
(2013) 02 MP CK 0104

In the Madhya Pradesh High Court

Case No : Writ Appeal No's. 1140, 1142 to 1151, 1153 to 1160 and etc. of 2011

Dr. Hari Singh Gour Vishwavidyalaya

APPELLANT

Vs

Surendra Saraf and etc. etc.

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Central Universities Act, 2009 — Section 27, 4(d), 8
Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 23, 24
Minimum Wages Act, 1948 — Section 12(1A)

Citation : (2013) ILR (MP) 552 : (2013) LabIC 1215 : (2013) 2 LLJ 720 : (2013) 3 MPHT 384 : (2013) 2 MPHT 489 : (2013) 3 MPLJ 16

Hon'ble Judges : S.A. Bobde, C.J.;Ajit Singh, J

Bench : Division Bench

Advocate : Shobha Menon, with Shri. Rahul Choubey, for the Appellant; P.C. Chandak, with Uttam Maheshwari, T.K. Khadka, N.K. Salunke, Dinesh Upadhyaya and Shri. Rohit Dubey, for the Respondent

Final Decision : Dismissed

Judgement

1. All these writ appeals are being decided by this common order because they involve a common issue and were heard together. Appellant Dr. Harisingh Gour Vishwavidyalaya, Sagar, was established by the State of Madhya Pradesh in the year 1973 under the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (in short, "the Adhiniyam 1973"). The respondents were appointed by the appellant on daily wages and some of them are working on Class III and some on Class IV regular posts. After the appointment, the respondents were being paid minimum wages as notified by the District Collector. But the respondents were dissatisfied with their wages. They, therefore, claimed for payment of the minimum of the regular pay-scale applicable to the posts on which they were working. They also made numerous representations to the appellant in this regard. The Executive Council of appellant in its meeting held on 1.5.2008 vide resolution, Annexure P7, resolved that all the daily wage and muster roll employees working in the University will be granted the minimum of the regular pay-scale and allowances

against the posts on which they were working but the employees shall not be entitled for any increment, House Rent Allowance, Medical Allowance and other benefits.

2. After passing of the resolution dated 1.5.2008, Annexure P7, Central Universities Act, 2009 (in short, "the Act 2009") was brought into force with effect from 20.3.2009. The appellant, therefore, became a Central University from that date. Section 4(d) of the Act 2009 protected the terms and conditions of service of the employees of appellant, including remuneration, until they were altered by Statutes. Thus, the service conditions of the respondents stood protected. In the meanwhile, recommendations of the Sixth Central Pay Commission were implemented and the respondents also sought benefit of these recommendations.

3. The appellant vide order dated 17.7.2009 directed that all the daily wage and muster roll employees, whose work was of the same nature as of regular employee, shall be given the minimum of the regular pay-scale applicable to the posts on which he was discharging duties along with 1/30th of the Dearness Allowance. The order also clarified that such employees will not be entitled for any other allowance. But later, on the recommendation dated 10.4.2010 of the Finance Committee that the work of University be done by outsourcing and rules of University Grants Commission be followed and also Collector rate be paid, the Executive Council of the appellant by resolution dated 24.10.2010 withdrew the order dated 17.7.2009.

4. Aggrieved, the respondents challenged the recommendation dated 10.4.2010 of the Finance Committee and resolution dated 24.10.2010 of the Executive Council in their respective writ petitions. The learned single Judge by the impugned order has allowed the writ petitions directing the appellant to pay respondents the minimum of the regular pay-scale notified for the posts against which they were discharging duties with effect from 17.7.2009. The learned single Judge has held that Section 4(d) of the Act 2009 protected the right accrued in favour of the respondents regarding grant of the benefit of the minimum of the regular pay-scale pursuant to resolution dated 1.5.2008, Annexure P7, of the Executive Council. The learned single Judge has further held that the respondents were also entitled for the benefit of the minimum of the regular pay-scale in view of Section 12(1-A) of the Minimum Wages Act, 1948 and as well as on the principle of "equal pay for equal work". While applying the principle of "equal pay for equal work" the learned single Judge has relied upon the circular, Annexure P8-A, and some note sheets issued by the Government of India. It is in this background the appellant has filed the present bunch of writ appeals.

5. The learned senior counsel for appellant has argued that the learned single Judge could not have issued the direction for payment of the minimum of the regular pay-scale because the respondents are admittedly daily wage employees. The learned senior counsel has also argued that the learned single Judge

committed an illegality in holding that the respondents were entitled for the payment of the minimum of the regular pay-scale under the Minimum Wages Act, 1948 and on the principle of "equal pay for equal work". The learned respective counsel for the respondents, in reply, defended the legality of the order passed by the learned single Judge.

6. As already stated above, the Executive Council of appellant in its meeting held on 1.5.2008 vide resolution, Annexure P7, resolved to grant all the daily wage and muster roll employees working in the University the minimum of the regular pay-scale and allowances against the posts on which they were discharging the duties but employees shall not be entitled for any increment, House Rent Allowance, Medical Allowance and other benefits. The Executive Council is constituted u/s 23 of the Adhiniyam 1973 and u/s 24 it is vested with wide powers to control the funds of University, including the power to prepare annual financial estimate, power to appoint the employees of University and defining their service conditions, etc. Therefore, once the Executive Council took a decision on 1.5.2008 for granting the minimum of the regular pay-scale and allowances to the respondents, the same became their service conditions from that date. Thereafter the appellant became a Central University due to coming into force of the Act 2009 with effect from 20.3.2009. Section 4(d) of the Act 2009 reads as under:

4(d) every person employed by Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, immediately before the commencement of this Act shall hold his office or service in Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Act by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Act had not been enacted and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes.

(Emphasis supplied)

The above quoted Section 4(d) clearly states that the terms and conditions of all the employees of University including their remuneration shall remain protected unless they are altered by the Statutes. In State of Haryana and Another Vs. Tilak Raj and Others, the Supreme Court in paragraph 10 has observed that daily rated workmen were not entitled for the minimum of the regular pay-scale applicable to similar employees in regular service unless the employer had decided to make such minimum in the pay-scale applicable to the daily rated workmen. In the present case, the appellant as employer did decide that the respondents shall be granted the benefit of the minimum of the regular pay-scale and allowances despite they being daily rated workmen. Therefore, they are entitled for such benefit due to protection u/s 4(d) till the terms and conditions

of their service and remuneration were altered by the Statutes. Thus, the benefit of the minimum of the regular pay-scale with allowances granted to the respondents against the posts on which they are working vide resolution, Annexure P7, dated 1.5.2008 of the Executive Council cannot be withdrawn by its subsequent resolution dated 24.10.2010. For these reasons, we are in complete agreement with the finding of the learned single Judge that the respondents became entitled for the benefit of grant of the minimum of the regular pay-scale and allowances as per resolution, Annexure P7, dated 1.5.2008 of the Executive Council. The appellant must, therefore, pay the respondents the minimum of the regular pay-scale and allowances in compliance of the resolution, Annexure P7.

7. So far no Statute has been made as provided u/s 27 of the Act 2009 affecting the pay and allowances of the respondents. The resolution dated 24.10.2010 cannot be construed as a Statute. The appellant has not shown that the resolution has been approved by the visitor who, as provided in Section 8 of the Act 2009, is the President of India. The approval by the visitor of any new Statute is a mandatory condition u/s 27. In the present situation, we do not find it necessary to go into the question whether the Minimum Wages Act, 1948 or the principle of "equal pay for equal work" will apply. The appeals are accordingly dismissed.