

(2018) 05 MP CK 0073
In the Madhya Pradesh High Court
Case No : W.P. No.4436 OF 2016

Dharmesh Dubey

APPELLANT

Vs

State Of Madhya pradesh And Others

RESPONDENT

Date of Decision : 10-05-2018

Acts Referred:

Constitution of India — Article 226

Citation : (2018) 05 MP CK 0073

Hon'ble Judges : ANAND PATHAK, J

Bench : Single Bench

Advocate : Arun Katare, B.M. Patel

Final Decision : Disposed Of

Judgement

With consent, heard finally.

2. The present petition under Article 226 of the Constitution of India has been preferred by the petitioner being crestfallen by the order dated 30-01-

2016 (Annexure P-1) passed by the Director/ Commissioner, Public Instructions, Bhopal- respondent No.2 whereby representation preferred by the

petitioner in pursuance to the order dated 01-12-2015 passed in W.P. No.7868/2015 has been rejected.

3. As per the respondents, name of the petitioner is included in List-B of the absorbed employees of the school Swami Vivekanand Higher Secondary

School, Surpura, Bhind and therefore, is not entitled for the benefits of absorption for regular pay scale.

4. Precisely stated facts of the case for adjudication are that petitioner was appointed vide order dated 30-06-1997 (Annexure P12) on the post of

Physical Training Instructor (PTI). It appears that the said appointment order was given to the petitioner by Gyanodaya Adarsh Shiksha Prasar Samiti,

Surpura, District-Bhind (hereinafter referred as 'Samiti') which used to run the school Swami Vivekanand Higher Secondary School, Surpura at

the relevant point of time. It appears that prior to his appointment; in the year 1995, absorption proceedings for taking the school (Swami Vivekanand

Higher Secondary School, Surpura, Bhind) in government fold was under way and therefore, a list of 63 teachers/ employees was prepared for

absorption. At that point of time, petitioner was not appointed therefore, his name could not be included in the said list (list 'A'). However,

absorption proceedings took time and meanwhile, petitioner was appointed. A committee was constituted for absorption of the school and from perusal

of annexure P-10 which is the final recommendation of the Committee, it appears that in July, 2004, the Committee gave its recommendation for

absorption of 63 employees in the List-A and case of the petitioner alongwith two other similarly situated persons was rejected on the ground that his

name was not included in the original list of 63 employees (List-A). His name was in the list of 34 employees (List-B) and since inconsistency existed

in the list A and B therefore, his name appears to have been excluded.

It further appears that some other teachers/ employees viz. Krishan Gopal Sharma, Rambaran Sharma and Manoj Sharma who were appointed after

appointment of the petitioner in year 1998 and their name were figured in the list-B were included for the benefits of the absorbed employees.

5. Present petitioner preferred a writ petition as referred above for consideration of his case for grant of benefit of regular employee and this Court

directed the petitioner to prefer a representation with a further direction to respondents to consider petitioner's case afresh. Respondent No.2 turned

down the representation preferred by the petitioner by the impugned order annexure P-1. Therefore, petitioner is before this Court.

6. According to counsel for the petitioner, he was appointed in the school vide appointment letter dated 30th June, 1997 (Annexure P-12) whereas

other candidates Krishan Gopal Sharma, Rambaran Sharma and Manoj Sharma were appointed at a later stage vide order dated 01-10-1998. Krishan

Gopal Sharma got the benefits of regular pay scale of regular employees. Same is reflected in the certified list of employees issued by the State

Government vide Annexure P-11 and he is receiving benefits of regular pay scale. Other two candidates preferred a writ petition before this Court by

way of W.P. No.183/2007 alongwith 15 other candidates and vide order dated 29-03-2007, this Court allowed the writ petition preferred by them and

respondents were directed to extend the benefits of regular pay scale to the said candidates also who were similarly situated vis a vis present

petitioner. The order was challenged by the State Government in writ appeal vide W.A. No.410/2007 and recently vide order dated 08-032018, the

same got dismissed and consequently order and stand of the Writ Court stood vindicated. Once the similarly situated candidates have been given the

benefits either by the State Government itself or by the effect of order passed by this Court then petitioner cannot lag behind because in respect of the

same benefits, two similarly situated employees cannot be discriminated.

7. On the other hand, learned counsel for the respondents preferred reply and opposed the claim of the petitioner. One of the stands taken by the

respondents was raising doubt about the appointment of the petitioner. According to counsel for the respondents, petitioner did not file the appointment

order with the writ petition therefore, the appointment order of the petitioner was put to doubt. It was submitted by the respondents that name of the

petitioner did not figure in the list-A prepared by the respondent Screening Committee for absorption and therefore, he is not entitled for the benefits.

Since there was some error earlier in the District Level Screening Committee therefore, it was cancelled vide order dated 17-06-2002 and new

Committee was constituted which did not recommend the case of the petitioner. He prayed for dismissal of the petition.

8. Heard the learned counsel for the parties and perused the record.

9. The present case is in respect of grant of regular pay scale and attending benefits because of absorption. Grievance of the petitioner as echoed in

the writ petition is on the point of discrimination mainly. Petitioner referred the appointment of the Krishna Gopal Sharma, Rambaran Sharma and

Manoj Sharma, who were appointed after petitioner in the school. Petitioner submitted his appointment order with rejoinder. Thereafter it is established

that petitioner was appointed by the Samiti.

10. Petitioner specifically submitted that he holds the requisite qualification as Physical Training Instructor. The same is not denied by the respondents,

therefore, question only exists for consideration is in respect of absorption and subsequent benefits.

11. Petitioner has been absorbed by the respondents in the government fold and at present petitioner is working as government teacher. Only question is in respect of regular pay scale and accompanying benefits if any to be given to petitioner. Once the petitioner has been absorbed and taken into said fold then it is the duty of the State as a Model Employer not to discriminate between two similarly situated employees/ teachers. Here in the present case, petitioner specifically pleaded about the discrimination suffered by him because of grant of benefits extended to Krishna Gopal Sharma who was the employee appointed much after the petitioner therefore, on this count, petitioner can assert his right. Respondents could not dispute about the benefits given to Krishan Gopal Sharma and factum of his appointment at later stage viz a viz petitioner.

12. Even otherwise, two teachers who were later on, appointed on dated 01-10-1998 by the society running the school were being given the benefits of regular pay scale etc. by the effect of the order dated 29-03-2007 passed by this Court in W.P. No.183/2007 and the order which is confirmed by the Division Bench of this Court in writ appellate jurisdiction (W.A. No.410/2007) therefore, controversy if seen from this angle also, gives substance and sustenance to the arguments of the petitioner. Once the similarly placed persons (although appointed at later stage) are bestowed with the benefits of regular pay scale then the case of the petitioner ought to have been considered by the authorities in that perspective.

13. Return filed by the respondents is improvement of the impugned order which is not permissible in the light of the judgment rendered by the Hon'ble

Apex Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, AIR 1978 SC 851.

Therefore, the impugned order dated 30-01-2016 (Annexure P-1) passed by the Director/ Commissioner, Public Instructions, Bhopal deserves to be

and is hereby set aside. Matter is relegated back to respondent No.1 to consider the case of the petitioner afresh in the light of the benefits granted to

Krishan Gopal Sharma, Rambaran Sharma and Manoj Sharma in the light of the order of the Writ Court in W.P. No.183/2007 (later on affirmed by

the Division Bench in W.A. No.410/2007). If these three candidates are given the benefits of regular pay scale after absorption then the same shall be

accorded to the petitioner at par with them. Petitioner is directed to appear before respondent No.1 with a detail representation alongwith certified

copy of this order in the 1st week of June, 2018, which shall be considered by the concerned authority and after considering the same, necessary order

be passed by the respondent No.1 within two months thereafter under due intimation to the petitioner by passing a reasoned order.

14. If required, petitioner may be given a personal hearing to narrate the events.

15. Needless to say that if petitioner is found entitled for the benefits then the same shall be accorded to him within two months after passing of the order.

16. The petition stands disposed of in above terms.

17. Certified copy as per rules. Â