

THROUGH PROPER CHANNEL

TO

THE COMMISSIONER

NAVODAYA VIDYALAYA SAMITI

B-15, INSTITUTIONAL AREA, SECTOR-62, NOIDA,

DISTRICT- GAUTHAM BUDH NAGAR.UP-201307

Subject: **REPRESENTATION SEEKING INTRODUCTION/EXTENSION OF MACP SCHEME WITH 3 FINANCIAL UPGRADATIONS AFTER 10,20 AND 30 YEARS OF SERVICE TO THE APPLICANT TEACHER W.E.F. 01.09.2008 IN SUPERSESSION OF THE EXISTING 3-TIERS PAY STRUCTURE.**

1. That the Applicants is a TGT English presently posted at Jawahar Navodaya Vidyalaya, Devrala, Bhiwani (Haryana). The applicant filed an Original Application O.A. No.- 2451/2019 before the Central Administrative Tribunal, Principal Bench New Delhi seeking introduction/extension of MACP Scheme with 3 financial upgradations after 10,20 and 30 years of service to the applicant teacher w.e.f. 01.09.2008 in supersession of the existing 3-Tiers Pay Structure.
2. That this O.A. No.- 2451/2019 was disposed of with direction at admission stage by Hon'ble Tribunal vide Order dated 21.08.2019 with following operative direction:
*"6. The OA is disposed of, leaving it open to the applicants to file representation on specific and limited aspects to the concerned authority, through proper channel. As and when such a representation is made, it shall be dealt with, in accordance with law, within a period of **three months** from the date of receipt of a copy of this order. There shall be no order as to costs."*
3. That in compliance of this Order dated 21.08.2019 of Hon'ble Tribunal in O.A. No.- 2451/2019, the applicant teacher being an aggrieved person is filing this representation through proper channel along with internet downloaded copy of Order dated 21.08.2019 of Hon'ble Tribunal in O.A. No.- 2451/2019 with a request that this representation be dealt with, in accordance with law, within a period of three months from its date of submission through proper channel.

4. That the service particulars of the applicant teacher are submitted as under:

Name-

Designation-

Date of joining-

Promotion details-

Benefits availed under 3-Tier Pay Structure:

Senior scale after 12 years of service on -

Selection scale after 24 years of service on -

Benefits may be availed under MACP Scheme

If scheme is implemented w.e.f. 01.09.2008:

Ist MACP after 10 years' service on -

2nd MACP after 20 years' service on -

3rd MACP after 30 years' service on -

BRIEF HISTORY OF FACTS

5. That in 1971, the MHRD vide O.M. No. F.48-27/71-UT.1 Dated 26.11.1971 revised pay scales of school teachers w.e.f. 27.05.1970 and selection grade equal to fifteen percent of the permanent posts of teachers was introduced w.e.f. 05.09.1971.

Para 3 of the O.M. states as under:

“3. There will be a selection grade equal to fifteen percent of the permanent posts of teachers of the following categories carrying scales of pay as shown below. Appointment to the selection grades will be made on the basis of seniority subject of fitness.”

S.NO.	CATEGORY OF SCHOOL TEACHERS	REVISED PAY SCALES	SELECTION GRADE
i)	PRIMARY SCHOOL TEACHERS	RS. 165-10-215-15-275-EB-15-350	RS. 340-20-400
ii)	MUSIC TEACHERS	RS. 165-10-215-15-275-EB-15-350	RS. 340-20-400
iii)	HEADMASTERS OF PRIMARY SCHOOLS	RS. 220-15-310-20-430	RS. 400-25-500
iv)	TRAINED	RS. 250-20-	RS. 550-30-700

	GRADUATE TEACHERS AND OTHERS IN THE SAME SCALE	450-EB-25- 550	
v)	POST GRADUATE TEACHERS	RS. 350-25- 400-30-700	RS. 600-40-800
vi)	HEADMASTERS OF MIDDLE SCHOOLS	RS. 300-25- 600	RS. 600-30- 630-40-750
vii)	DRAWING TEACHERS GRADE III AND OTHER TEACHERS IN THIS SCALE	RS. 220-15- 310-20-430	RS. 400-25-500
viii)	LABORATORY ASSISTANTS	RS. 125-10- 195-EB-15- 300	RS. 275-20-375

6. That in 1983, National Commission on Teachers (1983-85) was appointed by the Government of India in 1983 under the chairmanship of Prof. D.P. Chattopadhyaya and in 1985, The Government of India announced a New Educational Policy in 1985 and accordingly, the National Policy on Education was implemented in 1986.
7. That in 1986, The concept of opening a Jawahar Navodaya Vidyalaya (JNV) in every district of India was born as a part of the National Policy on Education, 1986 with an aim of providing excellence coupled with social justice. Subsequently, the Navodaya Vidyalaya Samiti (NVS) was registered as a society under the Societies Registration Act, 1860 in February 1986 to set up and run Jawahar Navodaya Vidyalayas.
8. That in 1987, the MHRD vide O.M. No. F.5.180/86-UT.1 Dated 12.08.1987 revised pay scales of school teachers w.e.f. 01.01.1986 and 3-Tier Pay Structure (Career Advancement Scheme) was introduced with Entry Scale, Senior Scale and Selection Grade.
Para 2 of O.M. is reproduced as under:

“2. In partial modification of Finance Ministry’s Notifications No.F.15(1)-IC/86 dated 13th September, 1986 and 22nd September, 1986, by which replacement scales were given to school teachers, it has now been decided that the revised pay scales of school teachers in all Union Territories (except Chandigarh) including Government aided schools and organizations like Kendriya Vidyalaya Sangathan and Central Tibetan Schools Administration etc. will be as under: -

Category of School Teachers	Revised Pay Scales
a) Primary school teachers Senior Scale (after 12 years) Selection Scale (After 12 years in Senior Scale and attainment of qualifications laid down for TGTs)	Rs. 1200-30-1380-EB-30-1560-EB-40-1800-EB-40-2040 Rs. 1400-40-1600-50-1650-EB-50-1950-EB-50-2250-EB-50-2300-60-2600 Rs. 1640-60-2000-EB-60-2360-EB60-2600-75-2750-EB-75-2900
b) Trained Graduate Teachers/Headmasters of Primary Schools Senior Scale (After 12 years) Selection Scale (After 12 years in Senior Scale and attainment of qualifications laid down for PGTs)	Rs. 1400-40-1600-50-1650-EB-50-1950-EB-50-2250-EB-50-2300-60-2600 Rs. 1640-60-2000-EB-60-2360-EB60-2600-75-2750-EB-75-2900 Rs. 2000-60-2300-75-2375-EB-75-2825-EB-75-3200-100-3300-EB-100-3500
c) Post graduate teacher/Headmaster of middle school Senior Scale (After 12	Rs. 1640-60-2000-EB-60-2360-EB60-2600-75-2750-EB-75-2900 Rs. 2000-60-2300-75-2375-

years)	EB-75-2825-EB-75-3200-100-3300-EB-100-3500
Selection Scale (After 12 years in Senior Scale)	Rs. 2200-75-2650-EB-75-2800-100-3200-EB-100-3800-EB-100-4000
d) Vice-principal /Headmaster of secondary school	Rs. 2000-60-2300-75-2375-EB-75-2825-EB-75-3200-100-3300-EB-100-3500
Senior Scale (After 12 years)	Rs. 2200-75-2650-EB-75-2800-100-3200-EB-100-3800-EB-100-4000

9. That the conditions for grant of benefits under the 3 TIERS PAY SCALE SCHEME in terms of The Office Memorandum No.- F.5-180/86-UT-1 Dated 12.08.1987 of the Department of School Education and Literacy (Erstwhile Department of Education), Ministry Of Human Resource Development on the Subject- Revision of Pay Scales of School Teachers is reproduced here as under:

“3. The revised pay scales will be admissible subject to the following conditions: -

- i) *While senior scale will be granted after 12 years to Primary School Teachers, Trained Graduate Teachers/Headmasters of Primary Schools and Post Graduate Teachers/Headmasters of Middle Schools, the selection scale will be granted after 12 years’ service in the senior scale of the respective cadre. For the Vice Principals/Headmasters of Secondary Schools, there will be only senior scale after 12 years and no selection scale.*
- ii) *The number of posts in the Selection Scale for Primary School Teacher, Trained Graduate Teacher/Headmasters of Primary School, Post Graduate Teacher/Headmasters of Middle School will be restricted to 20% of the number of posts in the senior scale of the respective cadre.*
- iii) *The senior scale and selection scale will be given after screening regarding their satisfactory performance by an appropriate DPC.*

- iv) *Every teacher would be required to participate in an In-service training programme of at least three weeks duration before, he/she crosses an E.B. or is promoted to Sr Scale or Selection Scale i.e. once in every six years, provided that where arrangements for such training cannot be made, the appointing authority may exempt a category of teachers for a specific period of time.*
- v) *although for purposes of grant of Selection Scale Primary School Teachers and Trained Graduate Teachers will be required to obtain higher qualifications, they will not be required to shift to an institution of higher level.*
- vi) *Appointment to the post of Principals, Vice-Principals and Headmasters will be made in all schools on the basis of merit.”*

10. That in 1992, the NVS issued an Office Order Dated 30.03.1992 to intimate its administration that NVS has adopted the Central Government Rules and Regulations for its employees mutatis-mutandis as the case may be, till such time Samiti frames its own Rules and Regulations.

11. That in 1996, vide Office Memorandum Dated 31.12.1996, the MHRD made a request to DoPT to bring Kendriya Vidyalaya Sangathan and Navodaya Vidyalaya Samiti under judicial purview of Central Administrative Tribunal (CAT) with following observations:

“2. In this connection it is stated that Kendriya Vidyalaya Sangathan (KVS) and Navodaya Vidyalaya Samiti (NVS) are the two big and expanding autonomous organisations under the department of education and are fully funded by Govt. of India. The hon’ble Minister of Human Resource Development heads these organisations as Chairman and while the Minister of State (Education) is the Vice-chairman of NV Samiti, the Additional Secretary in this department holds the post of Vice-chairman in KV Sangthan. In so far as the pay and allowances and other service matter of its employees is concerned, all the rules and regulations applicable to the Central Government employees are mutatis mutandis adopted by these organisations for their employees.”

12. That in 1997, the 5th central pay commission submitted its report to the central government wherein it recommended a three-grade structure for teachers with improved residency period.

DESIGNATION	GRADE III /RESIDENCY PERIOD	GRADE II /RESIDENCY PERIOD
PRIMARY SCHOOL TEACHERS	10 YEARS	10 YEARS
TRAINED GRADUATE TEACHER/HEADMASTER OF PRIMARY SCHOOL	10 YEARS	8 YEARS
POST GRADUATE TEACHER/HEADMASTER OF MIDDLE SCHOOL	10 YEARS	8 YEARS
VICE- PRINCIPAL /HEADMASTER OF SECONDARY SCHOOL		8 YEARS

13. That vide Government Resolution Dated 30.09.1997, the Central Government considered the recommendations of the 5th CPC and accepted the recommendations with modifications.

Para 8 and 10 are relevant and are reproduced as under:

“8. Department specific recommendations which are not included in this Resolution shall be processed by the concerned Department/Ministry and approvals of the Government obtained in consultation with the Ministry of Finance and/or Department of Personnel and Training.

10. The other recommendations of general nature made by the Commission which are not included in the Annexure are being examined by the Government and decisions thereon will be notified separately.”

14. That in 1998, in terms of Government Resolution Dated 30.09.1997 on 5th CPC Report, the MHRD vide O.M. No. F.5.14/97-UT.1 Dated 07.08.1998 revised pay scales of school teachers w.e.f. 01.01.1996 and 3-Tier Pay Structure (Career Advancement Scheme) of 1987 was continued with revised pay scales till a decision is taken by the

Government with regard to the improvement in residency period proposed for school teachers.

CATEGORY OF TEACHER	PRESENT SCALE (RS.)	REVISED SCALE(RS.)
PRIMARY SCHOOL TEACHER		
ENTRY SCALE	1200-30-1560-40-2040	4500-125-7000
SENIOR SCALE	1400-40-1600-50-2300-60-2600	5000-150-8000 (REVISED TO 5500-175-9000)
SELECTION SCALE	1640-60-2600-75-2900	5500-175-9000 (REVISED TO 6500-200-10500)
TRAINED GRADUATE TEACHER/HEADMASTER OF PRIMARY SCHOOL		
ENTRY SCALE	1400-40-1600-50-2300-60-2600	5500-175-9000
SENIOR SCALE	1640-60-2600-75-2900	6500-200-10500
SELECTION SCALE	2000-60-2300-75-3200-100-3500	7500-250-12000
POST GRADUATE TEACHER/HEADMASTER OF MIDDLE SCHOOL		
ENTRY SCALE	1640-60-2600-75-2900	6500-200-10500
SENIOR SCALE	2000-60-2300-75-3200-100-3500	7500-250-12000
SELECTION SCALE	2200-75-2800-100-4000	8000-275-13500
VICE- PRINCIPAL /HEADMASTER OF SECONDARY SCHOOL		
ENTRY SCALE	2000-60-2300-75-	7500-250-12000

	3200-100-3500	
SENIOR SCALE	2200-75-2800-100-4000	8000-275-13500

“ 2. in continuation of the above, following points are made in order to ensure that there is no wrong interpretation or misinterpretation of the decisions of the Government on recommendations of the Fifth Central Pay Commission:

(ii) Residency Period: the proposed improvement in the residency period in the entry and senior scale for school teachers has been made by the Central Pay Commission in the context of a general Assured Career Progression (ACP) Scheme recommended for Central Government employees. The Government is still examining the proposed ACP Scheme and no decision has been taken with regard to the improvement in residency period proposed for school teachers. It is, therefore, clarified that the existing provisions for grant od senior scale and selection scale shall continue pending decision of the Government.”

15. That on 09.08.1999, the Department of Personnel & Training introduced Assured career Progression (ACP) Scheme for the central Government civilian employees as recommended by 5th CPC vide its Office Memorandum No.-35034/1/97-Estt(D) Dated 09.08.1999.

The conditions for grant of benefits under the ACP SCHEME in terms of The Office Memorandum No.-35034/1/97-Estt(D) Dated 09.08.1999 of the Department of Personnel & Training on the Subject- Assured career Progression Scheme for the central Government civilian employees is reproduced here as under:

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

effect on the second upgradation which would also get deferred accordingly;

5.2 Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit;

9. On upgradation under the ACP Scheme, pay of an employee shall be fixed under the provisions of FR 22(I)a (1) subject to a minimum financial benefit of Rs.100/- as per the Department of Personnel and Training Office Memorandum No.1/6/97-Pay.I dated July 5, 1999. The financial benefit allowed under the ACP Scheme shall be final and no pay-fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade;

13. Existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department -- not the employees -- shall have the option in the matter to choose between the two schemes, i.e. existing time-bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz. for promotion, redistribution of posts, upgradation involving higher functional duties, etc) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality;

16. That in 1999, the NVS amended the existing recruitment rules vide notification dated 29.12.1999 in pursuance of the decisions communicated by the MHRD on the recommendations of the 5th CPC.

17. That the DoPT Vide Office Memorandum No.35034/1/97-Estt(D)(Vol.IV) dated 10.2.2000 has issued clarifications for implementation of ACP Scheme. Point 7 clarification is related to autonomous bodies which is reproduced as under:

S.No.	Point of doubt	Clarification
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7.	<p><i>Whether the instructions on ACPS are applicable to the employees working in the instrumentalities like autonomous/ judicial / statutory bodies? Similarly, whether the orders are applicable to the employees working in industries governed by certified standing orders, Factories Act and Industrial Disputes Act, etc?</i></p>	<p><i>ACPS is applicable only to Central Government civilian employees and, as such, does not get automatically extended to autonomous/statutory bodies. A conscious decision in this regard shall have to be taken by the governing body/competent authority/ organisation concerned. In relation to others, specific cases shall be examined in consultation with the Department of Personnel and Training.</i></p>
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18. That on 20.07.2000, the MHRD vide Letter Dated 20.07.2000 communicated to the Respondent No. 1 NVS that no change in terms and conditions and period of residency for grant of senior and selection scale as given in the earlier Letter Dated 12.08.1987 has been agreed to by the Government till date.
19. That on 06.11.2000, the NVS issued a Notification Dated 06.11.2000 wherein it conveyed that senior scale and selection scale to the teachers and Vice-principals of Navodaya Vidyalayas are to be granted strictly in terms of MHRD Letter Dated 12.08.1987.
20. That on 09.04.2002, the NVS issued a Notification Dated 09.04.2002 on implementation of ACP Scheme to non-teaching staff wherein it conveyed that the implementation of Assured career Progression (ACP) Scheme to the NVS has been considered by MHRD and accordingly, the Executive Committee of NVS has approved its implementation to the non-teaching employees w.e.f. 22.06.2001.
21. That on 31.05.2002, the NVS issued a Notification Dated 31.05.2002 wherein it clarified the modalities to be adopted for granting of senior scale and selection scale to the teachers and Vice-principals of Navodaya Vidyalayas in terms of MHRD Letter Dated 12.08.1987.

22. That on August 25, 2003, the Directorate of Education, Government of NCT of Delhi issued Letter No.F.30-(28)/99/AR/3254-3354 implementing the ACP Scheme of August 9, 1999, Government of India, Department of Personnel for the Delhi Government School with retrospective effect i.e., from August 9, 1999. The guidelines were also issued by the Directorate of Education, Government of NCT of Delhi for the implementation of ACP Scheme vide letter dated August 25, 2003.

23. That on 30.09.2004, the MHRD vide O.M. No. 12-10/2001/UT-1 Dated 30.09.2004 rejected the extension of ACP Scheme to teachers with following observations:

“To

The Secretary (Education)

All UTs

Subject: Applicability of Assured Career Progression Scheme (ACP), to the teachers working in UTs

Sir,

In continuation to this Ministry’s letter of even number dated 28.1.2003, I am directed to stay that the proposal of implementation of ACP Scheme to the teachers of Union Territories has been considered in this Ministry in consultation with DOPT. It has not been found admissible to extend ACP Scheme to teachers and they will have to continue with existing scheme of three tier pay scales.”

24. That on 27.07.2005, the MHRD vide O.M. No. 12-10/2001/UT-1 Dated 27.07.2005 agreed to extend the ACP Scheme to teachers working in UT’s with following observations:

“To

The Secretary

UT Administration of A&N Island

Secretariat

Port Blair

Subject: Applicability of Assured Career Progression Scheme (ACP), to the teachers working under UT Government

Sir,

I am directed to refer to this Ministry's letter of even number dated 30.09.2004 on the above subject and to say that issue of implementing ACP Scheme for school teachers has been reconsidered in this Ministry in consultation with DOPT. In view of the fact that some UTs were willing to implement ACP Scheme for teachers without any relaxation of its essential features the reconsideration became imperative.

- 2. It has now been decided in consultation with DOPT that in those UTs where the administration favour adoption of ACP Scheme, in toto, in place of the existing scheme, the proposal for adoption of ACP Scheme can be considered.*
- 3. The proposal of A&N Administration No. 3-28/2002-D-III (Vol I) dated 28.2.2005 for implementing of ACP Scheme for the teachers of A&N Administration has been considered in light of the views of DOPT, it has been decided to convey the approval of the government for implementing ACP scheme for school teachers of A&N Administration. However, it may be implementing ACP Scheme for school teachers of A&N Administration. However, it may be ensured that the ACP scheme is adopted without any modification and that the scheme is applied across all sections of teachers in your UT."*

25. That on 11.11.2008, the NVS issued a Notification Dated 11.11.2008 for revision of pay scales of employees of NVS in terms of Cabinet Resolution Dated 30.08.2008 on 6th CPC recommendations.

Para 11 of the Notification is pertaining to ACP Scheme and is reproduced as under:

"11. Orders regarding Grant of Assured Career Progression (ACP) and other allowances and facilities for the employees of the Samiti will be issued separately."

26. That on 28.11.2008, the NVS vide Notification Dated 28.11.2008 extended revised allowances to the employees of the Samiti as per 6th CPC recommendations.

27. That on 19.05.2009, the Department of Personnel & Training introduced Modified Assured Career Progression (MACP) Scheme in supersession of ACP Scheme for the central Government civilian

employees as recommended by 6th CPC vide Office Memorandum No.-35034/3/2008-Estt(D) Dated 19.05.2009.

The conditions for grant of benefits under the MACP SCHEME in terms of The Office Memorandum No.-35034/3/2008-Estt(D) Dated 19.05.2009 of the Department of Personnel & Training on the Subject- Modified Assured career Progression Scheme for the central Government civilian employees are reproduced here as under:

- “1. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years’ service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.*
- 4. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of Rs. 1900 in PB-I and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next higher grade pay of Rs. 2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs. 100). After availing financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of Rs. 2400, on regular promotion, he will only be granted the difference of grade pay between Rs. 2000 and Rs. 2400. No additional increment will be granted at this stage.*
- 13. 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 by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch-over to the MACPS. However, these Schemes shall not run concurrently with the MACPS.

14. The MACPS is directly applicable only to Central Government Civilian employees. It will not get automatically extended to employees of Central Autonomous/Statutory Bodies under the administrative control of a Ministry/Department. Keeping in view the financial implications involved, a conscious decision in this regard shall have to be taken by the respective Governing Body/Board of Directors and the administrative Ministry concerned and where it is proposed to adopt the MACPS, prior concurrence of Ministry of Finance shall be obtained.”

28. That on 26.08.2009, the Right of Children to free and compulsory Education Act, 2009 was notified and it came into force on 01.04.2010. Section 23(3) lays down as under:

“23(3): *The salary and allowances payable to, and the terms and conditions of service of, teacher shall be such as may be prescribed.*”

Rule 20 of the Right of Children to free and compulsory Education Rules, 2010 lays down Salary and allowances and conditions of service of teachers as under:

- “20. Salary and allowances and conditions of service of teachers. -
- (1) *The Central Government or the appropriate Government or the local authority, as the case may be, shall notify terms and conditions of service and salary and allowances of teachers of schools owned and managed by them in order to create a professional and permanent cadre of teachers.*
 - (2) *In particular and without prejudice to sub-rule (1), the terms and conditions of service shall take into account the following, namely: -*
 - (a) *Accountability of teachers to the School Management Committee;*

(b) Provisions enabling long-term stake of teachers in the teaching profession.

(3) The Scales of pay and allowances, medical facilities, pension, gratuity, provident fund, and other prescribed benefits of teachers shall be at par for similar qualification, work and experience.”

29. That the MACP Scheme was not directly applicable to the autonomous bodies in terms of Clause 14 of the Annexure-I of MACP Scheme. Therefore, on 03.08.2010, the Respondent No. 4 Department of Personnel & Training issued an Office Memorandum No.-35034/3/2008-Estt(D) Dated 03.08.2010 in continuation of Para 14 of Annexure -I of MACP Scheme to extend Modified Assured career Progression (MACP) Scheme to employees of autonomous bodies with some conditions.

The conditions for grant of benefits under the MACP SCHEME to employees working in Autonomous/ Statutory Bodies in terms of The Office Memorandum No.-35034/3/2010-Estt(D) Dated 03.08.2010 of the Department of Personnel & Training on the Subject- Modified Assured career Progression Scheme for the central Government civilian employees - Clarification regarding, is reproduced here as under

“The undersigned is directed to invite reference to the Department of Personnel & Training (DOP&T)'s Office Memorandum of even number dated the 19th May, 2009 on the subject cited above. Consequent upon introduction of the Modified Assured Career Progression Scheme (MACPS), in view of para 14 of the Annexure-1 of the Scheme, a number of proposals /references seeking extension of the Scheme to Central Autonomous/ Statutory Bodies under various Ministries/ Departments have been received by the Department of Expenditure. The Department of Expenditure has felt that keeping the large number of Central Autonomous/Statutory Bodies in view, it would be appropriate to delegate the power the approving such proposals to the administrative Ministries/Departments concerned. The Department of Expenditure has accordingly approved for extending the benefits of the MACPS to the Central Autonomous/Statutory Bodies under various

Ministries/Departments subject to them satisfying the following four conditions:

- (I) The earlier ACP Scheme was also implemented/adopted by the said Autonomous/Statutory Body.*
 - (II) The proposal to adopt MACP Scheme has been approved by the Governing Body/Board of Directors.*
 - (III) The Administrative Ministry/Financial Adviser of the Ministry has concurred with the proposal.*
 - (IV) The financial implications of adoption of MACP Scheme have been taken into account by the Organisation/Body and the additional financial implications can be met by it within the existing Budget Grants.*
- 2. As per the revised arrangement, the proposal shall be processed by the Financial Advisor concerned in the first instance and subject to it' meeting the requirements spelt out at (i). (ii) and (iv) above, he would obtain the orders of the administrative Head/Secretary concerned for approving the extension of MACPS to such a body.*
 - 3. Above is brought to the notice of all concerned Ministry/Department in continuation of para 14 of Annexure-1 of MACPS dated 19.05.2009.”*

30. It is submitted that condition no. 1 of the DOPT O.M. Dated 03.08.2010 says that the earlier ACP Scheme was also implemented/adopted by the said Autonomous/Statutory Body. It does not say that ACP Scheme was to be implemented for a particular class of employees viz. teachers. It is submitted that once the ACP Scheme was implemented in NVS in 2002, condition no. 1 stands fulfilled. It is submitted that ACP Scheme of 1999 made applicable to all B, C and D Group employees and isolated post of Group A, B C and D. Applicant-Teachers belong to Group-B. ACP Scheme does not recognise Designation of the employees but it only recognises Group of the employees.

31. That on 11.11.2010, the NVS vide Notification Dated 11.11.2010 extended MACP Scheme to the non-teaching employees of the Samiti.

32. That the Ministry of Space vide O.M. No. A.12019/12/2011 Dated 10.04.2015 has implemented the MACP Scheme for the teaching staff. Para 3 of the O.M. is reproduced here:

“3. *In view of the above, and considering the stagnation being faced by the Teachers in Space Central Schools, the Department had examined the feasibility of implementing the Modified Assured Career Progression (MACP) Scheme to the Teaching Staff in Space Central Schools. It has been decided with the approval of Finance to implement the Modified Assured Career Progression (MACP) Scheme, for the Teaching Staff in Space Central Schools, subject to the following conditions: -*

3.1 *The Modified Assured Career Progression (MACP) Scheme is implemented to the Teachers in Space Central Schools with effect from 01.09.2008. The guidelines/instructions issued by the DoPT vide OM No. 35034/3/2010-Estt (D) dated 19.05.2009, and as amended from time to time, shall be followed in toto, for regulating financial upgradation(s) under the MACP Scheme.*

3.2 *As the Teachers in Space Central Schools were eligible for placement of ‘Senior Grade’ and ‘Selection Grade’ on completion of 12 and 24 of years of service, respectively, Assured Career Progression (ACP) Scheme of 1999 will not be applicable to the Teachers.*

3.3 *The placements in Senior Grads and Selection Grades already earned will be first adjusted against the financial upgradation(s) and any financial upgradation(s) due thereafter only will be granted subject to fulfilment of all prescribed conditions for grant of financial upgradation(s), under MACP Scheme, as per DoPT orders.*

3.4 *Consequent on implementation of MACP Scheme to the Teachers with effect from 01.9.2008, *ibid*, the existing scheme of placement to ‘Senior Grade’ and ‘Selection Grade’ on completion of 12 and 24 of years of service, respectively, is withdrawn. However, the existing provisions of selection to Trained Graduate Teachers (TGTs) and Post Graduate Teachers (PGTs), against vacancies, subject to fulfilment of prescribed norms, would continue.*

3.5 *The Teachers shall give an undertaking to the effect that they will not make any claim, whatsoever, in future, should any such scheme under KVS emerge as more favourable to the current MACP Scheme. To this effect, Chief Controller/Controller of VSSC and SDSC SHAR shall obtain an undertaking from all Teaching Staff in Space Central Schools and forward the same to the Department, for records.”*

33. That on 27.05.2015, the MACP Scheme was implemented in Sainik Schools by Sainik School Society, Ministry of Defence vide its Notification Dated 27.05.2015.

34. That in 2016, the 7th CPC in its Report has recommended normal replacement for the pay scales of school teachers. It does not say about residency period etc.

35. That on 28.09.2016, the Department of Personnel & Training introduced Modified Assured career Progression (MACP) Scheme for the central Government civilian employees as recommended by 7th CPC vide Office Memorandum No.-35034/3/2015-Estt(D) Dated 28.09.2016.

36. That in 2017, the CBSE has issued a Notification Dated 25.08.2017 regarding Appointment, Service conditions and duties of the teachers in CBSE affiliated schools. Condition 4 of Annexure-I deals with salary and conditions of service of the teacher:

“4. Salary and Conditions of Service of the Teacher:

a. *The scale of pay and allowances of teachers in the school shall be at par with the similar qualification, work and experience as provided under sec. 23(3) of RTE Act 2009 read with rule 20 (3) of RTE Rules 2010 and in accordance with rule 3.3 (i) (v) of Affiliation Bye-Laws. The salary and other allowances to the teachers shall be transferred through ECS on the last working day of the month.*

b. *In accordance with the provisions of rule 20 (2) of RTE Rules 2010 read with Chapter VII of Affiliation Bye-Laws, the school shall define and publish the terms and conditions of service of*

the teachers to create a professional cadre of teachers to impart quality education and ensure the learning outcomes to the students.

- c. The school shall ensure timely promotion after completion of residency period and benefit of Modified Assured Career Progression (MACP) to its teachers at par with teachers working in the similar grade in Central/State Government schools.*
- d. The school shall prescribe transparent and objective Annual performance Appraisal system on the lines similar to APAR in respect of teachers under Central/State Government, which shall be the basis for promotion and/or MACP.*
- e. The school shall enter into a 'contract of service' with the teacher in accordance to Appendix III of Affiliation Bye-Laws or in the form prescribed by the State/U.T. Government, as the case may be.*
- f. The school shall give due recognition to the academic responsibilities of the teachers and involve them in the educational activities in a dignified manner.*
- g. The school shall not retain the original degree/diploma certificates of the teachers after their appointment. Copies of degree/diploma certificates duly certified by the Head of School shall be placed in the personal file of the teacher in lieu of the original documents."*

It is submitted that Condition 4(c) makes it mandatory for school to extend benefit of Modified Assured Career Progression (MACP) to its teachers at par with teachers working in the similar grade in Central/State Government schools and the NVS has not implemented the CBSE Notification in strict letter and spirit till date.

37. That MACP is a condition of service and this position has been clarified by Respondent No. 3 Ministry of Finance vide O.M. No. F.No.A-26017/166/2018-Ad.IIA Dated 09.01.2019. Relevant portion is reproduced here as under:

"(iv) The MACP is a condition of service and, hence, cannot be given retrospective effect. It is upto Government to take a conscious decision to implement it uniformly from a certain date."

38. That on 30.04.2019, the Department of Telecommunications Ministry of Communications vide O.M. No.: F. No. 4-15(01)/2019-PAT dated 30.04.2019 has extended Modified Assured Career Progression Scheme (MACPS) for Group 'C' and 'D' employees who have opted for Government Service and working in Department of Telecommunications and BSNL/MTNL and it has withdrawn One Time Bound Promotion (OTBP) Scheme and the Biennial Cadre Review (BCR) Scheme w.e.f 01.09.2008.
39. That on 31.05.2019, the Railway Board, Ministry of Railways vide O.M. Dated 31.05.2019 has proposed to extend MACP Scheme to railway school teachers in place of the existing 3 Tiers Pay Structure Scheme (Career Advancement Scheme) in terms of Para 13 of the MACP Scheme and on the ground that MACP Scheme is broadly beneficial than the existing 3 Tier Pay Structure Scheme (Career Advancement Scheme).
40. It is submitted that Central Government has never stated the reasons for non-extension of ACP Scheme/ improved residency period for school teachers of NVS under 5th CPC benefits which is arbitrary and unfair practice. It is submitted that no decision qua improved residency period for school teachers was taken by the Central Government on the recommendations of 5th CPC which is arbitrary, unreasonable, harsh, iniquitous, illegal, unconstitutional and is in violation of Articles 14 16, 21,300-A, 309 of the Constitution of India.
41. It is submitted that non-extension of ACP Scheme w.e.f. 09.08.1999 in terms of the MHRD O.M. No. 12-10/2001/UT-1 Dated 27.07.2005 and MACP Scheme w.e.f. 01.09.2008 under sec. 23(3) of The Right of Children to Free and Compulsory Education Act 2009 read with rule 20 of The Right of Children to Free and Compulsory Education Rules 2010 to the applicant-teachers of the Navodaya Vidyalaya Samiti at par with teachers working in Union Territories is arbitrary, unreasonable, harsh, iniquitous, illegal, unconstitutional and is in violation of Articles 14 16, 21,300-A, 309 of the Constitution of India.
42. It is submitted that the applicant-teacher of the Navodaya Vidyalaya Samiti is entitled for extension of ACP Scheme w.e.f. 09.08.1999 and

MACP Scheme w.e.f. 01.09.2008 in supersession of existing 3-Tier Pay Structure Scheme at par with teachers working in Union Territories under sec. 23(3) of The Right of Children to Free and Compulsory Education Act 2009 read with rule 20 of The Right of Children to Free and Compulsory Education Rules 2010.

43. It is submitted that the Central Government is treating NVS teachers in step motherly manner. It has not extended MACP Scheme to NVS teachers but it has approved the extension of MACP Scheme to staff car drivers, teachers working in Space Ministry Schools, Sainik Schools, Department of Telecommunications etc. This attitude of Central Government is arbitrary, unreasonable, harsh, iniquitous, illegal, unconstitutional and is in violation of Articles 14, 16, 21, 300-A, 309 of the Constitution of India.
44. It is submitted that the teachers working in NVS have been receiving lesser pay than their counterparts teachers working in Delhi Administration Schools, Union Territories Schools, Space Schools, Sainik School, Railway Schools and State Government Schools on account of MACP scheme benefits given to teachers working in Delhi Administration Schools, Union Territories Schools, Space Schools, Sainik School, Railway Schools and State Government Schools.
45. It is submitted that financial upgradation under MACP Scheme is a condition of service of the applicant-teachers of the Navodaya Vidyalaya Samiti under sec. 23(3) of The Right of Children to Free and Compulsory Education Act 2009 read with rule 20 of The Right of Children to Free and Compulsory Education Rules 2010 and in accordance with rule 3.3 (I) (V) Of CBSE Affiliation Bye-Laws and CBSE Notification Dated 25.08.2017 regarding appointment, service conditions and duties of the teachers in CBSE affiliated schools and in terms of Ministry of Finance O.M. Dated 09.01.2019.
46. It is submitted that the condition no. (i) of para 1 of the DOPT O.M. Dated 03.08.2010 on applicability of MACP Scheme of 19.05.2009 to autonomous bodies does not prohibit extension of MACP Scheme of 19.05.2009 to the applicant-teacher of the Navodaya Vidyalaya Samiti.

47. It is submitted that ACP Scheme of 1999 made applicable to all B, C and D Group employees and isolated post of Group A, B C and D. Applicant-Teacher belongs to Group-B. ACP Scheme does not recognise Designation of the employees but it only recognises Group of the employees.
48. That the NVS has not taken any steps to extend MACP Scheme to teachers while the NVS is bound to introduce MACP Scheme with 3 financial upgradations after 10,20 and 30 years of service for the applicant-teachers of the Navodaya Vidyalaya Samiti under sec. 23(3) of The Right of Children to Free and Compulsory Education Act 2009 read with rule 20 of The Right of Children to Free and Compulsory Education Rules 2010 and in terms of CBSE Notification Dated 25.08.2017.
49. That the inaction of the NVS is a continuing wrong and it is affecting salary of the applicant as well as other teachers every month as they are receiving lesser salary due to non-implementation of MACP Scheme and it amounts to denial of 5th, 6th and 7th Pay Commission Benefits in changing circumstances which is illegal and unconstitutional, irrational, arbitrary, discriminatory, iniquitous, contrary to Articles 14,16,21,300-A and 309 of the Constitution of India.
50. It is submitted that clause 13 of MACP Scheme gives liberty to switch over from existing scheme to MACP Scheme independently and Railway Board has taken this legal position into consideration while granting MACP for Railway School Teachers.
“13. 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 by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch-over to the MACPS. However, these Schemes shall not run concurrently with the MACPS.”
51. It is submitted that the NVS never chose to remain under 3-Tiers Pay Structure scheme for its teachers but it waited for the decision of

Central Government on extension of ACP Scheme to school teachers as well as any notification on improved residency period for school teachers.

52. It is submitted that change in circumstances, stagnation and acuteness of promotion has never been taken into account by Central Government after National Commission for Teachers. Neither a National Commission for Teachers has been set up after 1983 nor ACP Scheme of 5th CPC was extended nor MACP scheme of 6th CPC was extended to NVS teachers while 3 Tier Pay Scale Scheme is of 4th CPC which makes denial of ACP/MACP scheme as well as Pay Commission Benefits to the applicant teacher without considering change in circumstances, stagnation and acuteness of promotion is arbitrary, unreasonable, harsh, iniquitous, illegal, unconstitutional and is in violation of Articles 14, 16, 21, 300-A, 309 of the Constitution of India.

53. It is submitted that the Secretaries of Departments of Expenditure (Finance), DOPT, DSEL(MHRD) and Union Minister of HRD in charge are part of Executive Committee of NVS in one capacity and they do not extend ACP/MACP to NVS teachers nor they improve residency period for NVS teachers while they have extended ACP/MACP to similarly situated organizations viz. Union Territories School Teachers, Space School Teachers, Railway School Teachers, Sainik School Teachers, Delhi Administration School Teachers Etc.

PRAYER

In the light of above submissions made in Para 1 to 53 and considering change in circumstances, stagnation, acuteness of promotion, MACP as service condition, existing 3 Tier Pay Scale Scheme is of 4th CPC while ACP scheme is of 5th CPC and MACP is of 6th and 7th CPC and other genuine reasons, you are most humbly requested to kindly please to pass orders qua introduction/extension of MACP Scheme with 3 financial upgradations after 10, 20 and 30 years of service to the applicant teacher w.e.f. 01.09.2008 in supersession of the existing 3-Tiers Pay Structure.

Place

Date

APPLICANT