
(1985) 11 MP CK 0046

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2638 of 1985

C.A. Bhakhare

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 06-11-1985

Acts Referred:

Constitution of India, 1950 — Article 41
Madhya Pradesh Local Authorities School Teachers (Absorption in Government Service)
Act, 1963 — Section 10

Citation : (1986) ILR (MP) 382 : (1987) MPLJ 509

Hon'ble Judges : Gulab Chand Gupta, J

Bench : Single Bench

Advocate : S.K. Mukherjee, for the Appellant; R.K. Thakur, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, J.

The petitioner is an old lady of 71 years of age and had retired as a Head Mistress of a Govt. Girls' School on 31-8-1969 and had been running from pillar to post for pension. Having exhausted not only her own resources but also her energy, she sent a letter to Hon. the Chief Justice by post praying for necessary help. The aforesaid letter was entertained as a writ petition and is being decided by this order. Shri S. K. Mukerjee Advocate has appeared for her in the sense of service and with a spirit of dedication and has made not only legal submissions but also a passionate appeal for help.

The facts of this case are more or less admitted. The petitioner was employed as a teacher w.e.f. 2-7-1956 in the Primary Girls' School run by Municipal Council, Bina, M. P. and was confirmed w.e.f. 1-4-1959. According to Rule 2-A governing the subscription to Provident Fund of Municipal Employees framed u/s 25(7)(2) of C.P. and Berar Municipal Council Act, the petitioner was entitled to be a member of contributory fund from the date of her employment and subscribe to

it. The Municipal Council was similarly required to contribute an equal amount to the said Provident Fund. It however appears that the Provident Fund amount was not deducted by the Municipal Council upto March, 1960 and therefore, no amount was contributed by the said Municipal Council upto this date. However, deduction started from 1-4-1960 and so also the contribution by the Municipal Council. It appears that in pursuance to a policy decision, the Government decided to take over all primary and middle schools run by the local authorities including the school where the petitioner was employed. On taking over the institutions, the petitioner was absorbed in the services of the State Government w.e.f. 1-10-1963. On such absorption in service, the petitioner's conditions of employment were governed by M. P. Local Authorities School Teachers (Absorption in Government Service) Act, 1963. Section 10 of this Act provides that all absorbed Teachers shall be governed by the New M. P. Pension Rules, 1951. That is how the petitioner became entitled to a pension under these Rules. A reading of this Act, however, indicates that no provision was made for counting the past services of such Teachers for giving them pensionary benefits. The respondent State Government therefore, considered the hardship resulting from this and issued a circular No. 15/21-1-1972 (Annexure-R-1) giving an absorbed Govt. Servant and absorbed teacher, the benefit of his/her past service for which he/she had made contribution to Provident Fund. As a result of this order the entire service covered by the Provident Fund Scheme operated by Municipal Council came to be counted as qualifying service for granting retirement pension. The case of the petitioner was considered in the context of aforesaid Rule and it was held that since she had not made contributions for the period from 2-7-1956 to 31-3-1960 but had made contributions only from 1-4-1960, her pensionable service was of 9 years 5 months only and hence she was not entitled to any pension. It is this order which is impugned in the present writ petition.

From the aforesaid facts, it is clear that the petitioner's services with Municipal Council, Bina and the respondent State Government are for a period of more than 10 years and if the entire service has to be counted for granting Pensionary benefit she would be entitled to a pension. The case of the respondent is that since she has not contributed to the Provident Fund upto 31st March, 1960 she is not entitled to get the benefit of earlier service in accordance with clause (1)

of Circular, dated 15/21-1-1972 (Annexure R-1). After having considered the aforesaid submission this Court is unable to accept the same. Contribution to a Provident Fund Scheme framed under a law is not dependent on the wish or desire of a Municipal Servant. Indeed, it should be the obligation of the Municipal Council to cover every Municipal Servant by the statutory scheme and make deductions from his/her salary and also make its own contribution. This obligation of the Municipal Council is required to be performed in spite of reluctance of a Municipal employee. Under the circumstances, inaction on the part of the Municipal Committee cannot be accepted as sufficient excuse for denying the Municipal employee benefits of the Provident Fund Scheme. Indeed, in the Employees' Provident Fund Act, 1952 which according to this Court should

be treated to be embodying general law on the subject, a defaulting employer is required to contribute the entire amount. Under the circumstance, even if it was to be assumed that the Municipal Council did not deduct the Provident Fund amount from the petitioner's salary upto 31-3-1960 this inaction of Municipal Council cannot be accepted as a justification for denying the petitioner the benefits of her past service. Indeed, the intention of the respondent in issuing the order dated 15/21-1-1972 (Annexure-R-1) appears to be to give effect to the directive principles contained in Art. 41 of the Constitution and provide for old age of its retired employees. The intention being noble has to be given full effect to. Under the circumstances, Clause (1)

of this Circular cannot be accepted as covering a case where the local body for reasons best known to them has not deducted the Provident Fund amount even though they were bound to do so under Law. In view of this Court, this clause would only apply to a case where the past services of a teacher were not covered by any Provident Fund Scheme. In this view of the matter, the petitioner is entitled to count her entire service for purposes of pensionary benefits. There is no dispute that if her entire service is counted, she is entitled to pension in accordance with law.

In view of the discussion aforesaid, the petition succeeds and is allowed. The respondents are directed by a writ in the nature of mandamus to treat her entire service from 2-7-1956 for purposes of granting pension and calculate and pay her the pension in accordance with law. It is, further directed that though the arrears on account of pension may be paid in six months time, the pension for the month of November, 1985 be calculated and paid in December, 1985.