
(2001) 06 MP CK 0007
In the Madhya Pradesh High Court
Case No : Writ Petition No. 864/99

Dr. Smt. Vijaya Kothalkar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 27-06-2001

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2001) 5 MPHT 295 : (2001) 3 MPLJ 469

Hon'ble Judges : Jayant Govind Chitre, J; A.M. Sapre, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; S.S. Kemkar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

The petitioner is hereby assailing the correctness, propriety and illegality of the judgment and order passed by the M.P. State Administrative Tribunal, Jabalpur (hereinafter referred to as "SAT" for convenience) in the matter of Original Application No. 335/99, dated 23-3-1999.

Some facts need to be stated for the purpose of understanding the matter in better way. The petitioner (Dr. Smt. Vijaya Kothalkar) had been working on the post of Assistant Professor from 18-9-74 in the pay-scale of Rs. 620-1300 and 700-1300. She had acquired the seniority on 18-9-85 and, therefore, she was sanctioned two advanced increments of Rs. 50/- in the aforesaid pay-scale by the Principal, Government Girls P.G. College, Ujjain (hereinafter referred to as the concerned College for convenience). The same order was passed on 7-10-1985. The said advanced increments were given to her in view of the recommendation of the "Pande Pay Commission" and in accordance with the General Administration Department's Memorandum dated 8-5-73. The pay-scale of the Asstt. Professors was revised in the tune of Rs. 2200-4000 from 1-1-86. Later on, vide State Government's Letter dated 30-5-90 the senior pay-scale of Rs. 3000-5000 was sanctioned with effect from 1-1-86 to Mrs. Kothalkar, the present

petitioner and her pay was revised at the minimum of pay-scale of Rs. 3000/-. The petitioner had contended that she was entitled to get her pay-scale fixed keeping in view the two increments which she had acquired on the fact that she was standing at the higher ladder of the stair-case on account of those two advanced increments in accordance with she was taken into consideration vide fixing her pay and a due weightage was to be given to that and after that the pay of Mrs. Kothalkar should have been fixed in the revised pay-scale in view of the recommendations of the "Pande Pay Commission". That was not done and, therefore, she filed a petition before the SAT and that came to be decided by virtue of the judgment of the SAT dated 23-3-1999.

It is necessary for the purpose of a reference to mention few facts, which led to this second battle of the litigation. On account of the two orders passed by the Members of the SAT, the petitioner was required to approach the High Court and after hearing the submissions advanced on behalf of the petitioner and the contentions raised by her, the Division Bench of this High Court passed the judgment and directed the Chairman of the SAT to constitute an appropriate Bench for the purpose of deciding the grievance echoed by the petitioner before the SAT and, therefore, again the matter was heard and the decision came in view of the judgment, which has been quoted above, which is dated 23-3-1999.

Shri G.M. Chaphekar, the learned counsel appearing for the petitioner pointed out that the SAT committed a gross error of mis-reading the facts and distinguishing the case of the petitioner from the case of two Asstt. Professors, namely, G.S. Tomar and Diwakar Kothalkar. While deciding the objections of G.S. Tomar (O.A No. 286/92, G.S. Tomar v.. State of M.P. and others) the SAT took the view that G.S. Tomar was done with injustice when his pay was not properly fixed keeping in view the advanced increments, which he had acquired. In the matter of Diwakar Kothalkar v.. Secretary, Public Health Department and another (O.A. No. 2962/91) also the SAT took the view that in his case the advanced increments were withdrawn on account of audit objections and, therefore, he could not have been denied the advantage of putting him at the higher ladder of the pay-scale by virtue of acquiring of those two advanced increments. Shri Chaphekar submitted that the SAT committed the gross error in not appreciating the case of the petitioner and went wrong in distinguishing the present matter from the case of those two persons. He pointed out that the reason given by the SAT in distinguishing the case of G.S. Tomar (supra) was not consistent with the facts on record and it was wrong on the part of the SAT to brush aside the contentions raised on behalf of the petitioner by saying that the facts in the case of Kothalkar (supra) were not to do so.

Shri G.M. Chaphekar further submitted that when the pay-scale is to be revised, a due weightage has to be given to the fact that the incumbent had already acquired and by virtue of that he should be supposed to be standing on the higher ladder of the stair-case. He submitted that on account of ignoring this aspect of the matter, the SAT committed the gross error and on account of that

the judgment and order passed by the SAT happens to be perverse and illegal and, therefore, this Court should grant the Writ of Certiorari in favour of the petitioner and correct the error committed by the Tribunal by exercising the jurisdiction in view of Article 227 of the Constitution of India.

Shri S.S. Kemkar, the counsel appearing for the respondents justified the impugned judgment and order by submitting that the SAT was right in distinguishing the cases of those two persons from the case of the petitioner. He submitted that there is no error whatsoever in the judgment and order passed by the SAT and, therefore, this petition deserves to be dismissed and it be dismissed.

It is to be noted that by virtue of the order dated 26-6-1997, the State Government granted two advanced increments to the petitioner from 1-1-1986 and the reason was that she had acquired the Degree in Ph.D. The said advanced increments could not have been given to her on account of some technical difficulties, as indicated by the letter of the State Government dated 9th Sept., 1998, by virtue of that letter the said grant of advanced increments to the petitioner was withdrawn.

It is a settled law that at the time of the fixing pay in revision due weightage has to be given to the increments already acquired by the incumbent and keeping in view that the pay-scale in the revised scale has to be fixed. If that is not done, it would tantamount to denying the benefit, which has been acquired by the incumbent to his prejudice. In view of that, the benefit was given to G.S. Tomar and Diwakar Kothalkar (supra). It has been pointed out by the SAT itself in its judgment in para 11 that G.S. Tomar (supra) was entitled to get such revised pay-scale keeping in view the fact that he had already acquired two increments. It further noted that the said grant was withdrawn and, therefore, that was to be restored and that was so done, there was no point in denying that benefit to the petitioner, but pointing out something which was not consistent with the material on record, the SAT committed an error in brushing aside the contentions of the petitioner by distinguishing the case of Diwakar Kothalkar (supra) by saying that the facts of the said case were not before it.

An employee, who has been given advanced increments and has been put to higher ladder of the stair-case can not be put to his prejudice because that would be causing all senior hardship to him because what he had acquired would be withdrawn without there being any fault on his part. Secondly, that would also be creating a quantic situation in the cadre because by such an action he would be brought to par with his juniors or may be keeping up else than his juniors. Therefore, the fact that the employee has acquired the increments and was getting the pay at higher rate can not be either withdrawn, reduced or can not be denied to him. It can not be ignored also. The pay-scale has to be fixed in view of the revision of the pay-scale properly and by giving due weightage to the standing of the person in the cadre.

The then error was not properly appreciated by the SAT. The patent facts echoed by the record were ignored not only that the SAT went on distinguishing the case of the petitioner with other persons who had secured the said benefit by depicting improper reasons and, therefore, there is no alternative but to declare the SAT order as perverse and illegal.

When the Tribunal has not used the jurisdiction vested in it properly and legally, it becomes the duty of the High Court to set it aside by correcting the error by granting the Writ of Certiorari and, therefore, this petition stands allowed with costs and the Writ of Certiorari stands granted in favour of the petitioner, and resultantly the judgment and order which has been assailed by this petition stands set aside. A Writ of Mandamus stands granted in favour of the petitioner and the respondents are directed to the pay-scale of the petitioner in revised pay-scale and grant her the pay which she is entitled to get in view of the observations made above.