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(2005) 03 MP CK 0020

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 745 of 2004

Dr. Chintamani APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 14-03-2005

Acts Referred:

Citation : (2005) 2 MPJR 405

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : D.S. Kale, for the Appellant; L.R. Bhatnagar, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

N.K. Modi, J.

Prayer in the petition is that the respondent be directed to add non-practicing allowance of Rs. 900 in the last basic pay of the petitioner and accordingly revise the pension of the petitioner and make the payment of arrears including the difference amount of gratuity pension and commutation as well as to make payment with interest.

Facts of the case are that the petitioner was appointed as Asstt. Surgon in the year of 1966 in Public Health and Family Welfare Department and on attaining the age of superannuation, the petitioner retired on 30.4.1998. Vide Circular dated 10.3.1997, the State Government granted non-practising allowance of Rs. 900 which was paid to the petitioner from time to tome. At the time of revision of pay scale in accordance with Vth Pay Commission, the non-practising allowance was not included. Hence, the petitioner approached the State Administrative Tribunal. Vide order dated 3-12-1999 in OA No. 1789/99 it was directed to consider the claim of the petitioner as per the policy and decide the representation. Since, no action was taken, hence again the petitioner approached the SAT and vide order dated 10-9-2002 in OA No. 1960/00 it was again directed to do the needful within a period of two months. Thereafter, vide order dated 18-11-2002, the representation of the petitioner was dismissed on the ground that as per the Circular dated 11-13/1/1999 ban on private practice was only to the doctors, who were working in Medical Education or who are doing the administrative work. It was alleged that since the petitioner was not in the above cadre, therefore, petitioner is not entitled to get the allowances. Further case of the petitioner is that as per Circular dated 10.3.1997, petitioner is entitled for non-practising allowance and as per Clause-3 of the aforesaid Circular, non-practising allowance has to be counted for D.A. allowance, Tour Allowance and it is to be further counted for retrial benefits.

Respondents submitted that the petitioner is not entitled because of the Circular dated 13-1-1999 and his case has been rightly rejected, in compliance of the order of the State Administrative Tribunal vide order dated 18-11-2002.

Fact remains that the petitioner was retired on 30-4-1998. Till his retirement, non practicing allowance was paid to him in accordance with circular date 10-3-1997. The Circular on which the reliance is placed is dated 11 13-1-1999. Since the petitioner retired on 30-4-1998, therefore, petitioner is entitled for the benefits which were given to him by the Circulars which was in existence at the time when he was in employment. No retrospective effect can be given to the Circular dated 13-1-1999 much after his retirement. In the Circular dated 10-3-1997 it was specifically mentioned that for the purposes of counting of retrial benefits, non-practicing allowance shall be counted as part of salary.

In view of this petition is allowed. Respondents are directed to pay the retrial benefits to the petitioner after counting the non-practicing allowance as part of salary, in accordance with Circular dated 10-3-1997, within a period of three months. No order as to costs.

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