Central Government Civilian employee. Accordingly, the Kendriya Vidyalaya Sangathan (KVS) had mooted the proposal duly approved by the Board of Governors of Kendriya Vidyalaya Sangathan (KVS), which was submitted to the Ministry of Human Resources Development (MHRD) on 14.01.2010 requesting to extend the benefits of MACPS to the teaching and non-teaching employees of Kendriya Vidyalaya Sangathan (KVS) in its totality. The Ministry of HRD vide its order dated 20.01.2011 has conveyed the approval of the Ministry extending the MACPS to non-teaching category employees of Kendriya Vidyalaya Sangathan (KVS) which has been implemented by Kendriya Vidyalaya Sangathan (KVS) on 09.02.2011. The General Secretary of AIKVTAA (approved teachers association) submitted a representation on 18.05.2013 before the 4th respondent herein for extending the benefits of MACPS to the teachers of Sangathan.

6. The Ministry of HRD upon receipt of the proposal duly approved by the Board of Governors of Kendriya Vidyalaya Sangathan (KVS) requesting to extend the benefits of MACPS to the teaching and non-teaching employees of Kendriya Vidyalaya Sangathan (KVS) in its totality, immediately forwarded the same to the Ministry of Finance (Department of Expenditure) vide Notes of MHRD at pages 42/N (F No. 3-18/2010-UT-2) for approval of the proposal to grant MACPS to the teaching staff of Kendriya Vidyalaya Sangathan (KVS). The Ministry of Finance (Department of Expenditure) examined the proposal in consultation with the Department of Personnel and Training (DoPT) guidelines issued vide their O.M dated 03.08.2010 and accordingly



informed the Ministry of HRD vide its letter Min of Fin (Exp.) No. 71068/SO(E.IIIA/2013 dated 04.07.2013 stating that the Department of Personnel and Training's (DoPT's) guidelines issued vide O.M. dated 03.08.2010 makes it clear that one of the conditions for MACP Scheme was that the earlier ACPS should have been implemented/adopted by the autonomous/statutory body. Since KVS did not avail the ACPS for the teaching staff and had themselves chosen not to opt the earlier ACP Scheme, the proposal cannot be acceded to. Clause No. 13 of the Modified Assured Career Progression Scheme which has made the position clear, reads thus:-

"Existing time bound promotion scheme, including in-situ promotion scheme, staff car driver scheme or any other kind of promotion scheme existing for a particular category of employees in a Ministry / Department or its offices, may continue to be operational for the concerned category of employees if it is decided concerned administrative authorities to retain such scheme after necessary consultations or they may switch over to the MACPS. However, these scheme shall not run concurrently with the MACPS."

Hence, it was the decision of the teaching staff association to continue in the existing three tier Time Bound Promotion Scheme.

7. The applicants submit that Annexure R-5(a) produced in the reply statement is a consent letter written by S.S. Malik, working General Secretary of AIKVT A. He was only a Working General Secretary authorized to do only the day to day affairs; no policy decision could be taken without the approval of CEC, hence, they concede no legal validity for Annexure R-5 (a). The working General Secretary filed R-5 (a) document on behalf of AIKVT A only, not on behalf of entire teachers of KVS. AIKVT A represents only 35 to 40% of KVS Teachers. The applicants submit that it is for the department to adopt and implement the scheme and not the employees.



8. Applicants claim is to be extended the benefits of ACP and MACP with effect from 09.08.1999 and 01.09.2008. Applicants Association AIKVTA had vide Annexure R-5(a) taken a conscious decision of continuing with the three tier pay scale scheme at the stage when ACP was introduced. The applicants having taken the benefit of the above Association's decision and being satisfied with it, are at this late stage, disowning AIKVTA without providing any arguments of their non-membership of the Association which had taken a decision on behalf of the teaching staff.

9. The Department of Expenditure while considering the extension of MACP to the teaching staff of KVS, drew attention to the Department of Personnel guidelines dated 03.06.2010 wherein one of the conditions for MACP was that ACP should have been in force for availing the benefit of MACP. The AIKVTA took a conscious decision to not opt for ACP. Hence, the choice for not opting for ACP was not made by the Kendriya Vidyalaya Sangathan or the respondent or the parent Ministry but the teaching staff Association which was a recognised and approved one. Applicants did not agitate the choice of non-option at the time of decision was made. Hence, a conscious decision was not only taken but also accepted on implementation. Further the 03.06.2010 guidelines is uniformly applicable to all beneficiaries of the scheme and the applicants are seeking an unilateral exception thereof four years thereafter, giving no sound reason for the exception except that of monetary benefit.

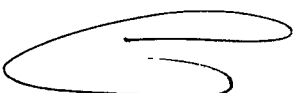
10. It would have been difficult and may be impossible for the Kendriya Vidyalaya Sangathan to obtain the views of all the teachers across the country by personally consulting them or by a referendum to obtain consent of all or otherwise, for adopting the ACP system. In the circumstances the best option was to consult the Teaching Staff Association AIKVTA to



ascertain their views on the move to ACP Scheme. The important fact which comes to notice is that the decision was taken by a process of consultation and was not suo moto thrust on the affected party or the applicants. The applicants also provide no arguments that there was more than one association and the said association if any were not consulted before a decision was made. The appropriate authority/respondent moved in the right direction of consulting the association representing the interest of the teaching staff and hence did not suo moto or unilaterally take a decision. There was nothing arbitrary or malafide in the decision making process. The applicants/applicants' association have missed the bus by taking a conscious decision to opt out of ACP and cannot as a postmortem disclaim ownership after ten years of accepting the decision to continue with the three tier pay scale scheme.

11. The decision taken was what a sensible decision maker could have on the material available before him arrived at. The action, therefore, was bonafide. It is not for the Court to go into the correctness of the choice of decision made by the teacher's association or the respondent from among the various alternatives available before them and open to them. The respondent's action exhibits no illegality or irrationality. It does not suffer from procedural impropriety, nor was it an outrageous defiance of logic - the ingredients which would prompt a re-look at the decision made. The primacy judgment/decision made by the respondent does not require any interference at our hands.


12. The decision for not opting for ACP was taken on a fair balancing of a majority view expressed by an association representing the teaching staff which the respondent construed as the best option available at the particular point in time. We deem it as the best option as the alternative would have



been, a referendum which would have been a shorter stymied version of a country-wide election process, generally adopted for important matters of state which was uncalled for in the case under consideration. There is every presumption in favour of the respondent that the power entrusted had been exercised bonafide and in good faith. The allegation of arbitrariness is more easily made and such an allegation demands proof of a high degree of credibility to stick.

13. The Original Application is dismissed. No order as to costs.

(Dated, the 2nd January, 2016)


(P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

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