

(2024) 02 CHH CK 0013
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 2709 Of 2018

Lata Shukla

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 05-02-2024

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2024) 02 CHH CK 0013

Hon'ble Judges : Deepak Kumar Tiwari, J

Bench : Single Bench

Advocate : Amrito Das, Shreyansh Mehta, Atanu Ghosh

Final Decision : Dismissed

Judgement

1. With the consent of learned Counsel for the parties, the matter is being heard finally.
2. This Petition is preferred against the order dated 24.06.2017 (Annexure P-1) seeking grant of annual increment for a period commencing from 23.08.1991 to 15.12.2008 to the Petitioner, who was working on the post of Lab Technician on ad hoc basis as also for fixation of proper salary after grant of annual increment with all consequential benefits including arrears of pay.
3. The facts of the case in nut-shell are that the Petitioner was initially appointed on the post of Lab Technician (Geography) against the sanctioned vacant post in Government College at Gadai, Kawardha vide order dated 27.07.1991. The services of the Petitioner were regularized vide order dated 15.12.2008 and during the period between 23.08.1991 and 15.12.2008, the Petitioner had rendered her services on having been appointed on ad hoc basis. The State of Madhya Pradesh, in the light of the judgment rendered in the matter of Dr. PL Malik vs. State of Madhya Pradesh and others (1991) MPLSR 475) has issued a circular dated 8.01.1993 and decided that benefit of annual increment shall also accrue in favour of ad hoc employees and similar circulars have also been issued

on 12.05.1993, 18.08.1993 and 25.10.1993 whereby, the State Government has further directed that the employees appointed under Class-III & IV category in the Department of Higher Education are also entitled for grant of annual increment. Since the State has never issued any notification/circular or order suspending or staying the operation of the circulars dated 08.01.1993, 18.08.1993 or 25.10.1993, therefore, the right of the Petitioner to get annual increment on the basis of the said circulars is still alive, but she was deprived of the same for the said period. A similarly situated Lab Technician namely Ku. Ragini Verma had filed a Petition before the Madhya Pradesh State Administrative Tribunal, Bench at Raipur (for short 'the Tribunal') on 04.07.2001 in O.A No.384/2001 in whose favour, the Tribunal has passed an award granting increment, however, the said order was not challenged and the same has attained finality. On a similar footing, other Petitioners namely Alok Kumar Rai and Premlal Patel have preferred W.P(S) Nos.3699/17 and 3712/2017 respectively wherein, the Respondent/authority has been directed to examine the issue in parity of the case of Ku. Ragini Verma and it was also directed that in case the benefit has been extended to Ku. Ragini Verma, then a suitable order has to be passed in respect of the Petitioners therein. Similarly, Satyanarayan Singh, Lab Technician had also preferred W.P(S) No.5958/2011 and this Court has passed order dated 18.12.2013 considering the fact that the State has not challenged the order passed in favour of Ku. Ragini Verma. On the contrary, the order passed by the Tribunal on 04.07.2001 was complied with and regular increment has been granted to Ku. Ragini Verma from the date of her initial appointment and further, a direction has been issued and similar treatment has been extended in favour of Satyanarayan Singh also. Thereafter, the State, considering the said case, vide order dated 19.01.2016 (Annexure P-24), granted annual increment to Satyanarayan Singh for his service rendered during ad hoc period in the light of the decision rendered in the case of Ku. Ragini Verma. The Petitioner herein had earlier filed a Petition before this Court by way of W.P(S) No.5031/2016 and this Court, vide order dated 17.02.2017, has issued a direction to decide her representation and the said representation has been dismissed vide order dated 24.06.2017 by mentioning that the case of the Petitioner was different as there were service breaks.

4. This Court has put a specific query to Shri Das, learned Counsel for the Petitioner as to whether there is any break in the service of the Petitioner for more than 3 days to which, he submits on instructions that there was no such break in the ad hoc services of the Petitioner and placed reliance on the circular dated 25. 10.1993 (Annexure P-7) and submitted that the guidelines issued by the State Government are clearly attracted in the present case through which, the benefit has been extended to other similarly situated employees of the said Department and this Court, on 18.01.2024, has directed the State to file a report about the break in ad hoc service of the Petitioner concerned and also directed to file a copy of the circular issued by the General Administration Department dated 11.09.1995, whereby the increment granted to the ad hoc employees was

stopped.

5. Learned Dy. Government Advocate Shri Ghosh has informed that he has duly communicated the said order to the concerned authorities on 22.01.2024, but they have not responded till so far. In the return filed by the State, it has been stated that the Petitioner was appointed on ad hoc basis on the post of Lab Technician on consolidated pay (at a minimum in the pay scale of Rs.1200-2040/-) for a period of 89 days where after, her services were terminated and she was given further appointment for a period of 89 days and after a break, she continued to work this way till her services were regularized vide order dated 15.12.2008. He further submits that the Petitioner never raised the issue of grant of annual increments while she was working on ad hoc basis and only after 20 years or more, she has raised such issue and no plausible explanation has been given by her with regard to the said inordinate delay, therefore, this Petition is squarely barred by doctrine of limitation and further, in the case of Ku. Ragini Verma, the Petitioner therein was granted annual increments for ad hoc period in compliance of the order passed by the Tribunal in the year 2001, which was not challenged by the State then and when the Joint Director, Treasury Accounts and Pension, Bilaspur has raised an objection, then the recovery was ordered which was challenged by Ku. Ragini Verma in W.P(S) No.3812/2012, therefore, this Court had observed that for an excess payment made for a period of 5 years or more, recovery would not be permissible. He further submits that Writ Appeal preferred by the State i.e. No.316/2016 on 04.07.2016 was dismissed as the Petitioner therein i.e. Ku. Ragini Verma had not stated any false facts or misrepresented any facts and her claim was accepted by the State in the year 2001. He further submits that the view taken by the Tribunal has been squarely reversed in a catena of judgments and it has been held that ad hoc appointees are not entitled for annual increments and a similar view has been taken by the High Court of Madhya Pradesh in the order passed in W.P. No.13207/2003 (Smt Kiran Shukla) that an ad hoc employee gets the flat rate of scale and he cannot claim as a matter of right that increment should be granted to him for the said period. He lastly submits that in a similarly placed matter i.e. W.P No.25463/2003 (Mahesh Pd. Gupta vs. The State of M.P.) dated 07.09.2010, the following was observed:-

9(31)(a) "Time -scale of pay" means pay which, subject to any condition prescribed in these rules, rises by periodical increments from a minimum to a maximum. It includes the class of pay hitherto known as progressive.

(b) Time scales are said to be identical if the minimum, the maximum the period of increment and the rate of increment of the time scale are identical. A conjoint reading of the aforesaid provision would thus make it clear that unless a person is appointed substantively in a time scale on permanent post is not entitled to count the services rendered by him for the purpose of increment. Conversely, since the ad hoc appointment is not an appointment to a permanent post and an ad hoc appointee cannot have a lien on a post is not entitled for the increment

for the said period. In this context regard can be had of the judgment rendered by the Apex Court in the case of Haribans Mishra and other Vs. Railway Board and Others (AIR 1989 SC 696); wherein, their Lordships were pleased to observe as under:-

15.....There can be no doubt that a person appointed to a post on an ad hoc basis cannot have any lien on the post. It is only when a person is appointed on a permanent basis, he can claim lien on the post to which he is so appointed

In view of the above since the petitioner was discharging the duties as ad hoc librarian between period from 23/02/1998 to 23/02/1990 he is not entitled for increment for the said period. In the result this petition fails and is hereby dismissed."

He further submits that in the matter of Sadhan Chandra Dev vs. Union of India reported in (1998) 8 SCC 127, it has been categorically held that it would not be proper to extend wrong benefits, therefore, the Petition being devoid of any merit is liable to be dismissed.

6. Heard learned Counsel for the parties and perused the order impugned as also the documents annexed herewith with utmost circumspection.

7. Undisputedly, the Petitioner has made a foundation for granting of annual increment on the basis of the circulars dated 8.01.1993, 18.08.1993 and 25.10.1993 and as per the pleading made in para-8.3, the circulars might have been issued in pursuance of Dr. PL Malik vs. State of Madhya Pradesh and others (supra). The High Court of Madhya Pradesh, in the matter of Saroj Goswami vs. State of M.P and others reported in 2006(1) M.P.L.J 217, has categorically observed at para-9 that the decision rendered in Dr. PL Malik vs. State of MP, T.A No.1547/88 and connected cases decided on 30.07.1990 holding that ad hoc employees are entitled to increments is therefore wrongly decided and reliance was placed on the matter of Dhyan Singh vs. State of Haryana, JT 2000(10) SC 436, wherein, considering whether temporary service or ad hoc service rendered in specific schemes could be counted as employment under the State, the Supreme Court has observed the following:-

"The continuance/engagement of the appellants under the specific scheme cannot be held to be an employment under any establishment of the Government. Such schemes are taken up for certain contingencies when money for the same is provided either by the Central Government or at times by some foreign countries. But the employment under such scheme not being a part of the formal cadre of the State Government, it is difficult to hold that the period for which an employee rendered service under such scheme, can be counted either for the purposes of deciding their pensionary benefits or even for fixing of their salary in the scale of pay once they are regularly absorbed."

8. Dealing with the principle of delay and laches, the following was materially observed in Saroj Goswami vs. State of M.P and others (supra) at para-6, which

is as under:-

6. This Court had occasion to consider the circumstances in which the principles stated in *M. R. Gupta* will apply, in *P. S. Rai vs. Union of India*, (WP (S) No. 596/2003). This Court held :

"The Principle in *M. R. Gupta* will apply where the re-fixation is sought on the ground of an error in calculation (incorrect computation), or where the entitlement for re-fixation is not disputed. It will also apply to a case where there is no dispute about the applicability of a particular pay scale, but the pay had been wrongly fixed in a different pay scale; or to a case where there was a wrong fixation in the same pay scale contrary to the Rules; or to a case where the fixation of pay was erroneously done by not calculating the initial pay in the pay scale as contemplated under Fundamental Rule 22 (I)(a)(i) corresponding to old F.R. 22 (c).

.....Where the real issue is adjudication of a right claimed for the first time and which is not admitted, the principle in *M. R. Gupta* will not apply. Similarly, where a person is regularised or absorbed on a particular post and the pay is fixed in the applicable pay scale but the employee wants pay should be fixed at a higher level by taking note of previous service rendered on stopgap/ ad-hoc/contract basis, then the question involves adjudication of an issue as to whether such service was rendered and whether it should be counted. Though the ultimate consequence of grant of such relief may be re-fixation of pay, the real issue to be adjudicated is not re-fixation but an independent right, which was not claimed or asserted in time. In those cases, if there is delay, the Court or Tribunal will be justified in refusing to adjudicate upon the right belatedly claimed and consequently there can be no re-fixation of pay."

9. In *Ram Naresh Rawat vs. Ashwini Ray and Others* reported in (2017) 3 SCC 436, it has been observed that even if principle of "equal pay for equal work" is applicable, temporary employee shall be entitled to minimum of the pay scale which is attached to the post, but without any increments, the right of equality under Article 14 is not in negative terms and relevant paras i.e. paras-26 & 27 are as under:-

"26. From the aforesaid, it follows that though a "permanent employee" has right to receive pay in the graded pay scale, at the same time, he would be getting only minimum of the said pay scale with no increments. It is only the regularisation in service which would entail grant of increments, etc. in the pay scale.

27. In view of the aforesaid, we do not find any substance in the contentions raised by the petitioners in these contempt petitions. We are conscious of the fact that in some cases, on earlier occasions, the State Government while fixing the pay scale, granted increments as well. However, if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in negative terms."

10. Reverting back to the facts of the present case, if we examine the impugned order (Annexure P-1) in the light of the law settled in the aforesaid precedents, the judgment rendered in the matter of Dr. PL Malik vs. State of Madhya Pradesh and others (supra) does not stand as a good law as it has already been overruled, therefore, on the basis of the circulars earlier issued by the State, equality cannot be extended in negative terms and as such, this Court is of the considered opinion that the decision taken by the Respondent/authorities is just and proper and the same does not call for any interference invoking writ jurisdiction.

11. Consequently, the instant Petition fails and is hereby dismissed.