(2013) 07 MP CK 0370

In the Madhya Pradesh High Court

Case No : Writ Petition No. 271 of 2001

G.M. Dubey and Another — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : (2013) 5 MPHT 482 : (2013) 3 MPLJ 677

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

Bench : Single Bench

Advocate : Rajneesh Gupta, for the Appellant; Lalit Joglekar, Panel Lawyer for Respondent Nos. 1 and 3, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—The only grievance of the petitioners is with respect to the communication dated 11-2-1999 contained in Annexure P-13 by which the resolution passed by the Board of Directors of the respondent No. 2 has been turned down in respect of grant of benefit of Vth Pay Commission recommendations to the employees of the Madhya Pradesh Police Housing Corporation (hereinafter referred to as ''Corporation''). The similar letter was reiterated on 27-8-1999 as contained in Annexure P-15. Again the resolution was passed and sent to the State Government but again the same was turned down on 2-12-1999, as contained in Annexure P-18. Subsequent proposals made by the respondent No. 2 were again rejected and such communications were made on 23-6-2000 and 2-9-2000 vide Annexure P-20 and Annexure P-22. The only claim made by the petitioners is that they are the employees of respondent No. 2 Corporation, which is registered as company under the Indian Companies Act. There were no service conditions made by the Corporation governing the services of the persons like petitioners, who were employed in the Corporation. However, the Conduct Rules of the Government of Madhya Pradesh, made applicable to the Government employees were adopted. Thereafter, when the pay revision recommendations were made by the Pay Commission, the Board of Directors of respondent No. 2 resolved to adopt the same for the purposes of revising the pay scales of the employees of the Corporation. A proposal to this effect was made, though not needed, for grant of approval of the State Government. However, by the impugned communications referred to herein above, since proposals are turned down, the writ petition is required to be filed. It is contended that under the scheme of establishment of the Corporation, State Government is not required to bear any financial burden for maintaining the establishment of the Corporation and, therefore, if the Corporation on its own was ready to grant benefit of pay revision to the persons like petitioners, it was beyond the jurisdiction of the respondents No. 1 and 3 to reject the said proposals. It is further put forth by learned Counsel for the petitioners that now the Corporation has started earning the profit and, thus, reasons of not granting approval mentioned in the order impugned have become non-existent. Thus, it is claimed that the petitioners are entitled to the relief claimed in the writ petition. The following reliefs are claimed in the writ petition: (i) This Hon''ble Court may kindly be pleased to call for the entire records from the possession of the respondents, for its kind perusal;

(ii) This Hon''ble Court may kindly be pleased to quash/set aside the impugned orders/letters dated 11-2-1999 (Annex.P/13), 27-8-1999 (Annex.P/15), 2-12-1999 (Annex.P/18), 23-6-2000 (Annex.P/20) and 2-9-2000 (Annex.P/22) issued by the respondent No. 2.

(iii) This Hon''ble Court may kindly be pleased to direct the respondents to implement the 5th pay commission for employees of the MPPHC, w.e.f. 1-1-1996, as already implemented to the employees of the State Government.

(iv) This Hon''ble Court may kindly be pleased to direct the respondents to pay the arrears of payment of 5th pay Commission implementing from 1-1-1996 to the employees of the MPPHC, as already paid to the employees of the State Government.

(v) Any other relief which this Hon''ble Court deems fit, may also be granted.

(vi) Costs of the petition.

Upon service of the notice of the writ petition, respondents No. 1 and 3 have filed their return. They have admitted in the return that the respondent No. 2/ Corporation is a company registered under the Indian Companies Act, 1956. It is specifically contended by them that respondent No. 2 is the employer and is having the total control of administration and supervision on the employees of the Corporation. It is put forth by the respondents aforesaid that the salary of the persons like petitioners is paid from the funds of the respondent No. 2 and not from the consolidated funds of the State Government. The employees of the Corporation are not to be treated as employees of the State Government. It is further contended by them that the service conditions of the employees of the Corporation are not framed and, therefore, if certain regulations or rules of the State Government employees are adopted by the Corporation, the employees of the Corporation cannot be put at par with the employees of the State Government. However, there is nothing to indicate as to why the benefit of revision of pay could not be extended to the employees of the Corporation if it is so resolved by the Corporation and if no financial burden is cast on the State Government. Merely it is said that the Corporation was not having the financial capabilities to grant such benefit of revised pay scales to its employees and, therefore, the State Government thought it better not to accept such proposals. How the resolution of the Board of Directors of the respondent Corporation was illegal or unsustainable, except for the financial difficulties of the Corporation, nothing is said in the return. However, it is claimed that the employees like petitioners working in the Corporation cannot be put at par with the State employees and are not entitled to benefit of revision of pay as was granted to the employees of the State Government. In view of these submissions, it is contended that the petition is liable to be dismissed.

2. The respondent No. 2 has filed a return and has categorically contended that there are no service rules made by the Corporation to govern the services of the employees of the Corporation. However, certain employees are taken on deputation to work in the Corporation. There are certain contract appointments made by the respondent Corporation. The Madhya Pradesh Civil Services (Conduct) Rules, 1965 are adopted by the Corporation for the purposes of governing the service conduct of the employees of the Corporation. It is admitted by the respondent No. 2 that when the recommendations of the Vth Pay Commission were received and the rules were framed for granting the benefit of revision of pay to the employees of the State Government, the said recommendations were considered by the Board of Directors of the Corporation and they resolved to grant the said benefit to the employees of the Corporation. However, nothing is said whether any requirement of law was there to obtain prior approval from the State Government, specially when no financial burden was cast on the State Government even when such a decision of Board of Directors is implemented. Why the matter was referred to the State Government is not clear but the only stand taken by the respondent No. 2 is that since such a recommendation made by the Board of Directors was rejected by the State Government on number of occasions, the benefit was not extended to the petitioners. However, it is said that in view of the fact that the Corporation was running in loss at that time, the claim of the petitioners could not be granted.

3. Heard learned Counsel for the parties at length and perused the record.

4. It is not clear from the stand taken by the respondents in their return whether there was any requirement of law to obtain prior approval for grant of any benefit of service conditions of the employees of the Corporation. On the other hand, it is clear that the respondent Corporation has adopted the Conduct Rules of the employees of the Government of Madhya Pradesh for the purposes of governing the services of the Corporation employees. In absence of any such provision of law, there was no occasion for the respondents No. 1 and 3 to reject

the resolution of the Board of Directors. Again nothing is placed on record to indicate that such a resolution could be interfered by the State Government in exercise of any power. If a Corporation has resolved to grant certain benefits to the employees of the Corporation at par with the employees of the State Government, it cannot be said that the Corporation employees will become automatically the Government employees. That being so, the rejection of the proposal made by the Corporation by the State cannot be sustained.

5. Since now it is stated that the Corporation has started yielding profit and would not be facing any financial crunch in case benefit of revision of pay is granted to the employees of the Corporation, as has been categorically stated by the State Government, which fact is not disputed by the respondent No. 2, there cannot be any extra financial burden on the State Government. In view of this, rejection of the resolution of the respondent Corporation for giving any benefit of pay to the persons like petitioners cannot be sustained.

6. Accordingly, the writ petition is allowed. The orders impugned are hereby quashed. It will now be free for respondent No. 2 to resolve and implement the recommendations made by the different Pay Commissions for grant of benefit of pay revision to the employees of the Corporation. Let a fresh decision in that respect be taken in view of the present financial status of the Corporation within a period of two months from the date of passing of this order. It will be free for the Corporation to adopt and implement the pay revision as recommended by the various Pay Commissions for the employees of the Corporation from any date as is referred in the Rules or recommendations of the Pay Commission or as convenient looking to the financial status of the respondent No. 2. No approval for implementing such a recommendation would be needed from the respondents No. 1 and 3. The writ petition is allowed to the extent indicated hereinabove. There shall be no order as to costs.

