(2007) 01 MP CK 0073

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6475 of 2003

Chandrakanta Sharma APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 12, 12(2)

Citation : (2007) 2 MPLJ 339

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : K.C. Raikwar, for the Appellant; Raghuveer Singh, Dy. G.A., S.P. Joshi, Dy. G.A., Smt. Rashmi Pandit, Panel Lawyer and A.K. Sethi, appears as Amicus Curaie, for the Respondent

Final Decision : Allowed

Judgement

J.K. Maheshwari, J.

Petitioner, who is the Teacher and attained the age of superannuation, had filed the Original Application before the M.P. State Administrative Tribunal. Bench at Indore claiming the pensionary benefits, on attaining the age of superannuation. On abolition of the Tribunal, the O.A. was transferred for final adjudication to this Court.

It is the case of Petitioner that she was initially appointed temporarily on the post of Assistant Teacher as per Annexure A/2 dated 4-1-1974 and joined her duties-on 10-1-1974. She had successfully completed her training from 24-8-1982 to 30-8-1984. Initially she was getting fix pay of Rs. 100/-, but after training enhanced to Rs. 300/-. It is further a case of the Petitioner that the services of the Assistant Teacher/Dy. Teacher/Teacher in the education department are governed by the rules which are known as M.P. Non-Gazetted Class III Educational Service (Non-Collegiate Service) Recruitment and Promotion Rules, 1973. Under these rules prescribed qualification is higher secondary or equivalent exam to acquire the eligibility for appointment, to the post of Teacher. Petitioner had already passed the higher secondary school examination in the year 1968 prior to her appointment, however, she possessed the requisite qualification for the post of Teacher. It is further a case of Petitioner that in the year of 1989 she was permitted to appear in B. Ed./B.T.I, examination, and qualified the same, thereon, her pay was regulated in the pay scale Rs. 975 -1650/- with effect from 6-1-1989. On 30-7-1997. and while attaining the age of superannuation, she was in the scale of Rs. 975 - 1650/-. and revised it time to time. Learned Counsel appearing for the Petitioner has argued that the Govt, has acted arbitrarily denying her the regular scale of pay and the increments since the date of initial appointment. It is further said that the order of grant of regular pay was passed alter qualifying B. Ed./B.T.I, examination is arbitrary because on qualifying such examination she should be paid two additional increments while in service as per the Government policy. However, denial as made by the Respondents to count the entire period of service for determination of the pension and other post retiral dues is arbitrary and violative of Articles 14 and 16 of the Constitution of India.

As per order dated 11-5-2006. passed by this Court Shri A.K. Sethi. Advocate, now designated as senior counsel was appointed as Amicus Curaie. Learned senior counsel Shri A.K. Sethi submits that undisputedly the pension of the Petitioner is regulated as per M.P. Civil Services (Pension) Rules, 1976 (hereinafter it shall be called as Pension Rules). Chapter III, which consists with Rule 12 onwards, deals with qualifying service, for the purpose of giant of pension. It is urged by him that as per Sub-rule (2) of Rule 12 the qualifying service of a government servant shall commence from the date he takes the charge of the post, to which he is first appointed either substantially or officiating or in temporary capacity. As per the order Annexure A/2 dated 4-1-1974 Petitioner was appointed temporarily though on a fixed pay of Rs. 100/-. He further submits that the word qualifying service has been defined under Rule 3(p). whereby it is apparent that the period between the date of joining to pensionable service of the State Government and retirement therefrom shall be taken into account for the purpose of grant of pension, gratuity and other benefits. It is urged that as per Rule 13 the services of a Government servant shall not qualify unless the duties and pay are regulated by the Government, or under the conditions determined. In the present case, Petitioner was initially appointed on the fixed pay of Rs. 100/- which was enhanced after training to Rs. 300/- and on passing B. Ed./B.T.I, examination, her pay was regulated in the pay scale of Rs. 975 - 1650/- under Rule 13 of Pension Rules. It is further said that her initial appointment order dated 4-1-1974 was temporary and on the post of Teacher; she has taken the charge of such post on 10-1-1974. thereafter attained the age of superannuation on 30-9-1997 during that period her pay was regulated in the regular pay scale. However, the period on which she had taken over the charge i.e. 10-1-1974 till attaining the age of superannuation 30-9-1997 deserves to be counted for the purpose of determination of the retiral dues and pensionary benefits in terms of Rules 12 and 13 of Pension Rules. Learned Amicus Curaie submits that Petitioner possesses the requisite qualification as specified under the recruitment rules i.e. Higher Secondary for the post of Assistant Teacher. On passing the B. Ed./B.T.I. examination while in service she must be paid two additional increments as per the judgment of Supreme Court delivered in SLP No. 9895/94 dated 22-7-1996 reported in State of Madhya Pradesh and another Vs. Badrinarayan Acharya, etc. etc., . However, the regularisation of the pay of the Petitioner after passing B. Ed./B.T.I. examination was improper and was against the settled legal position.

Learned senior counsel, rest his arguments on another limb, also, by which it is urged that in the cases of the Assistant Teachers/Dy. Teachers, who were appointed on a fixed pay in the education department as well as Tribal Welfare Department, have been held entitled for the regular scale of pay and increment from the date of their initial appointment. This controversy was first decided on 24-8-1992 in O.A. No. 2745/89 by the Tribunal in the case of Madhukant Yadu v. State of M.P. Against the said judgment State Government had preferred the SLP No. 6892/93, which was dismissed on 3-1-1999. Thereafter the same issue has also been resolved by this Court, passing orders in various cases i.e. Hariom Soni v. State of M.P. and others; Jagdish Prowal v. State of M.P. and others and Vibha Mathur v. State of M.P. and others, affirming the ratio of the judgment of Madhukant Yadu (supra). It is further held that the Teachers of the Tribal Welfare Department, are entitled to the same relief at par to the teachers of Education Department. However, it is submitted that merely appointing her on a fixed pay from the date of initial appointment; does not debar her. to count such period in qualifying service, necessitated to grant pension and post retiral benefits. However, it is submitted by him, that applying the ratio of the said judgments Petitioner is entitled for grant of regular scale of pay since initial appointment and the said period, is required to be counted for settlement of pension and post retiral dues. Learned senior counsel has fairly said that though the relief to grant regular pay, since initial appointment is not prayed for in the present case but the ratio of the said judgments, may be taken into consideration, while determining the qualifying period of service to grant the pension to her. In view of the aforesaid submissions it is urged by Shri A.K. Sethi, Amicus Curaie that the denial of the benefit of the pension to the Petitioner on the pretext that because she has not completed qualifying service, with effect from 6-1-1989 i.e. the date from which regular pay scale was allowed to her. till attaining the age of superannuation i.e. 30-9-1997 is arbitrary.

In view of the arguments as advanced hereinabove, it is urged that as per Rules 12 and 13 Petitioner has completed qualifying service from the date of taking over of the charge i.e. 10-1-1974 and till the date of retirement 30-9-1997 and such period be counted for the purpose of grant of pension. My attention is drawn to Rule 43 and 44 of the Pension Rules, whereby it is apparent that if the employee of the State Government has completed ten years of the service. get them entitled for pension and on completion of five years of service get them entitled for death-cum-retirement gratuity. In view of all these facts it is urged that the Petitioner is entitled for pension and the remaining gratuity after recalculation along with interest.

Learned Amicus Curaie has further advanced his argument that

According to Rule 12(2) of M.P. Civil Services (Pension) Rules, 1976. "qualifying service of a Government servant shall commence from the date he takes the charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity". The applicant has thus, completed the qualifying service from the date of his appointment as "Gram Sahayak" temporarily, to the date of his retirement and thus, entitled for Pension.

In view of the aforesaid, it is urged that because the Petitioner was initially appointed temporarily as per Annexure A/2 dated 4-1-1974 and taken over the charge on 10-1-1974. subsequently as per order dated 28-2-1989 her pay was regulated with effect from 6-1-1989 in the pay scale of Rs. 975 - 1650/-. therefore, in view of the Sub-rule (2) of Rules 12 and 13 of the Pension Rules, the entire period of temporary service rendered by the Petitioner shall be counted for the purpose of pensionary benefits and, the gratuity is required to be re-calculated accordingly.

Per contra Respondents/State have filed their return, wherein it is said that Petitioner has attained the age of superannuation on 30-9-1997. The services rendered by her during the period 10-1-1974 till 5-1-1989 on the post of Teacher shall not be counted for the purpose of pension and gratuity as she was not getting regular scale of pay during such period. It is further said in the return that as per the order dated 28-2-1989 the pay of the Petitioner was regulated in the scale of Rs. 975-1650/- with effect from 6-1-1989. however, the service rendered by her in the regular scale of pay from 6-1-1989 till retirement i.e. 30-9-1997. which comes to eight years and nine months only, can be counted as qualifying service for determination of pension and other post retiral dues. In view of above, it is said that because Petitioner has not completed the minimum ten years of qualifying service in a regular scale of pay from 6-1-1989 till 30-9-1997 i.e. the age of retirement, therefore, she is not entitled for the pensionary benefits. In the return it is further said that the appointment of the Petitioner was on the fixed pay of Rs. 100/- and Rs. 300/- which is a type of honorarium payable to her; with effect from the date of qualifying the B. Ed./ B.T.I. examination in the year of 1989. her pay was regulated in a regular pay scale. However, the period during which Petitioner has received regular scale of pay may be counted in qualifying service. Because the Petitioner has not completed ten years service in regular scale of pay, therefore, she is not entitled for the pensionary benefits under Rules 43, 44, 12 and 13 of the Pension Rules, 1976. It is further said that as per the provisions of Pension Rules gratuity of the Petitioner has already been determined and paid to her, therefore, the relief with respect to payment of gratuity cannot be re-agitated.

Learned Deputy Government Advocate has not disputed the ratio of the judgments of this Court, as pointed out by the Amicus Curaie, but it is urged that, in the light of the aforesaid facts, and submissions made hereinabove, Petitioner is not entitled for any relief and prayed for dismissal of this petition.

I have heard learned Counsel appearing for the parties, learned Amicus Curaie and also perused the record. The core question arises for determination in the present case is whether the service rendered by the Petitioner pursuance to the order Annexure A/2 from the date of taking over the charge i.e. 10-1-1974 till 5-1-1989. wherein her pay was not regulated, in the scale of pay Rs. 975 - 1650/- may be counted as a qualifying service or not, and whether Petitioner may be entitled for the pension and to revise the gratuity or not.

It is not disputed by the Respondents that on the date of initial

11A. Learned Counsel appearing for the parties have agreed that the pension and gratuity of the Petitioner shall be regulated, as per M.P. Civil Services (Pension) Rules, 1976. Chapter III, which starts from Rule 12 and deals the qualifying service, and Rule 13 which deals with the condition subject to which service qualifies; the relevant extract of those rules are reproduced hereinbelow:

Commencement of qualifying service. - (1) Except for compensation gratuity, a Government servant''s service does not qualify till he has completed 18 years of age, provided that nothing contained in this clause shall apply in the case of persons who were in service on the date of commencement of these rules and in whose case a lower age limit has been prescribed.

(2) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

Conditions subject to which service qualifies. - (1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

(2) For the purposes of Sub-rule (1). the expression "service" means service against a post under the Government and paid by the Government from the consolidated Fund of the State which has not been declared as non- pensionable.

On perusal of the Sub-rule (2) of Rule 12. it is apparent that subject to the provisions of the Pension Rules, the qualifying service of the employee shall commence from the date, on she/he takes charge of the post to which she/he is first appointed either substantively or in an officiating or temporary capacity. Rule 13 specifies that unless the duties and pay of the employee concerned is regulated by the Government it shall not qualify the service rendered by such employee. The word qualifying service has been defined under Rule 3(p) of the Pension Rules which is reproduced as under:

3(p) "Qualifying Service" means me period between the date of joining pensionable service under the State Government and retirement therefrom which shall be taken into account for purpose of the pension and gratuity admissible tinder these rules and includes the period which qualifies under any other order or rule for the time being in force:

However, on reading of the aforesaid rules, it is apparent that the date of joining to a post on which the employee is first appointed, either substantively or officiating or temporarily and takes over the charge on that post and retired therefrom shall be the period of service on that post, and the date of taking over the charge till attaining the age of superannuation be treated as qualifying service. Under Rule 13(1) it is clarified that the service of the employee shall not qualify unless duties and pay of the Government servant is regulated by the Government under the conditions determined by them. Sub-clause (2) of Rule 13 clarifies the word service for the purpose of Rule 13(1), by which it is apparent that if the service rendered against a post under the Govt, and paid salary from the consolidated fund of Govt., which is not declared as non-pensionable to be treated as service of the Govt. In view of reading of the aforesaid rules, it is apparent that qualifying service has been defined under Clause 3(p) of the Pension Rules. Rule 12(2) of these rules indicates the commencement of the qualifying service and Rule 13(1)(2) explains that service against the post paid from consolidated fund, not declared as non-pensionable, shall be the qualified service, only with the rider of regularisation of pay and duties by the Govt.

In the facts of the present case and as per the return submitted by the Govt., it is apparent that the Petitioner was appointed temporarily as Teacher though on a fix pay of Rs. 100/-. On the date of appointment Petitioner was possessing the requisite qualification of the post of Assistant Teacher. She has taken over the Teacher by joining her duties on 10-1-1974 and remain continued on such post till attaining the age of superannuation. She has performed the work attached to the post of Teacher. The payment of the salary either of fixed pay or in the regular scale of the pay was allowed to her from the consolidated fund of the Govt, was not declared as non-pensionable. The order of regulation of pay was passed by the Govt, on 28-2-1989 extending such benefit with effect from 6-1-1989. However, it is apparent that, her pay has also been regulated by the Govt.

The argument of the Dy. Govt. Advocate Shri Joshi is only confined, that the services rendered by the Petitioner in between 10-1-1974 to 5-1-1989 she had received fix pay. however, such period shall not be counted, under the qualifying service, to the Govt, servant. The service may qualify, only with effect from the date from which the pay is regulated by the Govt., under the conditions as determined by them under Rule 13(1); this argument is of no substance. Because Rule 12(2) of the Pension Rules deals with the commencement of the qualifying service, whereby it is apparent that the commencement of the qualifying service shall be with effect from the date on which he/she takes the charge of the post to which he/she is first appointed. Thereafter Rule 13(1) specifies the conditions subject to which the service qualifies. Wherein, it is mentioned that the service shall not qualify unless his duties and pay are regulated. Sub-rule (2) deals with the service, whereby it is apparent that if the payment is made to the employee from the consolidated fund of the Govt, which is not declared as non-pensionable. Thus, it is apparent that the commencement of the qualifying service starts from the date on which the employee takes the charge of the post and receives payment from the consolidated fund of the State Govt., which has not been declared as non-pensionable. Thereafter Rule 13(1) deals that under which condition the service of a Govt, servant shall be treated as qualifying service. In the present case the commencement of the service of the Petitioner has been started on 10-1-1974 and the salary has been received by her from consolidated fund which has not been declared as non-pensionable. The pay has been qualified by regulating the same as per the order of the competent authority in the regular scale, therefore, the period of the service with effect from 10-1-1974 to 5-1-1989 deserves to be counted as qualifying service, under Rules 12(2) and 13(1) and (2) of M.P. Civil Services Pension Rules, 1976.

The aforesaid interpretation of Rules 12 and 13 finds support from the various judgments of this Court in the case of Madhukant Yadu. Hariom Soni, Jagdish Prowal and Vibha Mathur (supra), whereby this Court has held that if the Assistant Teachers appointed on the fix pay are entitled to get regular scale of the pay and increment since the date of appointment. If the ratio of the aforesaid judgments is made applicable in the facts of the present case then Petitioner was entitled to get regular scale of pay since the date of initial appointment, which was not allowed to her by the Govt, arbitrarily. However, taking into consideration this aspect, and in view of the discussion made hereinabove the service rendered by the Petitioner on a fix pay of Rs. 100/- or Rs. 300/- shall be treated as qualifying service for the purpose to grant her. the benefit of pension and other retiral dues.

In view of the discussion made hereinabove and on perusal of Rule 12, 13. 3(p), 43 and 44 of the Pension Rules, and in the facts of the present case the entire period rendered by the Petitioner from 10-1-1974 till attaining the age of superannuation i.e. 30-9-1997, deserves to be counted as qualifying service. However, in the light of Rule 43 and 44 of the Pension Rules of 1976 because the Petitioner has rendered the services for more than ten years, hence, she is entitled for pension and gratuity after its re-determination.

In the result, this petition succeeds and is hereby allowed. Respondents are directed to determine and finalise the pension of the Petitioner as per the pay scale of Rs. 975 - 1650/- or corresponding pay scale thereto, if any. Respondents are further directed to re-determine the amount of the gratuity and to pay her accordingly. The aforesaid exercise of determination of the pension and gratuity and their payment be completed within a period of four months from the date of communication of this order. Petitioner is also entitled for the interest, according to the prevailing bank rates. Accordingly this petition is allowed. In the facts and circumstances of the case, there is no order as to costs.

In the last while parting with this judgment. I am duty bound to write the words of appreciation to the real assistance rendered to the Court by Shri A.K. Sethi, learned senior counsel, as Amicus Curaie.

Petition allowed.

