

(2014) 12 MP CK 0049

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 1418/2014, 1524/2013, 5404/2008, 7041/2010, 5879/2012, 935, 1427, 1523, 2065, 2726, 3632, 4173, 4216, 4512, 4679, 4807, 4808, 4885, 4888, 4889, 5006, 5493, 5717, 5718, 6222, 6224, 6456, 6596, 7449, 8037, 8171, 8173, 8732, 8733 and 8734/

Arun Kumar Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2014) 12 MP CK 0049

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Vivek Jain, R.B.S. Tomar, Nitin Agrawal, D.S. Raghuvanshi and S.K. Sharma, Advocate for the Appellant; Praveen Newaskar, Dy. G.A, Advocate for the Respondent

Judgement

Sujoy Paul, J.

1.This writ petition was finally heard with the connected matters on the joint request of the parties.

Facts are taken from W.P.No.1524/2013.

2. The petitioners are teachers/employees of aided institutions. It is canvassed by learned counsel for the petitioners that all the petitioners in these writ petitions were appointed prior to 1.1.1996. it is submitted that the petitioners are entitled to enjoy the same pay-scale and other benefits which are being given to their counter parts in Governmental institutions. It is submitted that the State Government introduced ?Krammonati? scheme whereby the employees are given financial up-gradation after rendering 12 and 24 years of service. The said Krammonati is made applicable to such employees who have not been given any promotion in 12/24 years of service. It is submitted that the respondents initially extended this benefit in favour of the employees of aided institutions but later on

by impugned communication dated 11.4.2002 (Annexure P-1) has discontinued the said benefit.

3. Shri Vivek Jain, while submitting the leading submissions in these batch of matters, criticized the impugned order on the ground that such order is based on the decision of the Government to discontinue the grant-in-aid w.e.f. 1.4.2000. In the year 2000, the amendment was made in Madhya Pradesh Ashasakiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmahariyon Ke Vetano Ka Sandaya) Adhiniyam, 1978. The amendment act (No.26 of 2000) was put to test before Division Bench of this Court in Dr. Sharique Ali and others Vs. State of M.P. & Others. In the judgment reported in Sharique Ali and Others Vs. State of Madhya Pradesh and Others, , the Division Bench opined that the amendment which has been brought on the statute book by way of amended act (No. 26 of 2000) are ultra vires being hit by Articles 14 and 21 of the Constitution of India. He submits that this judgment was unsuccessfully challenged by the State before the Supreme Court. The Apex Court in its recent order passed in Civil Appeal No. 6362/04 opined that the said amendment cannot be made applicable against those Teachers/non-teaching staff, who are appointed prior to the promulgation of amended act. He submits that in the light of this judgment of Supreme Court, the action of respondents in discontinuing the benefits of ?Krammonati? is bad in law. He also relied on the revised grant-in-aid rules for non Government institutions (Annexure P-4). By placing reliance on Rule 33(1), it is submitted that petitioners had a valuable right of consideration and grant of ?Krammonati? on completion of 12/24 years of service because the said benefits were admittedly available to their counter parts working in Govt. institutions. He relied on certain unreported judgments of this Court. He also relied on the judgments of Supreme Court in Kamla Devi Vs. Khushal Kanwar and Another, , The Land Acquisition Officer-cum-DSWO, Andhra Pradesh Vs. B.V. Reddy and Sons, and Maitri Koley and Another Vs. New India Insurance Co. and Others, . Lastly it is submitted that an employee must get an avenue of career progression in service in order to get encouragement, enthusiasm which is beneficial to the employee and to the employer.

4. Per contra, Shri Praveen Newaskar, learned Deputy Government Advocate opposed the relief. By taking this Court to various paragraphs of the return, it is contended that although it is not in dispute that the institution wherein petitioners were working are receiving grant-in-aid from the State Government, the petitioners have no right to get the benefit of ?Krammonati?. He heavily relied on the amendment in the Adhiniyam w.e.f. 31.3.2000 whereby the State Government withdrew from the liability to pay grant-in-aid in faced manner. It is contended in the return that the Supreme Court has passed an interim order against the judgment of this Court passed in the case of Dr. Sharique Ali (supra). It is further submitted that in certain matters, the Principal Seat granted the benefit of 5th Pay Commission to the employees which was not implemented and, therefore, a contempt petition was filed. However, the Supreme Court has stayed the contempt proceedings. The said order of Supreme Court dated

1.9.2008 is placed on record as Annexure R-7. In the return, heavy reliance is placed on the amended Adhiniyam (26 of 2000) and the interim order of Supreme Court passed in the case of State of MP Vs. Dr. Sharique Ali (supra) dated 6.5.2002 (Annexure R-1).

5. No other point is pressed by learned counsel for the parties.

6. I have heard the learned counsel for the parties at length and perused the record.

7. It is gathered that during the pendency of this petition, Civil Appeal No. 6362/2004 (State of M.P.Vs. Dr. Sharique Ali) is decided by the Apex Court. In the final order, the Apex Court made it clear that the amendment act (26 of 2000) shall not be made applicable to the respondents and similarly situated persons. The further clarification given in para 7 of the order makes it crystal clear that the said amendment is applicable to those Teachers/lecturers/non-teaching staff, who are appointed by the private aided educational institutions in Madhya Pradesh after promulgation of the amended act. Thus, the curtains are finally drawn by the Apex Court on the applicability of the amendment act. The petitioners being appointees of prior to promulgation of the amended act are not governed by the said amendment.

8. Admittedly, the petitioners were getting the same pay-scale which were enjoyed by their counter parts working in the Government institutions. The Government also passed a circular dated 18.4.1996 (Annexure P-5). In the said circular the State Government decided that the employees who have completed stipulated years of service shall be entitled for senior scale on completion of stipulated years of service. The singular reason for discontinuance of this benefit is introduction of the amended act. A minute reading of impugned order dated 11.4.2002 shows that the operative reason for discontinuance of the benefit of senior scale/Krammonati was that w.e.f. 1.4.2000 the State Government has withdrawn its liability to pay the salary to the employees working in aided institutions. It is stated in the said order that the State Government neither appoints the employees in aided institutions, nor decides pay of these employees. The management of those institutions are in the hands of respective private institutions. The Government only provides annual block grant to these institutions. Apart from this yearly block grant, the State Government is not liable to pay any other amount. It is apparent that the basic reason for issuance of Annexure P-1 is completely based on the amended act which was made applicable w.e.f. 1.4.2000. Once it is held by the Apex Court that such amended act cannot be made applicable against such employees, who were appointed prior to 1.4.2000, the very foundation for issuance of Annexure P-1 does not survive. Putting it differently, the impugned order dated 11.4.2002 was passed based on the amended act which has lost its complete shine as against the petitioners/employees who were appointed prior to the amended act. Thus, the impugned order cannot withstand judicial scrutiny.

9. The matter may be examined from yet another angle. The Apex Court in Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another, opined that, it is often said and indeed, adroitly, an organisation public or private does not "hire a hand" but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. In view of this judgment, it is clear that there cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of career progression.

10. The Apex Court in Dr. Ms. O.Z. Hussain Vs. Union of India and others, opined that, promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical "A" Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers.

11. The Apex Court in State of Tripura and Others Vs. K.K. Roy, again considered the aforesaid judgments and opined that the employees must get two higher grades, one upon expiry of period of 12 years from the date of joining and other upon expiry of 24 years of service. The basic reason for providing these benefits is to provide a ladder for advancement. Such opportunity of career advancement either in the shape of promotion or in absence of promotion as financial up-gradation is necessary to instill enthusiasm amongst the employees. The avenues of promotion/financial up-gradation kills stagnation and creates a healthy atmosphere in the institution. This gives boost to employees and ultimately helps the institution in terms of development and ultimate output of the organization. For said reason also there is no justification in curtailing the benefit of financial up-gradation in favour of the petitioners. It is seen that this Court in W.P.No. 2092/2003 (Ram Naresh Tiwari & Others Vs. The State of M.P. & others) decided on 28.2.2008 followed the Division Bench judgment of this Court in Suresh Kumar Dwivedi and Others Vs. State of Madhya Pradesh and Others, and opined that the analogy flowing from Suresh Kumar (supra) can be applied in the present case because the State Government is paying the revised pay-scale to the teachers and, therefore, it cannot deny the facility of financial up-gradation/Krammonati. The other judgments cited by petitioners are not applicable in the facts of this case

12. As analyzed above, the impugned order dated 11.4.2002 (Annexure P-1) cannot be permitted to stand. Resultantly, the order dated 11.4.2002 (Annexure

P-1) is set aside. The respondents are directed to consider the cases of the petitioners for grant of Krammonati on completion of 12/24 years of service (as the case may be). The aforesaid exercise be completed within four months from the date of production of copy of this order. If the petitioners are found entitled, they be given financial up-gradation with arrears from due date within the aforesaid time.

13. Petitions are allowed. No cost.

14. Registry is directed to keep true copy of this order in all the connected writ petitions.