
(2017) 01 MP CK 0155
In the Madhya Pradesh High Court
Case No : 10568 of 2016

Bati @ Batia & Ors.

APPELLANT

Vs

State of M. P.

RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Citation : (2017) 01 MP CK 0155

Hon'ble Judges : Subodh Abhyankar

Bench : Single Bench

Advocate : Manoj Chandurkar, Piyush Jain

Judgement

1. The petitioner before this Court is aggrieved by the order dated 11.8.2015 passed by the respondent No.4/Superintendent of Police, Head Office, Bhopal whereby the petitioner has been denied the benefit of time scale pay.

2. The case of the petitioner is that he was initially appointed on the post of Constable on 25.2.1971 and was promoted as Head Constable on 17.1.1982. Thereafter he was promoted as Assistant Sub Inspector on 25.4.1987 and finally as a Sub Inspector on 27.12.1995.

3. The contention of the petitioner is that he has got the benefit of first time scale pay w.e.f. 1.4.2006, on completion of 10 years of service but till his retirement on 31.7.2009 the same was not allowed to him although at the time of his retirement the other Authorities found that the petitioner is entitled for the time scale pay but by the impugned order Annexure P/8, the claim of the petitioner to get the time scale pay has been declined. The petitioner has also filed the

circulars issued by the State Government from time to time.

4. Annexure P/1 is the circular dated 24.1.2008 for providing time scale pay to the employees on completion of requisite years of service. The petitioner has filed another circular dated 1.4.2008 (Annexure P/2) clarifying the earlier

circular. In the earlier circular dated 24.1.2008 the benefit of time scale pay was to be accorded on completion of 10 years of service but it was made effective w.e.f. 1.4.2006 only but subsequently vide second circular dated 1.4.2008 (Annexure P/2) guidelines were issued and as per clarification No.9 of the circular, it is provided that where the Government servant has got one, two or more promotions from the original post they are also entitled for the time scale pay under the scheme. Subsequently another circular dated 13.11.2009 was issued wherein certain clarification have been made in respect of circular dated 1.4.2008.

5. It is contended by the petitioner that clarification No.9 of the earlier circular has not been changed. The contention of the petitioner is that despite there was no change in the circular and even assuming that there was a change for the sake of argument, the same cannot be applied in the petitioner's case as the petitioner already stood retired on 31.7.2009 whereas the third circular has come into force on 13.11.2009 and despite this factual and legal position the impugned order has been passed holding that petitioner is not entitled for the time scale pay. In the impugned order the benefit of time scale pay has been denied on the ground that the second promotional post i.e. Assistant Sub Inspector was not a direct recruit post, hence he is not entitled for the benefit of time scale pay.

6. In the return the respondent has justified the impugned order and has submitted that in the present case, the petitioner was

promoted from time to time and his third promotion as Sub Inspector was on 27.12.1995 and since the petitioner has been extended the benefit of promotion thrice, he is not entitled for the time scale under the policy. It is further submitted by the respondent that the purpose of grant of time scale pay is to mitigate hardships suffered by employees on account of non-promotion. According to the respondent, a bare perusal of circulars dated 24.1.2008 and 13.11.2009 reveals that the benefit of time scale pay is only available to the post of direct recruitment and since the post of Assistant Sub Inspector being the post to be filled up 100% by way of promotion, benefit of time scale pay is not available to the petitioner, who was Assistant Sub Inspector. It is also submitted that against other employee Kailash Nath Katiyar who was granted the time scale of pay, recovery is also proposed and filed the document for recovery as Annexure R/1. In view of the same, respondents have submitted that the petitioner is not being treated discriminately and uniform policy is being applied to all the employees concerned.

7. Heard learned counsel for the parties and perused the record.

8. Since the dispute in the present case revolves around the condition No.9 of circular dated 1.4.2008 (Annexure P/2) and clarification No.3 of circular dated 13.11.2009 (Annexure P/3), it would be relevant to produce the same at this juncture, which read thus : Condition No.9 of circular dated 1.4.2008

"VERNACULAR MATTER OMITTED"

9. From the above said circulars, it is apparent that in the circular dated 1.4.2008, it is clearly provided that the benefit of time scale pay may be given to the persons who have already got one, two or even more promotion and in the circular dated 13.11.2009 in condition No.3 as reproduced above, the query is in respect of only two promotions and the clarification is that if the person is direct recruit only, in that case, he be allowed the time scale pay. Apart from that in the circular, there is no reference made in respect of the earlier circular dated 1.4.2008 but of 24.1.2008 which is filed as Annexure P/1. Hence, it cannot be said that this circular dated 13.11.2009 (Annexure P/3) which was issued subsequent to the earlier circular dated 1.4.2008 can override the aforesaid circular without even referring to the same without there being any overriding clause. As it is a settled position of law that any circular would only have the prospective effect unless it is specific so far as its retrospectivity is concerned.

10. In the circumstances, the petition is allowed and the impugned order dated 11.8.2015 is hereby quashed. The petitioner is

entitled to get the benefit of time scale pay w.e.f. 1.4.2006 with interest @ 8% per annum. Respondents are also directed to recalculate the retiral benefits on account of enhancement and also accord the benefit to the petitioner within a further period of six weeks from the date of receipt of certified copy of this order.