
(1998) 04 MP CK 0056
In the Madhya Pradesh High Court
Case No : M.C.C. No. 634 of 1996 (G)

Dr. Amaresh Kumar

APPELLANT

Vs

The Dean, Laxmibai National College of Physical Education
(Deemed University) and one Another

RESPONDENT

Date of Decision : 28-04-1998

Acts Referred:

Citation : (1998) 2 MPJR 49

Hon'ble Judges : A.K. Mathur, C.J; Shacheendra Dwivedi, J

Bench : Division Bench

Advocate : Arun Mishra, for the Appellant; R.A. Roman, for the Respondent

Judgement

Shacheendra Dwivedi, J.

The case has a chequered history. On 21.2.1984 the petitioner was appointed on the post of Research Assistant in Laxmi Bai National College of Physical Education, Gwalior. The petitioner in the year 1988 had preferred a Writ petition No. 1187 of 1988, wherein he had raised many contentions including the one of discrimination against him by the respondent, as one Dr. M. I. Qureshi, who was junior to the petitioner was taken up by respondents as Lecturer. The Writ petition was allowed by the court directing the respondents also to appoint the petitioner on the post of Lecturer from 1.12.1987, since he had obtained Ph. D. on that date.

Against the order passed by Writ Court the respondents had preferred SLP before the Hon'ble Supreme Court. The order of the High Court was set aside. However, the Hon'ble Supreme Court had directed to restore the Writ petition with a further direction to the High Court to dispose of the petition after considering the other contentions raised by the petitioner in his Writ Petition, as those were not considered in the earlier order. The only direction issued by the High Court in the Writ Petition was that the petitioner be also appointed as Lecturer as the same treatment was given to Dr. Qureshi.

After the order of the Hon''ble Supreme Court, the writ court had considered the other contentions and found that since the duties and the work of Research Assistant were at par with Lecturer, on the principle of equal pay for equal work, the petitioner was entitled to the scale of Lecturer.

The respondents, against the order had preferred Letters Patent Appeal No. 6/95. The Division Bench had dismissed the appeal. The respondents had thereafter preferred the SLP before the Hon''ble Supreme Court, which was also dismissed by the Apex Court on 2.8.1996.

Since the respondent had not complied with the directions of this Court, a petition alleging contempt of the Court was filed as M. C. C. No. 139/95. A direction was issued to the respondents therein to make the payment of all the due benefits to the petitioner within a period of three weeks. The respondents had thereafter issued order dated 10.9.1996 informing that the petitioner was allowed the pay scale of Lecturer from the date of judgment. But since the petitioner was not paid the total arrears under the judgment and the payment was made to him from the date of judgment, he had filed a petition for the clarification of the judgment passed by the writ Court. The learned Single Judge had clarified the order in this M. C. C. 634/96 and had directed that the petitioner had the right of getting the benefits from the date of his entitlement and not from the date of judgment, as the respondents had put such interpretation to the main order passed in the writ petition.

Against the order of the Single Judge, the respondents had preferred L. P. A. No. 83/97. In appeal, the Division Bench on 15.5.1997 desired the Hon''ble Judge of the Single Bench to declare the date of entitlement so that one may not be required to guess. This matter had thereafter gone before the Single Bench. It was thereafter listed on 26.6.97. and adjourned to 25.7.97, 5.8.97, 7.8.97 and 4.12.97. Thereafter since learned Brother Judge was transferred to another State from this State, hence, under the High Court Rules, the matter was listed before the Division Bench.

In the above facts, the short question before us is as to what would be the date of entitlement of the petitioner for getting the benefits under the order passed by the Writ Court in M. P. No. 1187/88.

The questions as to the benefits to which the petitioner is entitled, have been concluded and the order has achieved finality. Therefore, it is no more open for consideration as to what are the benefits to which the petitioner may be entitled to on the principle of "equal pay for equal work". The petitioner was found entitled to the scale of Lecturer as the duties and work of Research Assistant were found at par with the duties and work of the Lecturer. The petitioner was admittedly appointed to the post of Research Assistant on 21.2.1984 and was continued as such. The respondents have already granted the benefits to the petitioner from the date of judgment, but the entitlement of the petitioner cannot be held to be from such date. Since the petitioner has been working as Research

Assistant from the date of his appointment, he will consequently have his entitlement to the benefits right from that date. The petitioner's entitlement has been found on the reasoning of "equal pay for equal work" and as duties of the Research Assistant are at par with Lecturer, his entitlement to the benefits would be from the date of his joining the service.

Learned counsel Shri Arun Mishra, appearing for the petitioner has placed reliance in this regard on the Supreme Court authority of Bindesh-wari Prasad Singh & others Vs. State of Rajasthan, passed on 25th April, 1985 in writ Petition No. 955 of 1984 and other similar petitions. (Photo-stat copy of the order filed on record.) While resolving the controversy the Supreme Court had earlier affirmed the decision of the Division Bench of Rajasthan, High Court, whereby the High Court had decided that Research Assistants of Udaipur University were entitled to U. G. C. pay scale, which was recommended for Lecturers. A review petition was filed thereafter expressing the difficulties that the decision of Rajasthan High Court, as affirmed by the Supreme Court, was likely to create inconvenience, inasmuch as the Research Assistants and the Lecturers, who formed entirely separate and distinct cadre would have to be amalgamated and that might create confusion in the matter of further promotions. Once they were put at par in the matter of pay scales, the Supreme Court had clarified the position by holding that Research Assistants and Lecturers were separate and distinct cadre.

In that authority, although it was found by Supreme Court that Research Assistants were entitled to get the pay scales of Lecturers, yet the authority does not relate to the date of entitlement. Shri Mishra has then pressed into service a Division Bench authority of Allahabad High Court in Pankaj Kumar Vs. University of Allahabad (1993 E. S. C. 137). In that authority the Court was also required to adjudicate the date from which the Research Assistants could be held to be entitled to get the salary payable to Lecturers and it was found that such date could be the date on which the employee had resumed his duties. The Allahabad High Court had placed reliance for such view on the Apex Court authority of Bindeshwari Prasad Singh (supra) and the other authority of Gopal Krishna Sharma and others, .

Their Lordships of Supreme Court in Gopal Krishna Sharma (supra) were considering the question whether the Research Associates were also entitled to the pay scale of lecturers, as was allowed to the Research Assistants and further as to what could be the date for allowing them the benefits of Lecturers. It was observed by the Apex Court that "Appointment of Research Associates will however continue to be what it is and they will not belong to the cadre of Research Assistants merely because their consolidated salary is ordered to be worked out on the minimum of the time scale allowed to Research Assistants." It was further observed that "They will not be equated with Lecturers / Assistant Professors in status and salary." While thus ordering, the Apex Court held that "The benefit of this revised consolidated salary will be available to them from the date of their appointment as Research Associates."

By applying the doctrine of "equal pay for equal work", the petitioner was allowed the benefit of Lecturer's pay scale. When the order of this Court has attained finality, there remains no justification for the respondents to allow the granted benefit to petitioner from the date of judgment or from any other date subsequent to his joining the duties. The entitlement of the petitioner to the benefit of Lecturer's pay scale would only be from the date he had resumed his duties i. e. 21.2.84, when he was appointed on the post.

We, therefore modify the order and clarify the ambiguity occurring in the order passed in Writ Petition No. 1187/88 and declare the date of the petitioner's entitlement to the benefits of Lecturer from the date of his appointment in service i. e. 21.2.1984. However, in the facts and circumstances, the parties are left to bear their costs of litigation.