

(2024) 08 MP CK 0021

In the Madhya Pradesh High Court

Case No : Writ Petition No. 23886 of 2018

Kedar Prasad Mishra

APPELLANT

Vs

The State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 06-08-2024

Acts Referred:

Administrative Tribunal Act, 1985 — Section 21
Constitution of India 1950 — Article 14, 16, 226

Citation : (2024) 08 MP CK 0021

Hon'ble Judges : Vinay Saraf, J

Bench : Single Bench

Advocate : Anurag Dubey, S. S. Chouhan

Final Decision : Dismissed

Judgement

Vinay Saraf, J

1. The petitioner has assailed the order dated 28.11.2017 passed by the Superintendent of Police, Satna District-Satna in the present petition whereby the representation submitted by the petitioner for extending the benefit of Time Scale Pay Scheme to the petitioner was rejected.

2. With the consent of parties, the matter is heard finally.

3. Shri Anurag Dubey, learned counsel for the petitioner submits that the petitioner was initially appointed as Constable in the Police Department on 2.03.1970 and thereafter promoted to the post of Head Constable by order dated 10.11.1982 and later on also promoted to the post of Assistant Sub Inspector on 01.02.1989. He completed the age of superannuation and retired from the services on 31.03.2009. He submits that the General Administration Department issued a circular dated 24.01.2008 for grant of benefit of Time Pay Scale to the employees and as the petitioner completed 30 years of services, the petitioner was eligible for the benefit of Ist Time Scale Pay Scale after completion of ten years of service and IInd Time Scale Pay Scale after twenty years of service. He

further submits that the petitioner was entitled for IIIrd Time Scale Pay Scale after completion of services for thirty years as per circular dated 01.07.2014.

4. Learned counsel for the petitioner submits that when the benefit was not extended to the petitioner despite his entitlement, he submitted a representation to the respondent no.4, Superintendent of Police but the same was of avail. Consequently, he preferred W.P.No.14318/2017 which was disposed of by order dated 22.09.2017 and direction was issued to respondent to decide the representation submitted by the petitioner by passing a reasoned order in accordance with law within sixty days. Thereafter, the Superintendent of Police, Satna District Satna by order dated 28.11.2017 rejected the representation submitted by the petitioner on the ground that the petitioner is not entitled for Ist and IInd Time Pay Scale as he had already availed the benefit of promotion twice and as IIIrd Time Pay Scale was introduced from 01.07.2014 and the petitioner superannuated on 31.01.2009 therefore the benefit of the same can not be extended to the petitioner.

5. Learned counsel for the petitioner assailing the order dated 28.11.2017 submitted that the petitioner is entitled for the benefit of Time Pay Scale as the petitioner has completed the service of more than 30 years. He further submits that the benefit of Time Pay Scale is available to a government employee after completing the service of ten years and thereafter further ten years irrespective to the fact that the employee was promoted twice during this period. He relied on the circular dated 24.01.2008 and Circular dated 13.11.2009 as well as judgment delivered by the coordinate Bench in the matter of Pratap Narayan Vishwakarma Vs. State of M.P. (W.P.No.13562/2014 decided on 31.07.2015) and another judgment of Coordinate Bench delivered in the matter of Kalideen Gupta Vs. State of M.P. & Anr. (decided on 16.01.2017 and upheld by the Division Bench in W.A. No.549/2017) by order dated 13.03.2018. He further relied on the order delivered by the coordinate Bench in the matter of Nepal Singh Gurjar Vs,. State of M.P. (W.P.No.8964/2017 decided on 06.09.2018). On the strength of the above pronouncements, learned counsel for the petitioner prays for issuance of necessary writ/direction to extend the benefit of Time Scale pay to the petitioner.

6. Shri S.S. Chouhan, learned Government Advocate appearing for the respondents supported the order dated 28.11.2017 passed by the Superintendent of Police, Satna and submits that as the petitioner was retired on 31.03.2009 and during his service period, he was promoted from the post of Constable to the Head Constable thereafter to the post of Assistant Sub Inspector, the benefit was rightly declined. He further submits that the benefit of the Time Scale Pay is not available to the employees, those were promoted during their service career and the petition preferred by the petitioner is misconceived. He prays for dismissal of the petition.

7. Arguments advanced by learned counsel for the parties are considered for the purpose of final disposal of the case.

8. Assured Career Progression Scheme (Time Scale Pay or Krammonati are final upgradation) was introduced by the State of M.P. with an object to remove frustration among employee who have stagnated at a particular scale for many years without promotional avenue, with the endeavour of removing any adversity in their performance. Keeping this purpose in perspective, Time Scale Pay Scheme was introduced. On 24.01.2008 a circular was issued, whereby it was stipulated that if an employee has not been extended the benefit of promotion, he will be entitled to get the financial up-gradation after completing the service of 10 years. The scheme was made applicable from 01.04.2006. Thereafter, by circular dated 13.11.2009, some clarification was issued by financial department of State of M.P. and it was clarified that if an employee has been promoted on a post which is 100% promotional post, the period will be counted from the original date of employment. However, if the promotional post is to be filled up partly from promotion and partly from direct recruitment, the period of service will be counted from the date of promotion.

9. It is not in dispute that the petitioner was initially appointed as Constable in the Police Department vide order dated 02.03.1970 and he was promoted to the post of Head Constable on 10.11.1982. Meaning thereby the petitioner received first promotion. It is also not in dispute that the petitioner was further promoted to the post of Assistant Sub Inspector on 01.02.1989 and in this way, he received the benefit of second promotion. As per circular dated 24.01.2008, if a government employee has not been extended the benefit of two promotion for which he was eligible, he will be entitled for benefit of Time Scale Pay. He retired on 31.03.2009 before introducing the scheme for IIIrd Time Scale Pay.

10. Learned counsel for the petitioner heavily relied on the judgment delivered by the coordinate Bench in the matter of Pratap Narayan Vishwakarma (supra) which is not helpful to the petitioner as the issue involved in that matter was different and that judgment was delivered in the case, wherein the petitioner therein was not found eligible in regard to grant of benefit of II Time Scale Pay on the ground that he was promoted on the post of Training Superintendent, which is 100% promotional post therefore he is not entitled to get the II Time Scale Pay. Considering the issue involved in the matter, the coordinate Bench considered the stipulations of subsequent circular dated 13.11.2009 and found that by the act of clarification the finance department has created two classes of employee i.e. one class who are eligible to get the benefit of II Time Scale, if they are promoted on a post, which is partial feeded by direct recruitment and partial by promotion and second class of employees who are promoted on the post which is 100% promotional post. It was held that it has created class within the class and due to aforesaid anomaly juniors were getting the higher pay scale in comparison to seniors. The coordinate Bench held that the act is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India. Under these circumstances the court found that the petitioner therein eligible for the benefit of grant of Time Scale Pay, whereas in present case petitioner was originally posted on the post of Constable, thereafter promoted to the post of Head

Constable and later on the post of Assistant Sub Inspector. He has not been denied the benefit of Time Scale Pay on the ground that he has been promoted on a post which is to be filled up partially by direct recruitment and partially by promotion. Therefore, in the opinion of this court, judgment delivered in the matter of Pratap Narayan Vishwakarma (supra) is not applicable to the facts and issue involved in present case.

11. Learned counsel for the petitioner further relied on the judgment delivered in the matter Dinesh Kumar Tiwari Vs. State of M.P. (W.P.No.13567/2014) decided on 31.07.2015, whereby in the similar situation, the dispute in respect of the 100% promotional post was decided by the coordinate Bench and benefit was extended for the reasons stated herein above. Said judgment is also not applicable to the present case. The third judgment relied upon by the counsel for the petitioner delivered by the coordinate Bench in the matter of Kalideen Gupta (supra) is also not helpful to the petitioner as in that matter, the petitioner therein was finally promoted to the post of Sub Inspector and he was found eligible for the Ist Time Scale Pay w.e.f. 01.04.2006 as the post of Sub Inspector is such a promotional post for which direct recruitment is also permissible. However, the said benefit was not extended therefore the petition was filed and the coordinate Bench extended the benefit by allowing the petition. In the present case, the petitioner was not promoted on any post of direct recruitment and therefore, the issue is different and the judgment delivered in the matter of Kalideen Gupta (supra) is also not helpful to the petitioner. He also relied upon the order passed in Nepal Singh Gujar Vs. State of M.P. & Ors. (W.P.No.8964/2017) decided on 06.09.2018 wherein the coordinate Bench relying on the judgment delivered in the matter of Kalideen Gupta (supra), Pradeep Narayan Vishwakarma (supra) and other judgments wherein the issue of not extending the benefit to the employees promoted on the post which was 100% promotional post was raised and by applying the judgments delivered in those matters, the coordinate Bench observed that identically placed employees were granted the same relief, therefore, the petitioner therein was entitled for grant of relief, whereas in the present matter, it is not a case of petitioner that identically placed employees were granted the benefit of Time Scale Pay. Order delivered by the coordinate Bench in the matter of Nepal Singh Gujar (supra) is also not helpful to the petitioner as in the said matter, the coordinate Bench simply passed the order by relying on the judgment of Kalideen Gupta (supra) and other matters, therefore, in the view of this Court, the said order is not having much authoritative and precedential value. The judgments relied by the coordinate Bench were in respect of some other issues and not in respect of the issue involved in the matter of Nepal Singh Gujar (surpa).

12. By no stretch of imagination, it can be accepted that the employee who has already received the benefit of promotion will also be entitled for the Time Scale of Pay, as the scheme was introduced with a view to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues.

13. In the present matter, the petitioner was originally appointed as Police Constable on 02.03.1970 and thereafter promoted to the post of Head Constable w.e.f. 10.11.1982 subsequently to the post of Assistant Sub Inspector on 01.02.1989. Meaning thereby, in the entire career petitioner received two promotions. The scheme was originally introduced on 17.03.1999 and 19.04.1999 and circular was issued on 17.3.2000. A clarification was issued on 24.01.2008 and 01.04.2008 which were in respect of grant of two Time Scale of Pay, if the employee has not received two promotions during his tenure. The scheme of grant of IIIrd Time Pay Scale was introduced w.e.f. 01.07.2014 and the petitioner was already retired on 31.03.2009 therefore, the petitioner is not entitled to get the benefit of the scheme introduced almost after eight years of retirement. Even in the scheme, the cut off date for benefit of the scheme was fixed as 01.07.2014, therefore, the petitioner has wrongly claimed the benefit of financial upgradation in the next grade pay. The Supreme Court has held in the matter of State of Tamil Nadu Vs. S. Arumugham (1998) 2 SCC 198 that the Government has right to frame a policy to ensure efficiency and proper administration and provide suitable avenues for promotion to officers working in different departments. The Supreme Court has further observed that the Tribunal/ Courts cannot substitute its own views for the views of the government or direct new policy based on the view of the tribunal. The scope of interference with the ACP scheme is very limited as it would violate government policy and therefore, the exercise of judicial review would not be proper.

14. Be that as it may, the petitioner was retired on 31.3.2009 and approached to this Court for the first time in the year 2017 by preferring W.P.No.14318/2017 which was disposed of with direction to the petitioner to resubmit the representation by order dated 22.09.2017 and the respondents were also directed to decide the representation by a reasoned order in accordance with law. By order dated 28.11.2017, the representation was decided by Superintendent of Police, Satna, whereby the claim of the petitioner for grant of II/III Time Scale Pay was declined on the ground that even before introduction of the Time Scale Pay Scheme, the petitioner had already received the benefits of two promotions and therefore, he was not entitled for any Time Scale Pay as per Scheme dated 01.04.2006. The Division Bench of this Court in the matter of Smt. Sunanda Shrivastava Vs. Union of India in W.P.No.26404/2023 decided on 06.11.2023 in the matter of claim of the petitioner for upgradation from grade pay and grant of benefit of Time Scale Pay has held thus:

"7 . Remedy under Article 226 of the Constitution of India relates to equity jurisdiction which cannot be exercised in favour of the petitioner who is not vigilant of her rights and is unable to explain the inordinate delay in approaching this Court except by submitting that repeat representations were made, which in the considered opinion of this Court cannot revive a dead cause.

8. This Court is supported in its view by the decision of Apex Court in the case of Union of India Vs. M.K. Sarkar reported in (2010) 2 SCC 59. Relevant extracts of

which are reproduced below for convenience:

"When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a Court's direction. Neither a direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the Court or tribunal Deciding to direct 'consideration' without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect.

9. In the present case, the petitioner has approached CAT, Jabalpur after a decade sleeping over her rights from 2009 till 2019. The CAT, Jabalpur while rejecting the O.A has held that petitioner should have approached within time limit prescribed under Section 21 of the Administrative Tribunal Act, 1985 and rejected the O.A.

10. In view of the above, no interference is warranted in the order passed by the CAT, Jabalpur in rejecting the O.A of the petitioner being hopelessly time barred with no justified reasons for such a huge delay."

15. In the present case also, the petitioner has approached this Court after eight years of retirement and in the considered opinion of this Court by mere filing a representation the petitioner cannot revive a dead cause and consequently on account of delay also the petitioner is not entitled for any relief.

16. In view of the above, the petition preferred by the petitioner is devoid of merit. The petitioner is not entitled for any relief for the reasons stated herein above.

17. Consequently, the writ petition preferred by the petitioner is hereby dismissed without any order as to costs.