
(2011) 06 MP CK 0014

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12094 of 2009 (S)

Dr. Smt. Ansuiya Paraste

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 130 FLR 936

Hon'ble Judges : Keshav Kumar Trivedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—By this petition under Article 226 of the Constitution of India, a prayer is made to issue a direction to the respondents to make payment of arrears of salary to the petitioner with effect from 22.12.2003 to 17.10.2004 as also the difference in pension, arrears of pension and other retiral dues with interest. A compensation is also demanded for the inordinate delay of making payment of aforesaid claims despite the direction of this Court in Writ Appeal No. 723/2006.

2. It is the claim of the petitioner that she was made to work as Incharge Director Medical Services. It is contended by the petitioner that though a post was earmarked for the candidate belonging to Scheduled Tribe Category, yet when case of the petitioner was considered, she was not promoted. The junior and ineligible persons were posted as Director. The petitioner was required to approach this Court by filing Writ Petition No. 2045/2003 which was dismissed by a Single Bench of this Court on 12.2.2004. The petitioner was required to file a Writ Appeal against the said order being Writ Appeal No. 723/2006, which was finally heard on 21.6.2007. The Division Bench of this Court came to the conclusion that though in the Departmental Promotion Committee held on 16.9.2003, the petitioner was also found fit for promotion on the post of Director Medical Services, but instead of issuing any order of promotion in her respect,

the orders were issued in respect of the respondent No. 2 on 19.9.2003. It was contended by the respondent/State that such an action was taken because a. Model Code of Conduct became enforceable and under the directions of the Election Commission, the order of promotion was not issued in respect of the petitioner and because of this on 22.12.2003, officiating charge of the post of Director, Kamla. Nehru Hospital, Bhopal, was given to the petitioner and when subsequently the Model Code of Conduct was released, regular promotion order was issued on 18.10.2004. The Division Bench of this Court has categorically held that the petitioner would be deemed to be promoted on the post of Director Kamla Nehru Hospital, Bhopal, With effect from 22.12.2003 on regular basis and she was entitled to all benefits of the said promotion. The appeal of the petitioner was, thus, allowed.

3. In consequence of this order passed by the Division Bench, it was necessary for the respondents to comply with the order in full, but only an amendment was made in the order dated 18.10.2004 whereby it was said that instead of treating the petitioner promoted with effect from 18.10.2004, she is treated to be promoted with effect from 22.12.2003. The Contempt Petition filed by the petitioner was disposed of because of this order and the proceedings were dropped, but the liberty was granted to the petitioner to challenge the action of the respondents by a separate writ petition, if she was still dissatisfied by the action taken by the respondents. It is the case of the petitioner that a demand of payment of salary was made and the fact was also pointed out that the petitioner has retired from service, yet neither any payment was made nor salary of the petitioner was revised.

4. This Court issued the notices to the respondents in this writ petition and even after service of the notice, no return was filed.

5. The petitioner thereafter moved an application, LA. No. 1838/2010, for taking subsequent facts on record and pointed out that by an order dated 23.12.2009, the petitioner was paid the difference of salary with effect from the month of January, 2004 to May, 2005. The amount of pay which the petitioner should have been paid with effect from 22.12.2003, was not paid. On account of revision of pay, it was necessary to revise the pension of the petitioner, but this too was not done. This Court vide order dated 25.2.2011 categorically directed the respondents to seek instructions and to file reply of the aforesaid interlocutory application, but the reply was not filed. Again on 16.3.2011, time was allowed to the respondents to file the reply, but no reply was filed. When the case was listed on 25.4.2011, it was specifically directed that in view of the averments made in I.A. No. 1838/2010, the respondents will make payment of pensionary benefits accruing to the petitioner along with arrears of pension within a period of two weeks from the date of order and report the compliance to the Court. Again it was complained that this order was not complied with when the matter was listed on 16.5.2011, and on this date the Court specifically directed that in case payment is not made, action shall be taken against- the respondents for

noncompliance of the order passed. The matter was directed to be listed on 21.6.2011.

6. When the matter is heard today, again it has been pointed out that neither any payment is made nor any reply to the aforesaid interlocutory application has been filed by the respondents. This makes it clear that the respondents are not complying with the order of this Court and are harassing; a senior citizen who otherwise has been found entitled for all the benefits. It has not been pointed out by the respondents that any appeal against the order passed by this Court has been filed or that there is any interim stay granted by any higher Forum.

7. In view of the aforesaid, it is a glaring example of gross negligence of the respondents of not complying with the directions issued by this Court. It is also seen from the records that whenever the orders are passed by this Court, the copies are duly sent for service to the respondents by the Registry of this Court. The order dated 25.4.2011 was also brought to the notice of the respondents authorities by supplying a copy of it to the Government Advocate representing the respondents before the Court.

8. This being so, this writ petition deserves to be and, is, hereby allowed. By issuance of a writ of mandamus, the respondents are commanded to make payment of arrears of salary of the post of Director Medical Services to the petitioner with effect from 22.12.2003, for the period when the petitioner has worked on the post in Incharge capacity and the said period has been regularised subsequently. The amount already paid indicated in memo dated 22.12.2009 be adjusted towards the arrears of salary. Accordingly, the respondents are further commanded to revise the pension of the petitioner, calculate entire arrears of pension and other retiral dues and to make payment of the said dues within three months from the date of issuance of this order. The amount so calculated and found due to the petitioner will carry interest @ 6% per annum from the date the amount become due till the date of actual payment. The respondents will also bear the cost of this petition quantified to Rs. 5,000/- (Rupees Five Thousand).

9. The writ petition, accordingly, stands allowed.