

(2004) 08 MP CK 0102
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5176 of 2003

Anusuyya Bai and others

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 13-08-2004

Acts Referred:

Citation : (2004) 3 MPLJ 627

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : Umesh Trivedi, for the Appellant; V.P. Nema, Government Advocate and Jaideep Singh, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

This petition was originally filed by Bharatlal Sahu before this Court on 8-10-1986 and was registered as Miscellaneous Petition No. 8295/86, however, on the formation of Madhya Pradesh State Administrative Tribunal, the petition was transferred and on the abolition of the Tribunal, this petition has been received back to this Court for adjudication.

It be seen that original petitioner Bharatlal Sahu is no more in this world to see the fate of his case as he breathed his last long back on 23-11-1992 and the eyes of his legal representatives including his widow, are waiting for the result of this petition.

A low paid Government employee like deceased original petitioner Bharat Lal Sahu on the date of the filing of the petition was serving on the post of Laboratory Attendant in Government Higher Secondary School. He was appointed vide Annexure P/I on 6-4-1956 on the said post. The date on which he was appointed on the post of Laboratory Attendant, the minimum educational qualification for recruitment of the said post was VIIIth standard. Since the petitioner did possess the minimum requisite qualification, he was appointed on

the said post. According to the petitioner from 1-4-1958 new unified scales of pay came into force and the Laboratory Attendants of Higher Secondary Schools (non-collegiate) were given scale of Rs. 45-100. It be seen that the petitioner was also fixed in the said pay-scale. Thereafter unified pay-scale was again revised by the State Government and all the Laboratory Attendants including the petitioner of Higher Secondary Schools irrespective of their educational qualifications were given a revised pay-scale of Rs. 85-140. The Education Department of State of Madhya Pradesh vide its memorandum dated 1-9-1967 (Annexure P/2) made clarification that the scale of pay of Rs. 85-140 is to be given to all the Laboratory Attendants irrespective of their educational qualifications and/or pre-unified pay scale. In the said memorandum it was also cleared that for the recruitment of the post of Laboratory Attendant minimum educational qualification will be Higher Secondary in future. For better understanding, it would be condign to re-write the said memorandum which reads thus :

Subject: Applicability of Unified and Revised Scales sanctioned for the Lab-Attendants in the institution under non-collegiate branch.

There has been a misunderstanding in giving the benefit of unified and revised scales of pay sanctioned by Government under G.A.D. No. 320/141/IPC dt. 2-8-61 to the Lab. Attendants. It is therefore clarified that all Lab. Attendants sanctioned for the various institutions under the

Non-Collegiate side irrespective of their various pre-unified scales and qualifications, will get the unified and revised pay scales as under with effect from 1-4-1958 and 1-7-1960 respectively :-

(1) Unified scale. --- 45-100

(2) Revised scale --- 85-140

Henceforth the appointments on the posts of Lab. Attendants should be made from the Higher Secondary passed candidates.

By order and in the name of Governor of M.P.

Sd/- V.P. Sheth, Dy. Secretary to Government of Madhya Pradesh Education Department

By taking the aid of abovesaid memorandum Annexure P/2, it has been contended by Shri Umesh Trivedi, learned counsel for the petitioners that for all purposes, all the Laboratory Attendants of various institutions working under non-collegiate side irrespective of their various pre-unified scales and qualifications were unified in pay-scale of Rs. 45-100 and their pay-scales were further revised to Rs. 85-140/-. The contention of learned counsel for the petitioner is that petitioner served on the post of Laboratory Attendant at several places. He was confirmed on the said post on 1-4-1970 in pay-scale of Rs. 85-140. On the commencement of new pay-scale, commonly known as Pandey Pay Scale came

into force from 1-1-1972 and according to the revision of Pay Rules, 1973, the employees serving on the post of Laboratory Attendants who were getting old pay-scale of Rs. 85-140 were benefited by the revised pay-scale of Rs. 169-300 and accordingly petitioner was also benefited and fixed in the said pay-scale. The State Government on 7-1-1974 issued a G.A.D. Memo No. D-30-1857-1-(3)PCC/74 stating therein that recruitment of Laboratory Attendants in future the minimum educational qualifications will be Higher Secondary (with Science Subject). According to the learned counsel for petitioner, adding the qualification of Higher Secondary with science subject cannot be given retrospective effect and for future only for those candidates who would be recruited must possess this qualification.

According to learned counsel for the petitioner, Laboratory Attendants who were drawing their pay-scale of Rs. 169-300 in Pandey Pay Scale were fixed in Choudhary Pay Commission in the pay-scale of Rs. 515-800. It has further been contended that respondent No. 2 on account of some personal bias against the petitioner which have been enumerated in para 5 of the petition under the pretext that since petitioner had not passed Higher Secondary, therefore he is not entitled for pay-scale of Rs. 169-300 in Pandey Pay Commission and is entitled to a lower pay-scale of Rs. 139-200. Respondent No. 2 has also not allowed regular annual increment to petitioner since 1975. The respondent No. 2 has also reduced the basic pay-scale of Rs.240/- to Rs.200/- for which respondent No. 2 had no jurisdiction. The petitioner who is a low paid employee is protesting since 1975 but nobody is responding to him. On 22-11-1983 vide Annexure P/3, the Principal respondent No. 2 intimated petitioner that since he was representing to higher authorities not to reduce his pay-scale for that reason his pay-scale was not reduced, however, since no clear and specific instructions have been received by the higher authorities to fix petitioner in pay-scale of Rs. 169-300, therefore from next month, petitioner shall be fixed in the pay-scale of Rs. 139-200/- and the excess amount paid to him would be recovered. According to the petitioner since he was harassed and was put in trouble on account of disparity of the pay-scale he was constrained to take leave and the Principal respondent No. 2 ultimately gave an order Annexure P/4 dated 1-5-1986 that petitioner is entitled for maximum pay of Rs. 200/- and not Rs. 240/- per month and he would be entitled for scale of Rs. 445-635/- in Choudhary Pay Commission, since he is non-matric.

On the basis of abovesaid premised reasons, it has been prayed by petitioner to quash Annexure P/3 and P/4 with a further prayer to fix petitioner in the pay-scale of Rs. 169-300/- in Pandey Pay Commission from 1-1-1972 and Rs. 515-800 in Choudhary Pay-Commission from 1-4-1981.

In joint return, filed on behalf of respondents this fact was not disputed that the petitioner was appointed on the post of Laboratory Attendant since the date of his appointment. It has been pleaded that in Annexure P/2 unified pay-scale of Laboratory attendant was fixed to Rs.45-100 and revised scale was fixed Rs.

85-140. By virtue of revised pay-scale of Pandey Pay Commission, the Pay scales were corrected into following two categories:

(i) Lab. Attendant (Class-IV) under Matriculate Scale Rs. 139-200/-

(ii) Lab. Assistant (Class-III), Higher Secondary Pass with Science Subject Rs. 169-300/-. Since the petitioner being under Matriculate was allowed the pay-scale of Rs. 139-200 from 1-1-1972. Previously his pay was fixed in the pay-scale of Rs. 169-300/-, however, at the time of approval of Accountant General Party the petitioner was refixed in pay-scale of Rs. 139-200 as per revised rules. It has been further contended in the return that in Choudhary Pay-scale, the pay-scales of Lab. Attendant and Lab. Assistant were fixed as under :

(i) Lab. Attendant Class IV (Under Matric) --- 445-635/-

(ii) Lab. Assistant Class III (Higher Secondary Pass with Science Subjects.) --- 515-800/-

Since the petitioner is non matric, he is entitled to be fixed in the pay-scale of Rs. 445-635 in Choudhary Pay Commission. Thus, it has been contended on behalf of respondents that petition be dismissed.

In the meantime, subsequent changes has taken place. The petitioner submitted an application for leave on 10-1-1984, according to the petitioner he could not join services on account of certain family unavoidable circumstances for 3Vi years. He submitted his joining vide Annexure P/5 dated 29-7-1987 but respondent No. 2 did not allow him to join and put a note on his joining application Annexure P/5 that since he remained absent from 10-1-1984 as well as he had also filed a writ petition, therefore till suitable order is received from the office of Joint Director, he is not allowed to join. The applicant again submitted an application to join on 3-10-1988 but the Principal did not allow him to join. Again and again petitioner submitted several applications to allow him to join but he was not allowed and ultimately he was allowed to join on 28-2-1991 vide Annexure P/6 and he was allowed to continue in service till he passed away on 23-11-1992. The Commissioner, Jabalpur Division vide its order dated 14-1-1999 (Annexure P/7) treated the period 10-1-1984 to 27-2-1991 as decision. In this context, it has been contended by learned counsel for the petitioner that the said order treating the period 10-1-1984 to 27-2-1991 as dies non is illegal, null and void and without jurisdiction as it amounts to awarding punishment and since no enquiry was held, therefore the same is liable to be set aside. It has also been submitted by him that on bare perusal of Annexure P/5, it is revealed that petitioner submitted his joining report on 29-7-1987 but he was not allowed to join and therefore he was not at fault. By rejoinder the petitioner prayed that apart from the main relief sought by him in main writ petition, order Annexure P/7 dated 14-1-1999 which was passed after 7 years of the death of the petitioner treating the period 10-1-1984 to 27-2-1991 to be dies non be set aside.

It be seen that additional return has not been filed on behalf of respondents controverting the averments made in the rejoinder by legal representatives of the petitioner.

So far as treating the period 10-1-1984 to 27-2-1991 as dies non is concerned, suffice it to say the said order is punitive in nature because treating the period as dies non would mean a break in service and therefore it is punitive in nature and cannot be passed without holding departmental enquiry. Admittedly no enquiry was conducted before passing such a harsh and punitive order of dies non. Since the consequence of treating the period of 10-1-1984 to 27-2-1991 to be dies non is punitive in nature, therefore in absence of holding departmental enquiry, the said order cannot be allowed to remain stand and the same is hereby quashed. It be seen that original petitioner died on 23-11-1992 and after 7 years of his death the period of 10-1-1984 to 27-2-1991 was held to be dies non, thus for the reasons stated hereinabove the impugned order Annexure P/7 so far as the period 10-1-1984 to 27-2-1991 treated as dies non is hereby set aside.

Now I would consider the relief of petitioner in regard to the fixation in the pay-scale of Rs. 169-300 in Pandey Pay Commission and thereafter to fix the petitioner in pay-scale of Rs. 515-800 in Choudhary Pay Commission with effect from 1-4-1981.

The authenticity of Annexure P/2 has not been denied by the respondents. Under the memorandum Annexure P/2, irrespective of qualification of pay-scale the employees serving on the post of Lab. Attendants were unifiedly fixed in the pay-scale of Rs. 45-100 and in revised pay-scale of Rs. 85-140. It is clear from the said memorandum that after the issuance of memorandum of Annexure P/2, the appointment which shall be made on the post of Lab Assistant, the minimum qualification was fixed Higher Secondary and therefore the addition of qualification of higher secondary would commence from the date of issuance of the said memorandum and cannot be given retrospective effect. Learned Government Advocate did not dispute that Lab. Attendant who were drawing the pay-scale of Rs. 85-140 were fixed in Pandey Pay Commission in the pay scale of Rs. 169-300. This fact has also not been disputed that the employees who were drawing wages in pay-scale of Rs. 169-300 were fixed in the revised pay-scale in Choudhary Pay Commission with effect from 1-4-1981 in pay-scale of Rs. 515-800/-. Thus, the post of Lab. Attendant on which the petitioner was appointed and was serving was rightly fixed in the pay-scale of Rs. 169-300/- in Pandey Pay Commission and Rs.515-800 in Choudhary Pay Commission. The respondent No. 1 did not issue any order against the petitioner that he should not be fixed in the said pay-scale. The respondent No. 2/Principal of the Institution vide impugned order dated 23-11-1983 (Annexure P/3) in anticipation passed order that since no order has been received from the office of Joint Director, the petitioner is fixed in the lower pay-scale of Rs. 139-200 in Pandey Pay Commission and Rs. 445-635 in Choudhary Pay Commission. The excess amount which was paid to the petitioner was directed to be recovered from him.

It be seen that the higher authorities of respondents did not issue any such order that petitioner is not entitled to be fixed in the pay-scale of Rs. 169-300 in Pandey Pay Commission and Rs. 445-635/- in Choudhary Pay Commission but respondent No. 2 passed such type of impugned order Annexure P/3 dated 22-11-1983. This fact has not been disputed that the petitioner was serving on the post of Lab. Attendant. On account of audit objection of the party of Accountant General, the petitioner was fixed in the pay-scale of Rs. 139-200 in Pandey Pay Commission and Rs. 445-635/- in Choudhary Pay Commission by the Principal vide impugned order annexure P/3. The view of this Court is that Principal was not having any jurisdiction to fix the petitioner in a particular pay-scale. It is well settled law under service jurisprudence that the service condition detriment to an employee cannot be applied retrospectively and for this reason also the impugned order Annexure P/3 and P/4 cannot be allowed to remain stand.

On the basis of aforesaid premised reasons the impugned order Annexure P/3, P/4 and P/7 are hereby quashed. The petition stands allowed with costs. Counsel fee Rs. 2000/-, if pre-certified.