
(2013) 09 MP CK 0002
In the Madhya Pradesh High Court
Case No : W.P. No. 10159 of 2010 (S)

Deepak Mishra

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2014) 2 MPLJ 532

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

Bench : Single Bench

Judgement

K.K. Trivedi, J.—The petitioners, three in number, employees of respondent No. 2 Dr. Hari Singh Gour University (herein after referred to as "University"), have approached this Court seeking a direction against the respondents to grant the benefit of Fifth Pay Commission recommendations with effect from 27-5-2000 in terms of the order dated 28-8-2000 and a direction against the respondents to calculate arrears of salary and payment thereof to the petitioners with interest at the rate of 18% per annum. A further direction is sought against the respondents to regularize the services of the petitioners with retrospective effect. It is contended that after following the process of recruitment after taking a decision by the Executive Council of the University, the persons like petitioners were appointed as Class-III and Class-IV employees in the faculty of Management Studies. The initial appointment of the petitioners as made on 1-11-1997 was for 89 days. However, later on after scrutiny of the-cases of the petitioners, once again they were appointed on temporary basis on their respective posts. Again the said order was made for appointment of petitioners in the Department of Business Management of the University. As per the Madhya Pradesh Vishwavidyala Adhiniyam, 1973 (herein after referred to as "Act of 1973"), a regular order of appointment was issued in respect of the petitioners appointing them on probation for two years. Such an order was issued on 30-3-1998. The petitioners were being paid the salary from the special fund of Business Administration Faculty of the University. In the order of appointment it was said that the appointment of the petitioners was likely to be made permanent on

receipt of concurrence from the State Government. Since the petitioners were not being paid the salary, they made applications. Later on since the services of the petitioners were found satisfactory, the Dean and Head of the Faculty of Management Studies of the University recommended the cases of the petitioner for confirmation. The meeting of Executive Council was convened on 27-6-2000 and the Executive Council granted sanction of appointment of petitioners and directed that they be appointed in the minimum of the pay scale of the post. However, it was made a condition that the increments of pay, pension, gratuity and other service benefits be made available to the petitioners only when sanction of creation of posts is granted by the State Government in Higher Education Department. The correspondence in this respect was done, matter was referred to the Higher Education Department and at the same time in terms of the Executive Council resolution, an order was issued in respect of petitioner on 24-7-2000. It was again categorically said that expenditure on payment of salary etc. of the petitioners would be borne from the special fund of Business Management Faculty. The petitioners were given the minimum pay scale vide order dated 28-8-2000 and certain allowances were allowed to them vide order dated 26-12-2000. By a memo dated 12/21-8-2004, the matter was referred to the Secretary of the Higher Education Department of Government of Madhya Pradesh seeking approval of such an action and sanction for creation of posts. Reminders were sent in this respect but for a long time nothing was done by the respondents. The petitioners were paid the salary only in the minimum of the pay scale. Even the revised pay scale was not made available. Whenever the applications were made by the petitioners in this respect, the matter was referred to the higher authorities of the State Government. Ultimately in the year 2009 the University was declared a Central University under the Parliamentary Act and the respondent State has sent a communication to the University on 28-1-2010 saying that no action is required to be taken in the matter of granting sanction to create the posts or in the matter of appointment of petitioners as after becoming a Central University, the respondent-University is not under the control of the State. After this, several requests have been made by the petitioners but no action is taken and the petitioners are still receiving a meagre salary without any increments. The funds are available with the University to meet out the expenses of granting benefit of revised pay scale to the petitioners but nothing is being done, therefore, this writ petition is required to be filed.

2. On receipt of the notices of the writ petition, respondent No. 1 has filed a very short reply stating that for all sort of reliefs claimed by the petitioners, only the respondent University was responsible to pass the orders and since now it has been made a Central University, the respondent State is not in a position to take any action. A return has been filed by the respondent No. 2 vehemently contending that the entire claim made by the petitioners is misconceived. According to respondent No. 2, if any such resolution is passed by the Executive Council, it has lost its effects now in view of the fact that the respondent University has been declared a Central University under the Parliamentary Act.

This being so, the resolution of the Executive Council of the erstwhile State University has lost its validity and no action whatsoever can be taken on the basis of such a resolution. It is contended that since the petitioners were never regularized, they are not to be given any benefit and as such the claim made in the petition is misconceived. According to the respondents, the petition itself is liable to be dismissed.

3. By filing a rejoinder the petitioners have tried to point out that when the meeting was already held by the Executive Council of the University when it was a State University, the decision was already taken for grant of increments of pay on account of one year of continuous service to any such employee, the petitioners could not have been denied the said benefit. As back as on 1-10-1994 the decision was already taken that those employees, who are appointed on ad hoc or temporary basis in a pay scale, would get the benefit of increment of pay on completion of one year service. It is contended that at least these service conditions could not be taken away and the petitioners are entitled to the relief. Though an additional return is filed but nothing much is said except whatever is stated in the return filed by the respondent No. 2.

4. Heard learned senior Counsel for the parties at length and perused the record.

5. It is vehemently contended by learned senior Counsel appearing for the petitioners that when the resolution was passed by the Executive Council of the University, within the meaning of the Act of 1973, the resolution of the Executive Council was binding on the University. It is contended that in fact this University was constituted under the provisions of the Act of 1973. The said Act specifically prescribes the constitution of an Executive Council of the University and its powers and duties. Reading section 24 of the Act of 1973, learned senior Counsel for the petitioners has contended that such powers were available to the Executive Council. There was nothing in the Regulations, Ordinance or Statutes contrary to which the decision was taken by the Executive Council. It is contended that the power to create administrative, ministerial and other posts with the prior sanction of the State Government is the power available to the Executive Council under the provisions of section 24 of the Act of 1973. Exercising these powers, the Executive Council has passed the resolution dated 28-5-1998 (Annexure P-39, placed on record). It was rightly resolved by the Executive Council that those who were appointed on contingency or muster roll in fixed salary, be granted increments of pay. In view of this, the Executive Council's decision become a condition of service for those employees and this benefit could not have been denied to the petitioners. Now the other fact is that a decision was taken by the Executive Council of the University for creation of the posts and it was decided that the establishment expenditure of the said posts would be borne from the special fund of the faculty of Management Studies. The appointment of petitioners for the aforesaid reason was made on the post of Lower Division Clerk, Computer Operator and Jeep Driver. The recommendations were made for the regular appointment of the petitioners and this is how they

were appointed as Lower Division Clerk and Computer Operator as also Driver in the pay scale. However, they were put to the minimum of pay scale only subject to the concurrence of the State Government for creation of the posts. If this was done in the year 1998, why the matter was not processed by the respondents with the State Government if at all any sanction was necessary in terms of the provisions of the Act of 1973. If in any Statute or Regulation of the respondent it was prescribed that for creation of any such post sanction from the State Government was necessary, it should have been obtained. As has been referred to hereinabove, the power to create the posts was available with the Executive Council of the State University under the provisions of section 24(xxi) of the Act of 1973. Nothing has been indicated by the respondents in their return that after passing of the resolution on 27-5-2000 by the Executive Council of the State University, expeditious actions were taken by them to obtain approval from the State Government. However, even before the prior approval the appointments of the petitioners were made on the so created posts, therefore, the petitioners cannot be said to be responsible for any such act on the part of the respondent University.

6. When a specific allegation is made in the petition with respect to any action on the part of the University as also against the State, it was necessary on the part of the respondent State to show why action was not taken in a proposal sent by the Executive Council of the State University as the Act itself is the creation of the State Legislature where the power of the Executive Council, though prescribed but is put under the control of the State Government, in the matter of creation of posts in any of the Universities within the State. When the correspondence in this respect was sent way back in the year 2004, why action was not taken at that time by the respondents, is not clear. In the letter it was very categorically written by the University that sanction was sought only for the purposes of regularizing appointment of the petitioners under the self financial scheme. This letter is required to be examined and, therefore, the same is reproduced below:

Nothing is said in the return as to why action was not taken except that certain information was asked and a letter was sent by the respondent State of which the reply was also submitted on 4th/5th March, 2008. A further clarificatory letter was sent on 14-3-2008. Still no action was taken by the respondent State and a lame excuse was given on letter dated 8-9-2009 asking the University to give an information with respect to some MOU to be executed with the Central Government. As respondent No. 1 was negligent in discharge of its duty, the petitioners cannot be held responsible for the same.

7. Learned senior Counsel for the petitioner has placed his reliance heavily in the case of Surendra Saraf and others vs. Dr. Harisingh Gour Vishwavidyalaya, Sagar, W.P. No. 4466/2010, decided on 26-9-2011. This order was challenged by the respondent University in a writ appeal before this Court being W.A. No. 1140/2011, decided on 12-2-2013 (Dr. Hari Singh Gour Vishwavidyalaya Vs.

Surendra Saraf and etc. etc.,). The Division Bench of this Court has considered the effect of provisions of section 4(d) of the Central Universities Act, 2009 (herein after referred to as "Act of 2009"). After detailed discussion, the Division Bench has upheld the order passed by the learned Single Judge and has held that once the Executive Council of the State University has passed a resolution, has granted certain benefits, the same will not come to an end and would be saved under the provisions of Section 4(d) of the Act of 2009. It is contended that in view of the well settled law, the service conditions of the petitioners, which were settled by the Executive Council of the then State University in exercise of powers under the Act of 1973, cannot be annulled, changed or wiped off after becoming the University as Central University even under the provisions of Act of 2009 unless the new statutes are created and made. Therefore, it is contended that the benefits which accrued in favour of the petitioners cannot be taken away.

8. Per contra it is contended by learned senior Counsel appearing for respondent No. 2 that the law laid-down by this Court in the case of Surendra Saraf (supra) is subjudice before the Apex Court where an appeal is preferred against the order of the Division Bench of this Court. Apart from the aforesaid, fact remains that the petitioners cannot be said to be regularized and this aspect has already been considered by a Division Bench of this Court in a writ appeal, M.P. Urja Vikas Nigam Ltd. and Others Vs. Rudra Prasad Mishra, . It is contended that in view of the law laid-down by the Division Bench of this Court, as of right petitioners are not entitled to be considered for regularization. Only they would be entitled to the minimum of the pay scale, which the University is granting to them. It is further contended that in the case of State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., , parity in, the employment and in the pay scale has also been considered by the Apex Court and it has been held that persons like petitioners are not entitled to get the benefit of equal pay for equal work. Thus, it is contended that in view of the aforesaid enunciation of law, petitioners would not be entitled to the relief claimed.

9. After considering the rival submissions made by learned senior Counsel for the parties and after going through the law relied by learned senior Counsel for the parties, this Court is of the opinion that the reliefs which the petitioners are claiming, are not restricted by any law laid down by the Apex Court. In the case of M.P. Urja Vikas Nigam Ltd. (supra) and in the case of Charanjit Singh (supra), the Courts were dealing with different aspects. Here it is not the case that the petitioners are seeking any directions for their regularization as virtually they have already been regularized. After taking a decision for creation of posts looking to the requirement of the University, appointments of persons like petitioners were made and, therefore, they cannot be said to be back door entries. They were put for screening twice, found fit and orders were issued in their respect in the year 1998. Again the resolution was already passed by the Executive Council for grant of regular pay to the persons like petitioners way back in the year 1998. In the year 2000 again regular appointment of petitioners

was approved but the only fact that they will get the benefit of service after the sanction for creation of posts granted by the State Government, was recorded. The orders in that respect were again issued in the year 2000. There was no question of treating that the petitioners were not the regular employees and that any such regularization was needed. Even otherwise in the case of Gujarat Agricultural University Vs. All Gujarat Kamdar Karmachari Union, , the Apex Court has said that there cannot be discrimination in the matter of application of section 33 of the Industrial Disputes Act. If classification cannot be refused in such a manner, how could it be said that petitioners would not be entitled to claim the benefit of resolution of the Executive Council of the State University as then it was. The only condition was that such a matter was required to be approved by the State which the State has utterly failed to do so. From the documents available on record it is not that the University has no means to pay such salary to the persons like petitioners as from the document Annexure P-38 it is clearly demonstrated that lot of money is available in the special fund of Business Administration Faculty of the University. Therefore, if now the sanction is required to be granted by the Central Government in this respect and if any such resolution is required to be passed by the Executive Council of the Central University, the respondent University cannot refuse to do so. After all the respondent University needed the services of the persons like petitioners, has appointed them and has taken work from them, therefore, it is the liability of the respondent University to pay the proper remuneration for the said work done by the petitioners.

10. Now the question would be whether at this stage when the respondent University has become the Central University, would it be possible for the respondent State for grant of sanction for creation of such post for the purposes of payment of salary to the petitioners or that the Executive Council of the Central University would require to pass a resolution afresh. There is no bar created under the Act of 2009 that the Central University or its Executive Council would not be authorized to pass such a resolution. On the other hand, a fair interpretation of section 4(d) of the Act of 2009 makes it clear that the said University and its Executive Council can do it even for the purposes of changing the service conditions of the employees of the University. Keeping in view the aforesaid, this writ petition is allowed to the extent that the respondents will revise the salary of the petitioners in the pay scale of the posts as recommended by the Fifth Pay Commission from the date the same become applicable to the University and will at least pay the salary to the petitioners in the said pay scale. The respondent University since has not annulled the decision of the Executive Council when it, was of the State University, giving effect to the said resolution, yearly increments of pay be released in favour of the petitioners in the revised pay scale and all the arrears of salary be calculated and paid to them. The respondent University will consider the cases of the petitioners for creation of posts, if at all it is necessary under the provisions of the Act of 2009 and will treat them as regular appointees on the said post from the date of creation of

the post by the Executive Council of the Central University. Let these directions be complied with within a period of three months. The writ petition is allowed to the extent indicated hereinabove. There shall be no order as to costs.