
(2020) 08 MP CK 0110

In the Madhya Pradesh High Court

Case No : Writ Petition No.22150 Of 2019 (S)

Chandresh Kumar

APPELLANT

Vs

State Of M.P. And Others

RESPONDENT

Date of Decision : 24-08-2020

Acts Referred:

Citation : (2020) 08 MP CK 0110

Hon'ble Judges : S. C. Sharma, J

Bench : Single Bench

Advocate : Vikas Jaiswal, Kriti Patwardhan

Final Decision : Allowed

Judgement

Learned counsel for the petitioner at the outset has drawn the attention of this Court towards order dated 25/06/2019 passed in Writ Petition No.11132/2018 (Dinesh Sharma S/o M. C. Sharma and Others Vs. State of M. P. and Others) and the same reads as under:-

"Shri Manoj Manav, learned counsel for the petitioners.

Shri Pavan Sharma, learned Govt. Advocate for respondents/State.

Shri Ashutosh Nimgaonkar, learned counsel for the respondent No.4.

Heard.

ORDER

Petitioners have filed the present petition seeking a direction to the respondents to grant the benefit of 5th , 6th & 7th Pay Commission.

2. Petitioners were initially appointed in the M.P State Oil Seed Growers Federation. Since the said Federation went into liquidation, therefore, petitioners were sent on deputation to different departments. The petitioners were paid the salary on the basis of recommendation of 4th pay commission. Petitioners

submitted representations to the respondents for grant of benefit of 5th, 6th & 7th Pay Commission. The State Govt. vide Gazette notification dated 28.2.2009 passed the M.P. Pay Revision Rules, 2009 for grant of benefit of 5th & 6th Pay commission. When the said benefit was not extended to the petitioners, they have filed the present petition before this court for grant of benefit of 5th, 6th and 7th Pay Commission.

3. After notice respondents have filed the return.

4. Similarly placed persons appointed in Oil Federation were sent on deputation to various Government departments and they were granted the benefit of 5th and 6th pay commission. Later on the state government withdrew the same which became the subject matter of various writ petitions before this court. One of the writ petition bearing No. 5680/2009(s) (Dinkar Pratap Singh Chouhan Vs. state of M.P.) was decided on 21.7.2011 in favour of the petitioner and thereafter Writ Appeal filed by the State Govt. has been dismissed and thereafter the SLP No. 31673/2011 has also been dismissed. By placing reliance over the aforesaid decision, one writ petition filed by Yashwant Aphle had also been allowed vide order dated 26.8.2013 passed in W.P.No. 7725/2009 and recovery of amount was quashed. The order passed in the case of Yashwant Aphle (supra) is reproduced as under -

"Petitioner employees of M.P. State Cooperative Oil Seed Growers Federation on deputation to Zila Panchayat Hoshangabad vide this petition while seeking quashment of orders dated 24.6.2009 and

11.8.2009; whereby recovery has been effected in respect of certain pay extended to the petitioner in lieu of the fixation as per Vth Pay Commission further seeks direction to the respondents to extend the benefit of Vth Pay Commission.

At the outset it is urged that the issue raised in this petition has been answered in W.P.No.5680/2009 (s) Dinkar Pratap Singh Chouhan and another Vs. State of M.P and others decided on 23.3.2011.

The said writ petition was disposed of with a direction to the respondents to grant the benefit of Vth and VI th Pay Commission. The State Government aggrieved by said order preferred Writ Appeal No.361/2011 which was dismissed on 27.7.2011.The Division Bench while dismissing the writ appeal observed:

"4. From the facts of the case it is clear that the respondents employees were sent on deputation on the terms and conditions fixed by the Government. Subsequently the General Administration Department clarified that the respondents employees shall be entitled the D.A and other allowances at par with the Government employees. The Government also sanctioned the post against which respondents employees are working. It is also a fact that the appellant department M.P. State Cooperative Oil Seed Growers Federation has become defunct and there is no possibility to send the respondents employees back to

their parent department. Virtually the respondent employees have been absorbed in their present post of deputation. In such circumstances, the direction issued by the learned Single Judge that the respondents employees are entitled the benefits of 5th and 6th Pay Commission recommendations is in accordance with law.

5. Learned Government Advocate appearing on behalf of the appellants/State has submitted that the respondents employees are entitled salary as per the salary they were receiving in their parent department. In support of his contention learned Government Advocate relied on the judgment of the Division Bench of this Court in the case of State of M.P and others Vs. Vinod Mohan Shrivastava ILR (2008)MP 1869. However, the aforesaid argument cannot be accepted because the respondents employees were sent on deputation as per the norms and conditions fixed by the Government. Apart from this there is no more the parent department of the respondents employees and the parent department has become defunct. Hence the respondents employees are working under the control of the State Government. Hence they are entitled for the same benefit.

An SLP (Civil) No.31673/2011 preferred there against was dismissed on 15.4.2013.

Since the issue raised in this petition is similar to that Dinkar Pratap Singh Chouhan and another Vs. state of M.P and others (supra) while quashing the order of recovery dated 2.7.2009 the respondents are directed to abide by judgment/ decision rendered in Dinkar Pratap Singh Chouhan and another Vs. State of M.P and others (supra).

The petition is allowed. There shall be no costs."

5. A co-ordinate bench of this court has already held that employees of Oil Federation during deputation period are entitled for the benefit of 5th and 6th pay commission. Admittedly the said benefit has not been extended to the petitioners when they are on deputation. Meanwhile, Govt. has extended the benefit of 7th Pay Commission to its employees. The petitioners are also entitled for the benefit of 5th, 6th & 7th Pay Commission as per their entitlement at the relevant point of time.

6. The Apex Court in the case of Bihar State Beverages Corporation Limited and others vs. Naresh Kumar Mishra and others reported in (2019) 5 SCC 110 has held as under:

23. Now, so far as the quashing and setting aside the Resolution dated 27-3-2012 by which the Corporation resolved to pay salary to the employees of the Corporation as is being paid in the parent Board/parent organization is concerned, it is required to be noted that it is not in dispute that the respective original writ petitioners are on deputation from different Boards/organizations. Therefore, if the Resolution dated 27-3-2012 is permitted to be implemented, in that case, there shall be disparity in the pay scale/salary of the employees of the

Corporation doing the same/similar work. There may be different pay scales/salaries in the respective parent organizations. However, when they are working with the Corporation and doing the similar work, they have to be paid the salary which is paid to other employees doing the same/similar work. It is not in dispute that the employees working on different posts in the Corporation are doing the same/similar work. Therefore, the Division Bench of the High Court has rightly applied the "principle of equal pay for equal work" and has rightly quashed and set aside the Resolution dated 27-3-2012.

27. Now, so far as the impugned judgment and order passed by the High Court directing the appellant Corporation to grant pay scale to the respondents herein, original writ petitioners as per the 6th PRC is concerned, it is required to be noted that, as such, the appellant Corporation itself took a conscious decision in the year 2010 to grant the benefit of 6th PRC to the employees working with the Corporation. However, on the advice of the Finance Department that the Corporation may grant the benefit of 6th PRC to their permanent employees and not to the employees on deputation, the Corporation thereafter took a decision not to grant the benefit of the pay scale as per the 6th PRC. As rightly held by the Division Bench of the High Court, the advice by the Finance Department was non-application of mind, inasmuch as so far as the Corporation is concerned, there is not a single employee appointed by the Corporation on permanent basis and the entire staff is either on deputation or on contract basis from other Boards/organizations. Therefore, the Division Bench of the High Court has rightly directed the appellant Corporation to grant the pay scale to the respondent, original writ petitioners as per the 6th PRC so long as they continue to work with the appellant Corporation and as and when they are repatriated, in that case, they shall be governed by the pay scale paid to the employees in the parent Board/organization.

7. Hence the petition is allowed. Respondents are directed to extend the benefit of 5th, 6th & 7th Pay Commission to the petitioners as also to pay the arrears within the period of 90 days from production of certified copy of this order. C.c. as per rules."

In light of the aforesaid order passed in an identical case, the writ petition is allowed. The judgment delivered in the case of Dinesh Sharma shall be applicable mutatis-mutandis in the present case also. The respondent shall extend the benefits of 5th, 6th and 7th Pay Commission to the petitioner and shall also pay the arrears within 90 days from the date of production of certified copy of this order.

Certified copy as per rules.