
(2009) 05 MP CK 0035
In the Madhya Pradesh High Court

Dr. Santosh Kumar Gandhi

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Citation : (2009) 05 MP CK 0035

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhay M. Naik, J.—This petition has been preferred for quashment of Annexure P/1 and issuance of writ of mandamus to the respondents commanding them to re-fix the pay of the petitioner under Clause 7 (c) of AICTE contained in Annexure P/2.

2. Facts involved herein are that the petitioner was appointed as lecturer in Sardar Vallabh Bhai Polytechnic College Bhopal. During service, he acquired Ph. D. Degree on 2.10.2003. All India Council for Technical Education (for Short "AICTE") issued a notification for diploma level technical institution as contained in Annexure P/2 on 30th of December, 1999. Clause 7 which is reproduced below provides incentives for higher qualification:

7. Incentives for Higher Qualification

(a) At the time of recruitment as Lecturers,

(i) four advance increments will be admissible to those who hold Ph. D. Degrees, and

(ii) two advance increments will be given to those who hold M. Phil. Degree in Science/Humanities and to those who hold M.E/M. Tech. Degree.

(b) A teacher with M.E./M. Tech., who does not have a Ph. D. degree will be eligible for two advance increments as and when he/she acquires a Ph. D. degree

in his/her service career.

(c) A Lecturer with Ph. D. will be eligible for two advance increments when he/she moves into the grade for Lecturer (Selection Grade) through Career Advancement Scheme or is appointed as Head of Department.

3. The petitioner on acquiring degree of Ph. D. was granted 2 advance increments by virtue of Clause (b) supra. Subsequently, vide order dated 14.7.2005 (Annexure P/1), the petitioner was placed in the Selection Grade w.e.f. 30th of December, 2004. After having been granted the Selection Grade, the petitioner claimed two advance increments as per clause 7(c) supra vide Annexures P/4, P/5 and P/6. The Director of Technical Education M.P. vide his letter Annexure P/8 informed the Principal of Sardar Vallabh Bhai Polytechnic College, Bhopal that on account of having been placed in the Selection Grade the petitioner is entitled to two advance increments by virtue of clause 7(c) and that the Principal was competent officer to make fixation after granting two advance increments. It was not complied with. The petitioner vide Annexure P/10 dated 3rd of January, 2007 and Annexure P/11 dated 27.1.2007 requested the Principal to grant him two advance increments in pursuance of the letter (Annexure P/8) issued by the Director of Technical Education. Since no compliance was made, the petitioner submitted the present writ petition for payment of two advance increments on account of having been placed in Selection Grade.

4. Respondents submitted their return refuting thereby the claim of the petitioner. According to the respondents the petitioner on acquiring the degree of Ph. D. was already granted two advance increments and is not entitled to re-claim the same in the light of clarification Annexure R/2 dated 8.6.2007. Reliance has also been placed on Annexure R/1 dated 3.1.2003.

5. The petitioner submitted certain documents with I.A. No. 5332/09 which being necessary for the decision of this petition are taken on record.

6. Shri Hemant Shrivastava, learned Counsel for the petitioner as well as Shri Shailesh Mishra, learned Government Advocate made their detailed submissions which have been considered in the light of the material on record.

7. Admittedly, the petitioner on acquiring the degree of Ph.D. On 2.10.2003 during his service period was granted two advance increments on 10.7.2003. Thereafter, the Selection Grade was granted to him w. e. f. 30th of December, 2004 as revealed in Annexure P/1. Under sub Clause (b) of clause 7 of the AICTE notification (Annexure P/2) the petitioner became eligible to two advance increments on acquiring the degree of Ph. D. He was accordingly, granted two advance increments. Sub Clause (c) of clause 7 of Annexure P/2 lays down that the lecturer with Ph. D. will be eligible for two advance increments when he is placed in the Grade of Lecturer (Selection Grade) through Career Advancement Scheme.

8. It is clearly revealed in Annexure P/23 dated 24th of March, 2005 that the

selection grade was granted to the petitioner under Career Advancement Scheme by virtue of sub Clause (c) of Clause 7 (supra). The petitioner on moving into the Selection Grade of Lecturer through Career Advancement Scheme became entitled to two advance increments since he was holding the degree of Ph. D. Sub Clause (c) has not been made dependent of sub Clause (b) in any manner. The Director of Technical Education, M.P. vide letter dated 26.7.2007 (Annexure R/3) rejected the claim of the petitioner in respect of two advance increments on moving to Selection Grade in the light of directions contained in Annexures R/1 and R/2. Annexure R/2 is based on the letter of AICTE dated 3.1.2003 which is on record as Annexure R/1. Captioned subject therein is "Clarifications on certain issues pertaining to Pay-Scales and Service Conditions for teachers of Degree level Technical Institutions". Petitioner is serving in Polytechnic College which is a Diploma level Technical Institution and not Degree Level Technical Institution.

9. This being so, Annexures R/1 and R/2 are not found to be applicable to the case of a lecturer with degree of Ph. D. serving in Diploma level Technical Institution who moves in the Selection Grade under Career Advancement Scheme. Annexure R/1 and R/2 would be applicable only to degree level technical institutions and not to diploma level technical institutions. Accordingly, they are found inapplicable to the petitioner's case.

10. A mere look at Sub-clauses (b) and (c) of clause 7 of the Notification contained in Annexure P/2 clearly shows that a teacher in the polytechnic College would be entitled to two advance increments on acquiring degree of Ph. D. Further a lecturer with degree of Ph. D. would become eligible for two more advance increments when he moves in Selection Grade through Career Advancement Scheme. Sub Clause (b) and (c) cannot be mixed up with two advance increments granted to the petitioner on acquiring degree of Ph. D. It will not debar him from claiming two more advance increments on account of moving in the Selection Grade through Career Advancement Scheme. Contrary reason assigned in Annexure R/3 is not sustainable in law.

11. In the result, writ petition deserves to be and is hereby allowed. Respondents are hereby directed to grant two more advance increments to the petitioner on account of having moved with degree of Ph. D. in the Selection Grade under Career Advancement Scheme and re-fix him accordingly. Cost of the petition would be borne by the respondents to the extent of Rs. 5000/-, if already certified.