

(2018) 07 MP CK 0216

In the Madhya Pradesh High Court

Case No : Writ Petition No.16274 OF 2018

Jagdish Chandra

APPELLANT

Vs

School Education Department

RESPONDENT

Date of Decision : 24-07-2018

Acts Referred:

Citation : (2018) 07 MP CK 0216

Hon'ble Judges : S. C. Sharma, J

Bench : Single Bench

Advocate : Chandrakant Verma, Mukesh Kumawat

Final Decision : Disposed Off

Judgement

The petitioners before this Court, who are employees of worked charged contingency paid establishment have filed this present petition claiming

kramonnati / time bound promotion pay-scale on completion of 10-20 years and 12-24 years of service.

The case of the petitioners is that they were appointed as Hand Pump Mechanics/ Technicians in the year 1991 and they were engaged under the

work charged and contingency paid establishment and in terms of various judgments of this Court they are entitled for Kramonnati pay-scale.

The stand of the respondents is that since the petitioners are working under the work-charged contingency paid establishment, the scheme of

Kramonnati as contained in the circular dated 17.03.1999 and 19.04.1999 is not applicable to the petitioners and, therefore, the case for grant of

Krammonati pay-scale deserves to be rejected.

It has been stated by the learned counsel for the petitioners that their case is covered by the judgment delivered in the case of Teju Lal Yadav Vs.

State of Madhya Pradesh and ors., reported in ILR (2009) MP 1326 decided on 23.01.2009.

Undisputedly, the petitioners were appointed on 27.11.1991 and they have certainly completed the number of years as required for grant of time bound promotion.

Having heard the learned counsel for the parties and on perusal of record, it is found that the issue involved in the matter is squarely covered by the

judgment of this Court in the matter of Teju Lal Yadav Vs. State of MP & others reported in ILR (2009) MP 1326 wherein this Court in the light of

the same circulars has considered the issue of grant of krammonat pay scale to the work charged and contingency paid employee and on placing

reliance upon the earlier judgment in the matter of K.L. Asre Vs. State passed on 7/11/2005 in Writ Petition (s) 1070/2003 has held as under:

â??6. Apart from the above, it is seen that the petitioner is working in the Polytechnic College and is said to be a contingency paid employee. Under

the M.P. Education Department (Technical Branch) Contingency Paid Employees Recruitment and Conditions of Service Rules, 1978, a contingency

paid employee is defined under Rule 2(b) to mean a person employed for full time in an office or establishment and who is paid on monthly basis and

whose pay is charged to â??Office Contingenciesâ? but it excludes such of the employees who are employed for certain periods only in the year. In

the aforesaid Rules of 1978, the categorization of employees is done under Rule-6 and the employees are classified into two categories i.e. permanent

and temporary. Under sub-rule 2 of Rule-6, it is provided that on completion of 15 years of continuous service the contingency paid employees shall be

eligible for attaining the status of permanent work charged or contingency paid employee. The similar provisions are made in the M.P. (Work Charged

and Contingency Paid Employees) Pension Rules, 1979 wherein the permanent employee is defined under Rule 2(c) to mean a contingency paid

employee or a work charged employee who has completed 15 years of service or more on or after 1st January 1974.

7. The complete reading of these Rules indicates that a contingency paid employee attaining the permanent status and a work charged employee

attaining the permanent status are treated to be similar in all respects for the purpose of granting them pension and revision of pay scales under the

MP Work Charged and Contingency Paid Employees Revision of Pay Rules, 1990 and under the M.P. (Work Charged and Contingency Paid Employees) Pension Rules, 1979.

8. Considering the fact that under the statutory rules also the contingency paid and the work charged employees are considered to be forming a common class. There is no reason why the benefit of time bound promotion which is extended to the work charged employees and why the judgment rendered in case of K.L. Asre (supra) be not made applicable in the case of the present employee also who has attained the status of a permanent work charged or contingency paid employees and entitled to various benefits in the matter of revision of pay and pension in identical manner.

9. A perusal of the Policy as contained in Annexure P/3 further indicates that even though the policy speaks about granting krammonati under the scheme to employees in the regular establishment, but by Clause (13) and (14) of the Scheme, the Government has extended the benefit of Krammonati to vehicle drivers working in the work charged and contingency paid establishment. A perusal of Clauses (13) and (14) clearly indicates that the benefit of krammonati after completing 12 years and 24 years of service is made applicable to employees in the work charged and contingency paid establishment.

10. As far as work charged and contingency paid employees are concerned, their service conditions are governed by the same rules namely the Work Charged and Contingency Paid Employees Recruitment Rules, applicable to various departments and the work Charged and Contingency Paid Employees Pension Rules 1979 and the Work Charged and Contingency Paid Employees Revision of Pay Rules, 1990. For the purpose of recruitment, appointment, pay revision and grant of pensionary benefits, the work charged and contingency paid employees constitute a common class and their terms and conditions of employment are governed by identical set of rules. It is, therefore, clear that for the purpose of recruitment, appointment, grant of pension and revision of pay scales, work charged and contingency paid employees are treated similarly and a separate set of rules, different from the one applicable in the regular establishment, govern their terms and conditions of employment. The work charged and contingency paid employees constitute a common class and therefore, this class of employees are entitled to

similar treatment in all respects, deviation being permissible on justifiable grounds and reasons. In the present case, the benefit of time bound promotion under the scheme- Annexure P/3 and P/4 is extended to vehicle drivers working in the work charged and contingency paid establishment, as per the policy itself.

11. The principles laid down in the case of Shri K.L. Asre(supra) has been made applicable to time keepers, working work charged and contingency

paid establishment. If time keepers and drivers in the work charged and contingency paid establishment are entitled to promotion under the time bound

scheme, there is no reason as to why the said benefit be not extended to other employees constituting the same class in the work charged and

contingency paid establishment. The policy is made applicable to drivers of his establishment and the reason for not making the said policy applicable

to other categories of the work charged and contingency paid establishment is not indicated in the return. No reason is given as to why a different

policy is being adopted in the case of other employees in the work charged and contingency paid establishment and the benefit granted to drivers in the

said establishment is not extended to other employees like the petitioner. Respondents being a State has to give similar benefit to employees

similarly situated and forming a common class. They may be justified in granting some additional benefit to some of the employees in comparison to

others, but the justification and reasons for such a classification has to meet the test of Article 14 of the Constitution and the decision has to be

reasonable, fair and justified by cogent reasons and relevant considerations. Except for contending that the policy is not applicable to employees

working in the work charged and contingency paid establishment, no justification is forthcoming from the respondents with regard to further

classification amongst the employees working in the work charged and contingency paid establishment with regard to implementation of the Policy

Annexure P-3 and P-4. When the employees working in the work charged and contingency paid establishment constitute a common class, all benefits

which are extended to one set of employees namely drivers as per the policy and the time keepers in the light of the judgment in the case of K.L.

Asre (supra) has to be granted by the respondents to the present petitioners also. In the absence of proper justification for adopting a different policy

and cogent reason given justifying the reasonableness in the classification and differentiation done fulfilling the requirement of Article 14 of the

Constitution, discrimination cannot be permitted. Parity in employment is required to be maintained and therefore, keeping in view the circumstances

and the action of the respondents in adopting a pick and choose method violative of Article 14 of the Constitution in the case of employees who form a

homogeneous class the action discriminatory in nature cannot be upheld by this Court.

12. Keeping in view the aforesaid, the respondents are directed to extend the benefit of promotion in accordance with the aforesaid scheme to the

petitioner and after evaluating his case in accordance with the requirements of the said scheme, grant benefit to the petitioner. In case the petitioner is

found entitled then necessary orders in this regard be passed within a period of three months.

13. The petition is accordingly allowed and disposed of.â??

The another important aspect of the matter is that the State Government has issued circular on 21.09.2016 granting the benefit to the work charged

contingency paid establishment w.e.f. 01.01.2016. The executive instructions issued by the State Government cannot supersede the judgment

delivered by this Court, which has attained finality and, therefore, the executive instructions issued by the State Government to the extent the cut-of-

date has been fixed is hereby quashed. The petitioners shall be entitled for all consequential benefits, which have been extended to Tejula Yadav

(supra) on account of the order passed by this Court.

The petitioners shall be entitled for Kramonnati w.e.f. 2003 and time bound pay-scale w.e.f. 2013. The petitioners shall also be entitled for monetary

benefits and arrears for the above period. The exercise of passing an appropriate order granting the benefits be concluded within a period of six

months from the date of receipt of certified copy of this order.