
(2006) 05 MP CK 0074

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No's. 2849 and 4148 of 2005

Dongar Singh Pawar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Madhya Pradesh Irrigation Department (Non-Gazetted) Service Recruitment Rules, 1969 — Rule 8

Citation : (2006) 05 MP CK 0074

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : Piyush Mathur, in W.P. S No. 2849/2005 and C.B. Patne, in W.P. S No. 4148/2005, for the Appellant; S.P. Joshi, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.K. Gangele, J.—Because a common question has been involved in this writ petitions with regard to grant of increments after one year of the regular appointment on account of not passing Hindi typing examination on a condition mentioned in the appointment order. Hence, both the petitions tagged together and heard together and have been decided by this common order. For the purpose of detailed facts the facts of the W.P. No. 4148/05 have been considered.

2. The petitioner has filed this petition with regard to grant of regular increments after completing one year from his appointment. As per the petitioner he was appointed on the post of Lower Division Clerk in the regular pay scale of Rs. 870-1420/- vide order dated 28-9-89. As per the terms and conditions of the appointment order the petitioner has to pass a typing examination after one year from the date of appointment and upto that period, he would be entitled a pay scale of Rs. 870/- per month and he would not be entitled the increments. The petitioner passed the typing examination in the year of 1995 a certificate to this effect has been submitted as Annexure P-2 issued by the School Education

Department and thereafter, vide order dated 24-10-97 the petitioner has been given the increment after one year of passing of the typing examination, thereafter the petitioner submitted a representation that he would be given the benefit of passing of typing examination after one year from the date of his initial appointment and that representation has been rejected. The petitioner also filed a copy of the circular issued by the General Administration Department dated 6-7-95. As per the aforesaid circular, the High Court in W.P. No. 1031/80, decided on 16-8-83 and Administrative Tribunal in T.A. No. 85/88, decided on 1-12-90 directed to grant of regular increments to the employees who did not pass the typing examination and the circular clearly states that those employees who were appointed prior to 22-8-73 in pursuance to the regular selection they would be given regular increments after one year from the date of their initial appointment, even though they did not pass the typing examination.

3. The respondents did not file the return in the present petition, but filed the return in other connected petition. The return filed in one of the petition is W.P. No. 4148/05 (S). The ground has been taken by the respondents is that in the appointment letter it was the condition that the petitioner should pass Hindi typing examination within a year and thereafter he would be entitled the increments after the date of his initial appointment and the Division Bench of Gwalior Bench of High Court in State of M.P. and Ors. v. Sushma Surana and Ors. in W.P. No. 712/2000 has held that when an employee has not passed the typing examination then he is not entitled the regular increments after one year from the date of his initial appointment. Hence, the petitioner is not entitled the same and one of the petitioner has also taken the ground that similarly situated persons have been given the benefit of grant of regular increments in W.P. No. 4148/05.

4. The learned Counsel for the petitioner has submitted that non grant of increments after one year from the date of regular appointment is arbitrary and illegal because as per the recruitment rules passing of Hindi Typing examination is not the essential qualification. Further as per the circular issued by the General Administrative Department dated 6-7-95 the employees who were appointed prior to 22-8-73 were given the regular increment after one year from the date of their initial appointment, even though they did not pass the Hindi typing examination. Hence, there is no nexus to fix the date as 22-8-73. It has further been submitted that a similarly situated employee has been given the benefit, hence, the petitioner is also entitled the same benefit.

5. From the facts, stated above, it is clear that the petitioner was appointed regularly on the post of Lower Division Clerk in the pay scale of Rs. 870-1420/-. However, it was the condition as per the appointment order that petitioner has to pass the typing examination within a period of one year then he would be entitled the regular increments and because the petitioner passed the typing examination in the year of 1995. Hence, he was given the regular increments after one year of passing the typing examination.

6. The service condition of the petitioner has been regulated by the Recruitment Rules, named as M.P. Irrigation Department (Non-Gazetted) Service Recruitment Rules, 1969. Rule 8 of the aforesaid Rules prescribes conditions of eligibility for direct recruitment and (B) of the aforesaid Rule prescribes educational qualification which is as under:

(B) Educational qualifications.- He must possess the educational qualification as prescribed for the service as shown in Schedule III provided that:

(i) in exceptional cases the Chief Engineer may on the recommendation of the Selection Committee/Appointing Authority treat as qualified a candidate, who though not possessing any of the qualifications prescribed in this clause, has passed examination conducted by other institutions by a standard which in the opinion of the Engineer-in-Chief/Chief Engineer, justifies the consideration of the candidate for selection, and

(ii) candidates who are Ors.wise qualified but have taken degrees from Foreign Universities, being Universities not specifically recognised by Government may also be considered for selection at the discretion of the concerned Chief Engineer.

and Schedule III of the aforesaid Rule prescribes qualification for a Lower Division Clerk is as under:

Lower Division Clerk: 18 years 25 years Matriculation or equivalent examination pass, Preference to those possessing certificate in typewriting.

Hence, it is clear from the Recruitment Rule that, passing of typing examination is not a necessary qualification. However, it is mentioned in the recruitment rule that preference is to be given to those persons who possess the certificate of typewriting, and it also a fact that after judgment of this Court and Tribunal vide circular dated 6-7-95 the General Administration Department has ordered that the employees who were appointed prior to 22-8-73 on regular post would be given regular increment from one year of their initial appointment. In such a circumstances, in my opinion, when passing of typing examination is not necessary qualification. As per Recruitment Rules the increment of an employee who was appointed regularly cannot be withheld.

7. The same point has been considered by the learned Single Judge of this Court reported in 1987 36 J.L.J. 755, State of M.P. and Anr. v. Ramesh Chandra and Anr. has held as under:

If anything more has to be said to hold that the defence was wholly meritless and the poor and petty employee had to make a wild cry in the wild wilderness, I have to merely refer to F.R. 24 on which the claim of the plaintiff was founded; and I quote:

F.R. 24. Withholding of increments.- An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by a local Government, or by any authority to whom the

local Government may delegate this power under Rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding authority shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments.

The only power which is vested in the Government to withhold increment of a Government servant is to be found in the aforesaid statutory rule and it is trite law that the power must be exercised subject to the condition by which it is circumscribed. When conduct of a Government servant has not been good or his work has not been satisfactory that an order withholding his increment may be passed. In this case, admittedly, the situation is entirely different. Indeed defence taken is wholly irrelevant to the statutory provision aforesaid. It has never been the case of the State either here or in any of the Courts below that the work of the plaintiff had not been "good" or "satisfactory"; merely on the basis of a circular which could not, and indeed, did not bind the plaintiff, he is sought to be saddled with a disqualification as is not contemplated under the aforesaid statutory provision. As I have held above, it was not the condition of service of employment of the plaintiff/respondent manifested, whether in the order dated 30-7-1971 or the subsequent order dated 9-3-1972, that he will not draw the time scale salary, but he will draw a fixed salary of Rs. 90/- till he had passed "typing examination". In *Indrasen Jain (supra)*, I had taken the view with reference, albeit, to the sister provision F.R. 25 that there can be no unreasonable restrictions imposed, whether by executive order or statutory provision in the enjoyment of the right to time scale salary of the Government servant because such an action is interdicted to Article 16. If some more has to be said, mere mention of *Olga Tellis (1)* is sufficient.

The Hon'ble Supreme Court in *State of Maharashtra v. Jagannath Achyut Karandikar* reported in AIR 1989 SC 1133 has held that Executive instructions may supplement but not supplant statutory rules. Apart from this, the General Administration Department, vide circular dated 6-7-95 also directed that an employee who was appointed prior to 22-8-73 would be given regular increment, even though he did not pass the typing examination and there is no nexus to deny the same benefit to the petitioners who were appointed after 22-8-73 on regular basis.

8. The judgment cited by the learned Counsel for the respondents of the Division Bench passed in W.P. No. 712/2000, *State of M.P. and Ors. v. Sushma Sumna* is distinguishable. In the aforesaid case, the Tribunal granted a regular increments to an employee from the date of initial appointment which was on ad hoc basis. The petitioner in that case was regularised in the year of 1999 and in that circumstances the Division Bench has quashed the order of the Tribunal with regard to grant of regular increments from the year of 1988 and also the Division Bench noted the fact that the Tribunal granted the benefit of grant of increments to the petitioner from the year of 1988 when she was engaged on ad hoc basis and at that time it was the condition in the appointment order that the petitioner

has to pass the typing examination certainly, the condition of the appointment order can be relied on in the case of an ad hoc employee because an ad hoc employee has no statutory status, but the case of the regular employee who has been appointed as per the Recruitment Rules is on a different footing and in the present case, the petitioners were appointed on a regular basis as per the provisions of Recruitment Rules. Hence, they could not be denied the benefit of increments contrary to recruitment rules only on the basis of executive circular.

9. Hence, on the basis of the above, the petitions of the petitioners are allowed. The respondents are directed to grant regular increments after one year from the date of initial appointment. The pay of the petitioners be fixed accordingly and arrears be given to them within a period of 3 months from the date of receipt of the order.