
(2003) 03 MP CK 0108
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1291 of 2001 (J)

Lallan Prasad

APPELLANT

Vs

M.P. Electricity Board

RESPONDENT

Date of Decision : 19-03-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2003) 2 MPJR 54

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

Bench : Single Bench

Advocate : Virendra Verma, for the Appellant; Vivek Awasthy, for the Respondent

Final Decision : Allowed

Judgement

K.K. Lahoti, J.

All the aforesaid three petitions are decided by this common order. The facts in all are identical and facts are taken from Writ petition No. 4344 of 2001 (Shankar Mandal vs. M.P.E.B. and another).

The petitioners were appointed as workcharged driver in M.P.E.B. vide order (Annexure P/1). They were appointed temporarily to officiate until further orders as driver in the time scale of Rs. 750-15-840-20-960-25-1060. Vide order dated 17.3.90 (Annexure P/2), the cadre of the petitioners were changed as Plant Assistant Grade-II (Shift Drivers) in the equivalent time scale with a clarification that it will not be treated as promotion for the purpose of pay fixation. It was directed that their seniority will be counted in the cadre of Plant Assistant Grade II from the date of joining in O. & M. Circle.

The respondents issued a policy on 19.7.1990, by which respondent-Board has granted the benefit of two options for higher pay scales to Class III and Class IV employees on completion of 9/18/26 years of services. The aforesaid option was filed by the petitioners as they had completed 9 years of service as driver and the respondent vide Annexure P/3 dated 30.4.1998 allowed benefit of this

scheme to the petitioners and higher pay-scale was allowed to them vide order dated 5.6.1998. Thereafter all of a sudden vide Annexure P/5 dated 16.5.2001, the aforesaid order Annexure P/4 was cancelled and vide Annexure P/6 dated 20.7.2001, it was directed that the amount of higher pay scale so paid shall be deducted from the salary of the petitioners.

The contention of the petitioners is that the aforesaid order was passed without considering the circular dated 12.1.95 (Annex. P/7) and without affording any opportunity of hearing or issuing show cause notice to the petitioners. In the circumstances, the aforesaid orders (Annexures P/5 & P/6) are liable to be quashed on this ground.

After cancellation of the aforesaid order, petitioners made a representation to the S.E. vide Annexure P/8 which was decided by common order Annex. P/11 dated 27.7.2001. Consequently, petitioners have filed the present petitions for quashing orders Annexures P/5 & P/6.

The respondents on notice in this petition filed their return and contended that the petitioners were earlier appointed as driver. They were redesignated as Plant Assistant Grade II. Vide clause (x) of Annexure R/4, it was made clear that the service rendered on posts other than posts of line of promotion will not be counted. In the circumstances, the respondents have rightly cancelled the order (Annex.P/3) which is just and proper. So far as Annex.P/7 is concerned, the respondents have admitted that the period of services rendered by them as driver prior to their redesignation as Plant Assistant Grade II shall be counted for grant of benefit of higher pay scale along with the service rendered by them as Plant Assistant Grade II. The petitioners have wrongly tried to interpret the circular dated 12.1.1995 so as to draw an inference that the rider of completion of 9 years on the post of Assistant Grade II has been removed and date of joining on the said post is not at all relevant for the purpose of computing the seniority so as to ascertain the fixation of higher pay scale. Contending aforesaid, the learned counsel for respondents contends that (sic) petitioners cannot get any benefit from Annex. P/7. The aforesaid Annexure P/7 was issued to give benefit to those drivers who were redesignated by the Board itself, but the others who on their applications sought redesignation were not entitled for such benefit. The learned counsel for respondents contends that the orders Annexures P/5 and P/6 were rightly passed and the petitioners are not entitled for higher pay-scale.

Considering the aforesaid, the following facts are not in dispute :

- (1) That the petitioners were appointed as drivers and subsequently they were redesignated as Plant Assistant Grade II Shift Driver in the equivalent time-scale and this was not a promotion nor their pay-scale was changed by aforesaid redesignation.
- (2) The respondents as per policy (Annex. R/4) has allowed higher pay-scale to the petitioners after completion of nine years" service.

(3) The orders (Annexures P/5 & P/6) were passed without issuance of any show cause notice or affording any opportunity of hearing to the petitioners to explain their position in this regard.

So far as Annexure P/7 is concerned, it reads as under :

Sub : Counting of service rendered as Driver consequent on redesignation as plant Assistant Grade II, for benefit of higher pay scale.

Some of the Drivers working in power stations were redesignated as Plant Assistant Grade II in the interest of the Board's work. The Board decided that in respect of such drivers, who were redesignated as plant Assistant Gr. II in the interest of Board's work, the period of services rendered by them as driver, prior to their redesignation as plant, Assistant Gr. II shall be counted for the period of grant of benefit of higher pay scale along with the service rendered by them as Plant Assistant Gr. II. The above has been decided as a special case hence it should not form a precedent for other cadres.

The aforesaid circular is very clear. The respondents have not denied this circular but have contended that the aforesaid circular is applicable only to those drivers, who were redesignated by the Board itself, in the interest of Board's work but it will not apply to those drivers who were redesignated because of their application for such redesignation.

The aforesaid contention cannot be accepted. The aforesaid contention violates the Article 14 of the Constitution of India as the respondents cannot treat the drivers placed in similar situation in different manner. The drivers who were redesignated by the respondents Board on their own and the drivers who were redesignated on application cannot be treated differently for the purpose of grant of higher pay-scale. The Board in the aforesaid circular has specifically stated that all the drivers who were redesignated as plant Assistant Grade II in the interest of Board's work, the period of services rendered by them as driver, prior to their redesignation as plant Assistant Grade II shall be counted for the purpose of grant of benefit of higher pay scale along with the service rendered by them as plant Assistant Gr.II.

The aforesaid circular is applicable to both types of drivers who either have been redesignated by the Board on their own or by the Board on the applications of the drivers. The aforesaid distinction is violative of Article 14 of the Constitution of India. In these circumstances, the contention raised by the learned counsel for respondents cannot be accepted.

So far as non-furnishing of the information is concerned, though the petitioner has filed the form. In column no.6, he has categorically stated that he was firstly appointed on 1.9.1985. There is no column showing appointment on the post of Plant Assistant Grade II. This was not included in the form because it was not the post of promotion, nor a higher cadre for the post of driver. In fact, the aforesaid driver will remain as Shift Driver, and was only redesignated as Plant Assistant

Grade II without any monetary benefits. In the circumstances, the respondents initially rightly allowed higher pay scale to the petitioners after completion of nine years service as per policy (Annex.R/4). But subsequently without considering the merits of the petitioners' case and Annexure P/7 issued the impugned order without affording any opportunity of hearing. The aforesaid benefit was withdrawn arbitrary. The aforesaid orders (Annex. P/5 & P/6) which have been passed without considering the aforesaid position are liable to be quashed on this ground and hereby quashed. The respondents are directed to allow higher pay-scale benefit which was allowed vide Annexure P/3 to the petitioners. The petitioners are also entitled for arrears and other benefits which are applicable to them as per policy.

With the aforesaid directions, these petitions are allowed with costs.