
(2013) 09 MP CK 0344
In the Madhya Pradesh High Court
Case No : W.P. No. 3096 of 2011

Dulare Prasad Raikwar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2014) 2 MPLJ 401

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—The petitioner, who was initially appointed on the post of Assistant Grade III in the office of Tahsildar has approached this Court by way of filing this writ petition seeking a direction against the respondents to sanction the annual increments of pay to the petitioner for the period of initial appointment w.e.f. 1990 to 1993 and to revise and pay the arrears of salary to him. It is contended that in the order of appointment though a condition was mentioned that the petitioner would be required to pass the Hindi Typing examination within a specified period but in terms of the said appointment even if the period of initial appointment was treated as ad hoc period, he would be entitled to pay in terms of the circular so issued by the State Government. It is contended that in terms of the order of appointment dated 11-8-1989, the petitioner has passed the Hindi typing test and result was declared on 12-10-1993 and therefore the increments of pay for the ad hoc period was required to be granted and released. This has not been done, on the other hand erroneous fixation of pay has been done, therefore, petitioner is required to approach this Court seeking a direction against the respondents. Initially when the claim was made by the petitioner, he has placed his reliance in the case of one Donger Singh Pawar vs. State of M.P. and others, 2006 (3) MPHT 352 but when the fact was brought to the notice that such a law would not be treated as a good law in terms of the subsequent decision rendered by Division Bench of this Court in the case of State of Madhya

Pradesh and Others Vs. Vinod Mohan Shrivastava, , it is contended that since there is a circular issued by the State Government that for the period of ad hoc appointment increments of pay is required to be released, such benefit cannot be denied to the petitioner.

2. By filing the return, the respondents have contended that such a contention of the petitioner is not correct. There were circular of the State Government issued that those who are appointed as Assistant Grade III were required to pass the Hindi Typing examination. A condition was specifically mentioned in their order of appointment that till they pass the Hindi Typing examination, the period of their appointment was to be treated as ad hoc appointment. In terms of those instructions, the petitioner was not eligible for grant of annual increment till he has passed the aforesaid Hindi Typing examination. Since, the examination was passed by the petitioner in the year 1998, rightly the order was issued giving him benefit of increment of pay. It cannot be said that the petitioner would be entitled to grant of benefit of increment of pay from the initial date of appointment.

3. After hearing learned counsel for the parties at length and examining the record, it is clear from the decision rendered by the Division Bench of this Court that passing of Hindi Typing Test was a must. It was the finding recorded by the Division Bench that once such a condition was prescribed, the period of initial appointment till the period of regularization after passing of the said examination cannot be treated as regular service period. However, since the said decision was given in a matter where relaxation was claimed on account of completing the age of 40 years from passing of the typing examination, it was held by the Division Bench that such a relaxation would entail the benefit of increments of pay and such a decision was required to be taken by the department. In the decision of the Division Bench circular of the State Government dated 12-5-1993 issued by the General Administration Department was not taken into consideration and the earlier circular of the Finance Department issued in this respect was already quashed by the Madhya Pradesh Administrative Tribunal. It was categorically directed by the aforesaid circular dated 12-5-1993 that since the Finance Department by issuing a latest circular on 8-1-1993 has directed to release the increments of pay for those ad hoc employees as well, unless there is any other bar created, the increments of pay to the ad hoc employees were also required to be released.

4. In context of the aforesaid direction contained in the circular of the State Government, the condition mentioned in the order of appointment is seen. It nowhere prescribes that the increments of pay would not be released in favour of those who have not passed the Hindi Typing test at the time of recruitment. Only this much was said that those who have not passed the Hindi Typing test were required to pass the said typing test within a period of 4 years and the said period was to be treated as ad hoc period till they pass the Hindi Typing test. No condition was mentioned that such ad hoc appointees will not get the regular

pay. Precisely it was done because circular was issued in such a manner. If such a circular of the State Government is examined in the light of stand taken by the respondents in their return, it would be clear that the stand taken by the respondents is contrary to their own circular. Consequently, though the period of ad hoc appointment is not to be regularized with retrospective effect in the matter of granting seniority etc. to the persons like petitioner but in terms of the circular of the State Government, petitioner would be entitled to grant of increments of pay on successful completion of one year of service as he was appointed in a pay scale though on ad hoc basis which has an increment of pay, to be released every year.

5. Consequently, the writ petition is allowed. The respondents are directed to release the increments of pay to the petitioner for the period of ad hoc appointment, before the date of passing of the Hindi Typing test by the petitioner and revise the salary of the petitioner accordingly. All the arrears of salary after revising the pay of the petitioner be paid to him within a period of three months from the date of receipt of certified copy of the order passed today. The writ petition is allowed to the extent indicated hereinabove. There shall be no order as to costs.