

(2001) 11 MP CK 0001
In the Madhya Pradesh High Court
Case No : Writ Petition No. 396 of 1991 (J)

Dr. M. Deouskar

APPELLANT

Vs

Dr. Hari Singh Gaur Vishwavidyalaya

RESPONDENT

Date of Decision : 19-11-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 39(d)
Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 49

Citation : (2002) 1 MPJR 262

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Malti Dadaria, for the Appellant; Dilip Pande, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

The question involved in the writ petition is whether petitioner's services can be ordered to be regularized with effect from 17.8.1971 and whether petitioner is entitled to count his service for the retrial benefits which he rendered on adhoc basis and whether he is entitled for seniority for the period. The question is also whether the petitioner is entitled for increments with effect form 17.8.1971 till he was selected in 1998.

The petitioner was appointed as a lecturer on stop gap basis in leave vacancy in respondent no. 1/Dr. Hari Singh Gaur University. University of Sagar was established under the University of Sagar Act, 1916 (Act no. 16 of 1946). After coming into force of M.P. Vishwa Vidyalaya Adhiniyam, 1973 (Act No. 22 of 73), the previous act was repealed and respondent no. 1 Dr. Hari Singh Gaur Vishwavidyalaya, Sagar is deemed to be University established under the Act of 1973.

The petitioner possesses the qualification of M.A., M.Ed., B.Lib. Sc, PHD (Education). He was appointed as stop-gap temporary Lecturer in the University

vide order dated 1.8.1971 (Annexure-B). At the time of appointment, he was M.A., M.Ed., and also had teaching experience. He possessed necessary qualification for the post of lecturer at the time of appointment. He assumed the charge on 17.8.1971 and is rendering the service uninterruptedly without any break till today. Petitioner submits that seniority list (Annexure-C) was prepared by the University under Statute No. 19; the name of the petitioner was shown at Sr. No. 336 and date of appointment was shown as 1.8.1971. Petitioner performed the responsible jobs given to the senior lecturers or even to the Asstt. Professors such as Examiner for B.Ed. & B.A., Internal Examiner for B.Ed. Practice Teaching, Central Supervisor, in 1972 in exam held by Board of Secondary Education, M.P. Asstt. Superintendent-Pre B. Ed. Test and PMT, Administrative Officer of Academic Staff of College of respondent No. 1, Dr. Hari Singh Gaur Vishwavidyalaya. Petitioner submits that he was being paid the pay of Instructor whereas the other instructors were getting the pay scale of Lecturer. The petitioner alleges violation of principle of "equal pay for equal work" which is violative of Articles 14, 16(1) and 39(d) of the Constitution of India. The petitioner submits that respondents cannot take the work of higher post from the petitioner while continuing him in the lower pay scale. Petitioner made several representations praying for pay scale of lecturer with effect from the date of appointment, and as revised from time to time alongwith periodical increments, seniority and other consequential benefits. Petitioner also claims by amending the writ petition relief of regularization with effect from the date of his initial appointment since he was working on a vacant post and all other consequential benefits and counting the period for retrial benefits on the strength of decision of State of U.P. and others vs. Dr. R.K. Tandon and others, 1995 SCC (LAS) 820.

Respondent No. 1 in the return contends that the appointment was purely stop-gap temporary appointment as Lecturer on a consolidated pay of Rs. 297/- per month. He was not selected by the selection committee nor came in through an application pursuant to the advertisement. It was case of back door entry. There is no provision under the statute 31 framed u/s 49 of M.P. Vishwavidyalaya Adhinyam for such appointment. Thus, his services cannot be regularized: However, the respondents also point out that petitioner participated in the selection process in the year 1983 but could not be selected. However, since post was vacant, his services were continued. Further the advertisement was issued in 1987 and 89, but selection committee did not meet. There was vacant post which could not be filled owing to the fact that the procedure was not completed.

It is also submitted at bar that the petitioner has been selected as Asstt. Professor on 6.8.98 and is continuing on regular basis. The reliefs which are now left to be considered are with respect to whether period 1971 to 6.8.98 can be counted for retrial benefits, entitlement of pay scale, whether increments should have been given and the question of seniority.

Last question is taken first. The appointment of the petitioner was purely stop-gap in a temporary vacancy created owing to fortuitous circumstances. Petitioner

was not appointed by following the prescribed selection procedure. Petitioner faced the selection procedure in 1983 and was rejected. He cannot obviously get the benefit of seniority for the period as his appointment was not regular and was not found fit in 1983 for regular appointment, thus, he cannot have march over others regularly appointed.

Next question is with respect to counting of period for retiral benefits which may be available to petitioner in the event of his retirement and retiral benefits. In *State of U.P. vs. R.K. Tandon (supra)*, the Supreme Court found that un-selected appointees were continued for a long period of several years. The seniority could not be claimed however, the benefit was granted by the Supreme Court for counting the period spent for computation of retiral benefits. The Supreme Court held in para 7 as under:

It is on record that some of these adhoc doctors have retired on attaining the age of superannuation. In respect of them, there shall be a direction to notionally treat them to be regularly appointed from respective dates of initial appointment only for the purpose of giving them pensionary and retiral benefits admissible according to relevant rules. This should not be reckoned for inter se seniority among the temporary or adhoc doctors appointed in the service.

Following the decision of *R.K. Tandon's* case, it is held that the petitioner is entitled to include service for retiral benefits which may be admissible to him on his retirement which he rendered from 16.8.1971.

Next question is with respect to the grant of pay scale on the basis of "equal pay for equal work". The petitioner was a member of faculty. He was appointed as a lecturer. He has been regularly selected pursuant to advertisement in 1998. Averments made by the petitioner in the writ petition remain uncontroversial that he was discharging the duties of lecturer which are the duties of every faculty member. The Supreme Court in Writ petition No. 9555 of 1983 decided on 25th April, 1985 (*Bindeshwari Prasad Singh & Ors. v. State of Rajasthan*) considered question whether research assistants of Udaipur are entitled to same pay scale as admissible to university lecturers. Distinction was sought to be made on the ground that research assistants stand on different footings: the High Court of Rajasthan came to the conclusion that research assistants of Udaipur university are entitled to same pay scale as recommended for lecturers. Against the decision of the High Court, the SLP was dismissed by the Supreme Court with the observation that research assistants are entitled to similar pay scales as that of lecturers. In *Pankaj Kumar v. University of Allahabad* and another 1990 (3) Education & Services Cases 137, a similar view was taken. Supreme Court in *Gopal Krishna Sharma and others*, also took a similar view. A single bench of this Court in case of *Dr. Amrash Kumar v. Dean Laxmibai National College of Physical Education Misc. Petition No. 1187/1988* decided on 21.10.94 took a similar view. Against the order, LPA No. 6/95 was preferred which was dismissed by the Division Bench. Against that order SLP was also dismissed by the Supreme Court.

In the instant case the petitioner was appointed as lecturer only not as research assistant/instructor. When the appointment itself was that of lecturer and the petitioner was rendering the duty of lecturer and was treated as member of faculty for all the purpose, he cannot be denied the benefit of pay scale available under the rules. Petitioner, as a matter of fact, in the instant case has been denied protection available under the rules which amounts to denial of protection of law itself. Even where an incumbent is not holding the post; is doing similar work gainfully "equal pay for equal work" has been upheld umpteen number of times. In *Randhir Singh Vs. Union of India (UOI) and Others*, the Supreme Court implemented the principle of "equal pay for equal work". Equal remuneration for work of equal value was the principle deduced from Article 14, 16 and 39(d) of Constitution of India which was taken to further logic in *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, . A discrimination was held to be impermissible in *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others*, . In *Purshottam Lal and Others Vs. Union of India (UOI) and Another*, . It was held that implementation of the revised pay scale in a particular category of servants from a later date than that recommended by the Pay Commission was violative of Article 14 and 16 of Constitution of India. In *Laljee Dubey and Others Vs. Union of India (UOI) and Others*, , the same principle was reiterated. In *P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others*, classification into two groups on the basis of seniority and differentiation in pay scale was held to be not permissible. The principle of "equal pay for equal work" was enforced in *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, in *Bhagwan Dass and Others Vs. State of Haryana and Others*, and in *Jaipal and Others Vs. State of Haryana and Others*, . The emphasis is on the equality clause and equal protection of law. The petitioner filed the writ petition in the year 1990 and though he was rendering the service of lecturer, he is held entitled for salary in pay scale of lecturer with effect from date of filing the petition for purpose of notional fixation of pay however, actual arrears monetary benefit is confined to three years prior to date of his regular selection which was made on 6.8.98.

Next question is about the increments. Since the petitioner was working from the year 1971 uninterruptedly and continuously and for adhoc officiating period increments should have been added. Pay cannot be static and must be enhanced suitably in accordance with reality of the day; stagnation is unrealistic. It is submitted that such increments have been allowed to the Government servants and servants of other local bodies. Petitioner should be treated similarly. Since the petitioner has continuously officiated though he was appointed on temporary vacancy but he cannot be kept stagnated for a period of 28 years. Thus, the petitioner is held entitled to the computation of increments from the date of initial appointment to the pay scale to which he was appointed. Actual monetary benefit of annual increments shall be paid to him with effect from date of filing the writ petition.

In the result, the writ petition is partly allowed. The petitioner is not entitled for seniority and regularization with effect from 16.8.1971. However, he is entitled for computation of the service with effect from 1971 which he has rendered with the University towards retiral benefits. He is further entitled to the increments w.e.f. initial appointment, however, the actual payment of increments be made with effect from the date of filing the writ petition. The petitioner is entitled to be fixed notionally in the pay scale available to the lecturer with effect from the date of filing the writ petition and payment of monetary benefit on such fixation is directed to be made for three years prior to date of regular appointment of petitioner which was made on 6.8.98.

Thus, petition is allowed in part. Cost on parties.