

(2005) 08 MP CK 0027

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4038 of 2003

Devendra Kumar

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 29-08-2005

Acts Referred:

Citation : (2005) 4 MPLJ 514

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : N.K. Dave, for the Appellant; L.R. Bhatnagar, Government Advocate for Respondent 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

This petition was originally filed before this Court on 23-3-1991 and was registered as M. P. 583/91. Later on, on account of establishment of the Bench of M. P. Administrative Tribunal at Indore this petition was transferred to the Tribunal where it was registered as T. A. 7/93. However, on account of abolition of the Tribunal again this petition has been received by this Court for its adjudication.

The plain and simple case of the petitioner is that despite the order of the Division Bench of this Court passed in M. P. 703/82, Dr. Devendra Kumar v. State of M.P. and Ors. on 8-7-1987, the respondents have not paid the incidental service benefits to the petitioner. The other grievance of the petitioner is that on account of arbitrary action of the respondents, his candidature was not considered in the D.P.C. for promotion to the post of Reader which was convened in the year 1990 on account of non-availability of the A.C.R.

The unfolded facts are that - The petitioner on 2-4-1976 was appointed on the post of Reader in Surgery. Later on, vide order dated 26-7-1982 his services were terminated by giving one month's notice to him. The petitioner assailed the

action of the respondents terminating his services by filing Misc. Petition in this Court which was registered as M. P. 703/82 and which was allowed by the Division Bench of this Court on 8-7-1987. In pursuance to the order of this Court, vide order dated 31-7-1988 the petitioner was reinstated and he resumed his duty on 2-8-1988. However, the petitioner was not given any incidental service benefits as per direction of this Court as a result of which he submitted representation addressed to the Secretary, Department of Public Health and Family Welfare, Government of M. P. Bhopal. A copy of said representation is on record as Annexure B. Thereafter on 10-1-1990, the petitioner sent the Demand Justice Notice addressed to the Secretary and Director, Medical Education Department. The seniority list was published on 30-9-1990. A copy of which is on record as Annexure E and in the said list respondent No. 3 has been shown as junior to petitioner. All these facts are undisputed.

In order to promote suitable candidates who were serving on the post of Lecturer, were considered for promotion to the post of Reader in Surgery and vide Annexure F dated 27-12-1990 respondent No. 3 was promoted to the post of Reader in Surgery.

5-6. The contention of Shri Dave, learned counsel for petitioner is that if the action of respondents is taken into consideration in proper perspective, it would reveal that in order to jeopardize the right of petitioner his incidental service benefits were not provided to him in terms of the order of Division Bench of this Court dated 8-7-1987 (Annexure A). And so far as promotion part is concerned, on account of non-availability of the ACR of the last year, the D.P.C. did not recommend the petitioner for promotion to the post of Reader. However, the DPC made recommendation which was accepted by the Department and kept one post of Reader vacant. The contention of the learned counsel is that if the ACR of last year was not available with the Department, the petitioner cannot be blamed and he should not be allowed to suffer. On this premised submission, it has been contended by learned counsel for petitioner that this petition be allowed.

Refuting the aforesaid submission of the learned counsel for petitioner, it has been contended by Shri Bhatnagar, learned Government Advocate that in terms of the order passed by the Division Bench of this Court Annexure A, the petitioner was reinstated and since he did not work for the intervening period, therefore, order in regard to payment of wages for that period was rightly not passed. Learned Government Advocate further submitted that on account of non-availability of the last year's ACR of the petitioner, his case was not considered by the DPC which was convened in the year 1990. On this premised submission, it has been argued by Shri Bhatnagar, learned Government Advocate, that this petition be dismissed.

After having heard learned counsel for parties, I am of the view that this petition deserves to be allowed.

There is merit in the contention of the learned Government Advocate that on

account of principle of "NO WORK NO PAY" the petitioner is not entitled for wages and other incidental service benefits for the period 26-7-1982 to 2-8-1988. The Division Bench of this Court while allowing the M. P. of the petitioner vide Annexure A, passed the following order :

The petition is, therefore, allowed. The order of termination dated 26-7-1982 (Annexure "F") is hereby quashed. The petitioner shall be deemed to be continuing in service as a Lecturer in Surgery. The respondent is directed to reinstate the petitioner with all the incidental benefits of service, as if his service was never terminated. The parties shall bear their own costs of this petition. The outstanding security deposit shall be refunded to the petitioner after due verification.

If the aforesaid decision of the Division Bench is considered in proper perspective, there is no room left in order to say that petitioner is not entitled for the incidental service benefits. Thus, the petitioner is entitled for the wages for the period from 26-7-1982 to 2-8-1988. The respondents 1 and 2 are hereby directed to make necessary arrangement for the payment of salary of the petitioner on or before 30th November, 2005; failing which the petitioner shall be entitled for interest at the rate of 5% per annum on the said amount w.e.f. 1st December, 2005. Needless to emphasis that the incidental service benefits would also include the increments and other allowances which are payable to the petitioner in accordance with the rules.

So far as the promotion part of the petitioner is concerned, suffice it to say that petitioner is not at fault. It seems that petitioner was well in zone of consideration for promotion to the post of Reader in Surgery and his case was also put before the DPC, however, on account of non-availability of his ACR of last year, his candidature was not considered and one post was kept vacant. However, the view of this Court is that, petitioner cannot be allowed to suffer. Admittedly one post of Reader was kept vacant as ACR of petitioner is still not available. In this view of the matter respondents are hereby directed to convene review DPC on the same norms which was convened in the year 1990 to consider case of petitioner for his promotion to the post of Reader. If last year's ACR of petitioner is still not available on account of which he was not considered for promotion in the year 1990, the respondents are hereby directed to direct DPC to consider case of petitioner without the ACR of that year. Let this exercise be done within six months from today. Needless to emphasis that if petitioner is found fit for promotion, necessary orders in that regard with all consequential benefits be provided to him.

With the reasons stated hereinabove, this petition stands allowed with no order as to costs.