
(2003) 08 MP CK 0066

In the Madhya Pradesh High Court

Case No : W.Ps. No's. 2354 and 2880 of 2003

Dwarkesh

APPELLANT

Vs

M.P. and Another

RESPONDENT

Date of Decision : 30-08-2003

Acts Referred:

Citation : (2005) 1 JLJ 59 : (2004) 1 MPLJ 260

Hon'ble Judges : A.K. Gogil, J

Bench : Single Bench

Advocate : V.K. Patwari, C.B. Patne, A.K. Sethi and Subhash Upadhyay, for the Appellant; D.D. Vyas, A.A.G. and V.P. Khare, Deputy Government Advocate, for the Respondent

Judgement

This order shall also govern the disposal of all other connected matters as per list appended hereto. In all the petitions the Petitioners are claiming for two advance increments on the ground that they have passed B. Ed, examinations at their own expenses, and as per Policy/Circular of the Government of Madhya Pradesh, they are entitled for the same. Admittedly, the Petitioners have been appointed between 1973 to 1.1.1992 and they all have passed B.Ed, examinations at their own costs between the year 1988 to 1999.

Learned Counsel for the Petitioners have filed and have also placed strong reliance on two Circulars of the State Government, i.e., Circular dated 16.2.1998 (Annexure A-3) issued by the State of M.P., Department of Scheduled Castes and Scheduled Tribes Welfare Ministry for grant of two advance increments to the teachers, who have passed B.Ed./M. Ed./B.T.I training examinations at their own costs after 22.10.1964 and by Anr. Circular dated 24.12.1998 (Annexure A-4), the State of M.P., Department of School Education Ministry has also directed the Commissioner, Public Instructions, M.P. Bhopal to grant two advance increments to the teachers, who have passed B.Ed./M.Ed./B.T.I. at their own costs after 22.10.1964. He has also cited a decision of the Supreme Court in the case of State of Madhya Pradesh and another Vs. Badrinarayan Acharya, etc. etc., ,

wherein it has been held, thus:

5. A reading thereof would clearly indicate that such of those in service who had gone on training to improve their qualifications at the government expenses, would not be eligible for two advance increments while those who had gone on training at their own expenses, would be eligible for two advance increments within the stipulated period mentioned in the order. It would be obvious that they had the benefit of pay and expenses. Consequently, they were denied advance increments.

In the aforesaid judgment the Supreme Court, has considered the cut-off date as 22.10.1964 for determining the eligibility of two advance increments and the same has been held to be perfectly valid. The Supreme Court has further held that those employees, who had gone on training at their own expenses would be eligible for two advance increments within the stipulated period mentioned in the order.

It is submitted by the learned Counsel for the Petitioners that in various other cases the Madhya Pradesh State Administrative Tribunal has allowed payment of two advance increments to those teachers who have passed B.Ed, examinations at their own costs and submitted that in case of Smt. Manorama Shrivastava v. State of M.P. and Ors. reported in 2000(1) MPLSR 136, a similar direction has been issued by the Tribunal. Similarly, while deciding O.A. No. 1405/2000 (Azad Khan v. State of M.P.) along with other identical matters the Tribunal has also allowed the claim of two advance increments in accordance with the Policy of the Government and has already given direction for payment of the same to the Petitioners therein. Learned Counsel for the Petitioners have also cited an order passed by the SAT in O.A. No. 76/2000, in which the Tribunal had directed for payment of two advance increments to the similarly situated teachers. Learned Counsel for the Petitioners also cited a decision of the M.P. Administrative Tribunal, Gwalior Bench in O.A. No. 184/98 (Dharmendra Kumar Jain v. State of M.P.) decided on 7.4.1998 for grant of two advance increments after acquiring B.Ed, degree at their own costs and quashed the direction about the recovery of amount already paid to them and disposed of the petition finally with a direction to the Respondents to allow two advance increments to the applicants and has also placed reliance on a decision of the Supreme Court in Badrinarain (supra) and two orders passed in O.A. No. 778/93 M.P. Teachers Association and Ors. v. State of M.P., decided on 22.7.1997 at Indore Bench and O.A. No. 427/94 (Hirja Rajni v. State of M.P.) decided on 12.2.1998 at Gwalior Bench.

Learned Counsel for the Petitioners further submitted that against the decision in Dharmendra Kumar Jain's case (supra) review petition (M.A. No. 100/98) filed by the State Government was also dismissed on 12.5.1998 by the SAT and thereafter the State Government challenged the decision before the D.B. of this Court at Gwalior Bench and in W.P. No. 1244/99 the D.B. has also dismissed the petition filed by the State. Thereafter, the Supreme Court has also dismissed the SLP (Civil) No. 1999/2000 on 27.3.2003, filed by the State.

Therefore, their submission is that in view of the consistent orders passed by all Benches of the Tribunals as well as by the D.B. of this High Court and Apex Court the teachers (including the Petitioner), who have passed B.Ed., M.Ed, and B.T.I, examinations at their own expenses are entitled for two advance increments and, as such, this petition be allowed and necessary directions be issued for payment of two advance increments.

Learned Counsel for the Petitioners also placed reliance on F.R. 27, according to which an appointing authority may grant a premature increment to a government servant on time scale of pay, subject to general or specific orders issued by the Government.

LC for the Petitioners also submitted that in O.A. No. 590/99fs, decided on 14.12.1999 (Smt. Manorama Shrivastava v. State of M.P.) and O.A. No. 1632/99 (Rakesh Kumar Shrivastava v. State of M.P., decided on 12.10.1999 th Tribunal has observed tha the Circular dated 1.3.1999 cannot be made applicable retrospectively.

In reply, learned Counsel for the Respondents placed reliance on Circulars dated 1.3.1999 (Annexure R-4) and dated 3.5.2002 (Annexure R-6) and submitted that by the aforesaid two Circulars the Government has taken a policy decision for giving two increments to the teachers those who have passed examinations at their own costs between 23.10.1964 to 7.5.1973 while in service and further submitted that recently the Government has issued Anr. Circular dated 26.7.2003 (Annexure R-7) by which the State Government has taken a final decision that the teachers appointed upto 16.5.1993 and while in service have passed B.Ed./ B.T.I. examinations at their own costs, they shall be entitled for two advance increments between 23.10.1964 to 1.3.1999 and submitted that as per this last Circular only the employees those who are covered by the said Circular are entitled for the two advcance increments. Therefore, submission of the LC for the Respondents is that the Government has issued this order dated 26.7.2003 (Annexure R-7) after taking into consideration the decisions of the Supreme Court in SLP No. 1999/2000 decided on 27.3.2000 and also in view of the other decisions of the Courts.

I have heard the learned Counsel for the parties and perused various Circulars issued by the State Government and also the decisions of the Supreme Court and also the D.B. decision of this Court as well as the orders passed by the Tribunal.

All the Circulars produced by the parties are being quoted below for ready reference:

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e/; izns? ?klu

vkfne tkfr ,oa vuqlwfpr tkfr dY;k.k foHkKx

ea=ky;

?- ,Q & 4@101@98@25@1 Hkksiky] fnukad 16 Qjojh] 1998 izfr]

?1? vk;qDr ?2? vk;qDr vkfnoklh fodkl vuqlwfpr tkfr dY;k.k] Hkksiky Hkksiky fo"k; % Lo;a ds O;; ij izf?{k.k ?ch- ,M-] ,e- ,M-] ch- Vh- vkbZ- vkfn? izkIr djus okys f?{kdksa dks vfxze osru o`f) dks Lohd`frA

lanHkZ % Ldwy f?{kk foHkkx ds Kkiu ?ekad ,Q 7&44@96@20&4 fnukad 21-12-1998 A

Ldwy f?{kk foHkkx ds lanfHkZr Kkiu fnuakd 24-12-1988 }kjk ekuuh; mPpre U;k;ky; }kjk ,l- ,y- ih- ?ekad 9895 esa fnukad 22-7-1996 esa fn;s x, fu.kZ; ds lanHkZ esa ;g vkns? tkjh fd;k x;k gS fd fnukad 22-10-1964 rd fu;qDr lHkh ,sls f? {kdksa dks nks osru o`f);ka lohd`r fd;k tk,] tks Lo;a vFkok v?kldh; O;; ij izf? f?{kr gSaA fnukad 22-10-1964 ds ckn fu;qDr dsoy Lo;a ds O;; ij izf?{k.k izkIr f? {kdkas dks nks osru o`f);ka Lohd`r djus dh Lohd`fr iznku dh x;h gSA vr% rnuqlkj dk;Zokgh bl foHkkx ds varxZr fu;qDr ,oa izf?f?{kr f?{kdksa ds ckjs esa Hkh dh tk;sa

e/; izns? ds jkT;iky ds uke ls rFkk

vkns?kuqlkj

lgh @ ?,- ,l- fclsu?

mi lfpo

vkfnetkfr ,oa vuqlwfpr tkfr dY;k.k foHkkx

,usD"pj&,&4

e/; izns? ?klu

Ldwy f?{kk foHkkx ea=ky;

oYyHk Hkou Hkksiky & 462 004

?- ,Q & 7@44@96@20&4 Hkksiky] fnukad 14-12-1998 izfr]

vk;qDr

yksd f?{k.k

e- iz- Hkksiky

fo"k; % Lo;a ds O;; ij ch- ,M-] ,e- ,M-] ch- Vh- vkbZ- vkfn] izf?{k.k izkIr djus ij vfxze osru o`f) nsus ds laca/k esa A

jkT; ?klu }kjk eku- mPpre U;k;ky; esa nk;j ,l- ,y- ih- ?ekad 9895 ds fu.kZ; fnukad 22-7-1996 ds ifjiky esa 22-10-1964 rd lHkh ,sls f?{kdksa dks nks osru o`f);ka ns; gksxh tks Lo;a vFkok ?kldh; O;; ij izf?f?{kr gS ,oa 22-10-1964 ds ckn dsoy Lo;a ij izf?{k.k izkIr f?{kdksa dks nks osru o`f) nsus dh Lohd`fr iznku dh tkrh gSA

e/; izns? ds jkT;iky ds uke ls rFkk

vkns?kuqlkj

lgh @ ?vkj- ih- oekZ?

voj lfpo

e- iz- Ldwy f?{kk foHkkx

,usD"pj&,&4

e/; izns? ?klu

Ldwy f?{kk foHkkx

ea=ky;

oYyHk Hkou Hkksiky & 462 004

vkns? Hkksiky] fnukad 1 ekpZ] 1999

?ekad ,Q 7&44@96@20&4 % bl foHkkx ds lela[;d vkns? fnukad 24-12-1998 }
kjk ,sls f?{kdksa dks ftUgksaus ?kldh; O;; ij ch- ,M-] ,e- ,M-] ch- Vh- vkbZ- izf?
{k.k izkIr fd;k gS mUgsa 22-10-1964 rd nks osru o`f);ka ,oa Lo;a ds O;; ij izf?
f{kr f?{kdkas dks 22-10-1964 ds ckn nks osruo`f);ka nsus dh Lohd`fr iznku dh
FkhA

2- mDr vkns? ds laca/k esa mRiUu dfri; fcUnqvksa ij iw.kZ fopkjksijkar eku-
U;k;ky;ksa ds bl laca/k esa gq;s fu.kZ;kas ,oa fo?k foHkkx ds vkns? fnukad
18-12-1975 ds izdk? ds vkxs [kqyklk fuEukuqlkj fd;k tkrk gS %

v- fnukad 22-10-1964 ls iwoZ ?kldh; O;; ij vFkok Lo;a ds O;; ij lgk;d f?{kd ds :i
esa izf?{k.k izkIr f?{kdksa dks nks vfxze osruo`f);ka iwoZ vkns?kuqlkj ;Fkkor
Lohd`r jgsxhA rFkk

c- mDr vkns? mu f?{kdkas ds fy, ykxw gS] ftuds }kjk ch- ,M-] ch- Vh- vkbZ- izf?
{k.k Lo;a ds O;; ij fnukad 23-10-1964 ls 7-5-1973 dh vof/k esa ?kldh; Isok esa
j[krs gq, iw.kZ fd;k x;k gks A

e/; izns? ds jkT;iky ds uke ls rFkk

vkns?kuqlkj

lgh @ ?vkj- ih- oekZ?

voj lfpo

e- iz- Ldwy f?{kk foHkkx

Hkksiky] fnukad 1 ekpZ] 1999

,usD"pj&,&6

e/; izns? ?klu

vkfne tkfr ,oa vuqlwfpr tkfr dY;k.k foHkkx

ea=ky;

?- ,Q & 4@101@98@25@1 Hkksiky] fnukad 3-5-2002 izfr]

vk;qDr

vkfnoklh fodkl

Hkksiky

lapkyd

vuqlwfpr tkfr fodkl

e- iz- Hkksiky

fo"k; % Lo;a ds O;; ij izf?{k.k ?ch- ,M-] ,e- ,M-] ch- Vh- vkbZ- vkfn? izkIr djus okys f?{kdkas dks vfxze osru o`f) dks Lohd`frA

lanHkZ % Ldwy f?{kk foHkkx ds Kkiu ?ekad ,Q 744@96@20&4 fnukad 24-12-1998 ,oa vkns? lela[;d fnukad 1-3-1999 A

jkT; ?kld }kjk f?{kk foHkkx }kjk tkjh vkns? ?ekad ,Q 4&44@96@2-&4 fnukad 1-3-1999 ds }kjk muds vkns? fnukad 24-12-1998 esa f?{kdkas dks ftUgksaus ? kldh; O;; ij ch- ,M- @ ch- Vh- vkbZ- izf?{k.k izkIr fd;k gS mUgsa 22-10-1964 rd nks osruo`f);ka ,oa Lo;a ds O;; ij izf?{kr f?{kdkas dks 22-10-1964 ds ckn ls nks osru o`f);ka nsus dh Lod`fr iznku dh FkhA

2- mDr vkns? ds laca/k esa mRiUu dfri; fcUnqvksa ij iw.kZ fopkj ekuuh; U;k;ky;ksa ds bl laca/k esa gq; fu.kZ;ksa ,oa fo?k foHkkx ds vkns? fnukad 18-12-1975 ds izdk? esa [kqyklk fuEukuqlkj fd;k tkrk gS %

?v? fnukad 22-10-1964 ls iwoZ ?kldh; O;; ij vFkok Lo;a ds O;; ij lgk;d f?{kd ds :i esa izf?{k.k izkIr f?{kdkas dks nks osruo`f);ka vkns?kuqlkj ;Fkkor Lohd`r jgsaxhA rFkk

?c? mDr vkns? mu f?{kdkas ds fy, ykxw gS] ftuds }kjk ch- ,M- @ ch- Vh- vkbZ- izf?{k.k Lo;a ds O;; ij fnukad 23-10-1964 ls 7-5-1973 dh vof/k esa ?kldh; Isok esa j[krs gq, iw.kZ fd;k x;k gks A

vr % rnuqlkj dk;Zokgh bl foHkkx ds varxZr fu;qDr ,oa izf?{kr f?{kdkas ds ckjs esa Hkh dh tk, A

e/; izns? ds jkT;iky ds uke ls rFkk

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lgh @ ?vkj- ds- ekFkqj?

voj lfpo

e- iz- ?klu] vkfnetkfr dY;k.k foHkkx

,usD"pj&,&3 vkj

e/; izns? ?klu

Ldwy f?{kk foHkkx

ea=ky;

oYyHk Hkou Hkksiky & 462 004

vkns? Hkksiky] fnukad 26-7-2003

?ekad ,Q 18&45@2002@ fo- iz- @ 20 % bl foHkkx ds lela[d vkns? fnukad 24-12-1998 ,oa 1-3-1999 rFkk 6-2-1986 ds vuq?e esa rFkk mPpre U;k;ky; esa nk;j ;kfpdk ?ekad 1999 @ 2000 ds fu.kZ; fnukad 27-3-2000 rFkk fofHkUu U;k;ky;hu fu.kZ;ksa ds ifjiky esa jkT; ?klu }kjk ;g fu.kZ; fy;k x;k gS fd %

fnukad 26-6-1993 rd fu;qDr ,sls lHkh f?{kd ftUgksaus Lo;a ds O;; ij Isokdky ds nkSjku] foHkkxh; vuqefr izkIr dj ch- ,M- @ ch- Vh- vkbZ- dh izf?{k.k @ mikf/k izkIr fd;k gks ftUgksaus 23-10-1964 ls 1-3-1999 rd dh vof/k esa ch- ,M_ @ ch- Vh vkbZ- ijh{kk m?khZ.k djus ds fnukad ls nks oaru o`f);ka dks Lohd`fr iznku dh tkrh gSA

e/; izns? ds jkT;iky ds uke ls rFkk

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After considering the aforesaid Circulars issued by the State Government as well as after considering the decision of the Supreme Court in the case of Badrinarain (supra) and the D.B. decision of this Court in the case of Dharmendra Kumar Jain (supra) and also the affidavit filed by the OIC of the case in W.P. No. 2880/03 that the Government has already extended the benefit of two advance increments by Circular dated 26.7.2003 (Annexure R-7) to the teachers who were appointed prior to 16.6.1993 and have obtained B.Ed./B.T.I, degree between 23.10.1964 to 1.3.1999 while in service, at their own expenses. In both the cases, and in all other connected petitions, the Petitioners have been appointed prior to 16.6.1993 and have passed B.Ed./B.T.I. examinations between 23.10.1964 to 1.3.1999 at their own expenses, while in service. Therefore all the Petitioners are entitled for two advance increments, as their cases arc covered by the Circular (Annexure-R-7).

So far as the question of passing B.Ed./B.T.I. training examinations, the submission of the learned Counsel for the Petitioners is that they have passed this training examinations through correspondence course, after taking due permission from the State Government or the concerned Department and this

fact has been specifically mentioned in W.P. No. 2354/03 and, in reply, the State Government has not denied this fact, but the only contention of the Respondent-State is that after passing the examinations in 1993-94, they have made demand in the year 2002, which is barred by time. Admittedly, the Petitioners and other teachers are demanding increments regularly and the Government has also paid the same to some of the employees. Therefore, looking to the fact that the Petitioners-employees are agitating the matter in the Courts, this contention of the Government cannot be accepted that the claim of (he Petitioners is barred by limitation.

Accordingly ail the petitions arc disposed of with a direction that the State Government shall pay two advance increments to all the Petitioners those who are covered by Circular (Annexure R-7) within a period of 4 months from the date of communication of this order. In the cases the State Government has already released increments to the teachers the same shall not be recovered. In so many other petitions the Tribunal and the High Court has already directed for the payment of the same and those orders become final as they have not been challenged anywhere, therefore, the Stale Government cannot be permitted to take any decision which is detrimental to its employees. No order as to costs.