
(2010) 11 MP CK 0030
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4482 of 2001

Laxmi Prasad Goutam

APPELLANT

Vs

State of MP and Others

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapkon Tatha Anya Karamcharyon Ki Bharti) Niyam, 1979 — Rule 7(1)

Citation : (2010) 11 MP CK 0030

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.—Challenging the action of the Respondent/State Government in not releasing 100% grant for payment of salary to the Petitioner with effect from the date of passing of order-dated 29.3.2001 - Annexure P/1, and reducing the grant to the extent of 67% from February 2000, Petitioner has filed this writ petition seeking quashing of the order - Annexure P/1 and a direction to pay 100% salary to him till amendment to the M.P. Ashaskiya Shikshan Sanstha (Adhyapkon Tatha Anya Karamcharyon Ki Vetno Ka Sanday) Adhiniyam, 1978, brought into force by the State Government with effect from 1.4.2001, vide Circular dated 31.1.2000.

2. Facts that have come on record indicate that Petitioner was appointed as an Upper Division Teacher in Rajput Higher Secondary School, Amarha, Tehsil Sohagpur, District Shahdol vide order-dated 29.6.1974 - Annexure P/2. The school in question was receiving 100% grant from the State. Petitioner joined as a UDT on 6.7.1974 and thereafter was promoted as Lecturer on 12.9.84 vide Annexure P/3. Petitioner continued to work as Lecturer. However, Petitioner was not treated as a staff of the regular establishment and grant-in-aid in accordance to the M.P. Ashaskiya Shikshan Sanstha (Adhyapkon Tatha Anya Karamcharyon Ki Vetno Ka Sanday) Adhiniyam, 1978 (hereinafter referred to as "Adhiniyam of

1978") was not paid to the Petitioner. Aggrieved thereof Petitioner filed M.P. No. 3929/87 before this Court. This Court having dismissed the writ petition on 3.5.90, Petitioner filed SLP No. 11865/90, and on 5.8.91, following orders were passed by the Supreme Court:

On the uncontroverted statement made on behalf of the Petitioner, we hold that the Petitioner has a Master's Degree in Sanskrit and Hindi and Bachelor's Degree in Education. Admittedly, he has been teaching in the higher sections of the school in these two subjects for about 15 years. The post held by him should, therefore, be regularized. We direct that the post be regularized within six weeks from now. The SLP is disposed of accordingly. No costs.

The said order is filed as Annexure P/4. In spite of the aforesaid order, when Petitioner's services were not regularized, Petitioner again filed W.P. No. 3108/94 and sought regularization on the post of Lecturer w.e.f 12.9.84. This petition was registered as W.P. No. 1558/95 and Petitioner was allowed regularization in service as Lecturer w.e.f 12.9.84 and this Court in W.P. No. 1558/95 passed orders directing for treating Petitioner to be treated as a regular employee w.e.f 12.9.84 and to pay him salary and arrears alongwith interest @ 12% per annum. The aforesaid orders were complied with and Petitioner started receiving the said benefit. However, grievance of the Petitioner is that after passing of the impugned order - Annexure P/1, salary of the Petitioner is reduced to 67% on the ground that by virtue of a circular passed on 9.5.96 vide Annexure P/7 and in view of Rule 7(1)(a) & (b) of the M.P. Ashaskiya Shikshan Sanstha (Adhyapkon Tatha Anya Karamcharyon Ki Bharti) Niyam, 1979 (hereinafter referred to as "Niyam of 1979"), the Petitioner cannot be appointed as the post is reserved for SC/ST candidates. By interpreting the aforesaid rules, it was pointed out that as staff in excess are available and 3 Lecturers are working in the said school, the salary was distributed @ 67% among the three Lecturers w.e.f February 2000. It is pointed out that as far as regularization of the Petitioner is concerned, Petitioner was regularized by virtue of the order passed by the Supreme Court and by this Court and he is deemed to be a regular employee w.e.f. 12.9.84, from which date regularization was granted to the Petitioner by virtue of the orders passed by the Supreme Court and this Court and once the Petitioner is treated to be a regular employee by virtue of these orders, he is entitled to 100% grant in aid with effect from the date of regularization i.e.. 12.9.84, till amendment to the Adhinyam of 1978, whereby in a phased manner reduction of grant to all aided institute @ 20% w.e.f. 1.4.2001 was affected. Interalia contending that the provisions of Niyam of 1979 has been incorrectly applied to the Petitioner and the reduction of salary to the extent of 33% and paying 67% is not correct, Petitioner seeks interference and prays for quashing the order - Annexure P/1.

3. Smt. Amrit Ruprah, learned Counsel for the Petitioner, taking me through the orders passed by the Supreme Court and the High Court in the petitions filed by the Petitioner and the benefit of regularization granted to the Petitioner w.e.f

12.9.84, argued that when the Petitioner is regularly appointed against a post carrying 100% grant in aid, by virtue of the orders passed by the Supreme Court and the High Court, Respondents cannot treat the appointment of the Petitioner to be irregular or against a post in excess of the quota and thereby in view of certain subsequent developments that took place by issuance of Annexure P/7 on 9.5.96, reduce his salary. To that extent it is stated by learned Counsel that the action of the Respondents is unsustainable.

4. Respondents have filed reply and it is stated by them that reduction of 20% grant in aid every year has been incorporated and, therefore, Petitioner's salary has been reduced.

5. Having heard learned Counsel for the parties and on a perusal of the records, it is clear that Petitioner is treated to be regularized and has been admitted to the benefit of 100% grant in aid w.e.f. 12.9.84, after orders were passed by the Supreme Court and the High Court. Once the Petitioner is admitted to the said benefit, the same cannot be taken away by virtue of any subsequent developments that took place by enforcing the Circular dated 9.5.96 - Annexure P/7. Petitioner was already regularized much prior to the said date and Petitioner was regularized against a post receiving 100% grant in aid and, therefore, on the ground of some subsequent change in the promotion/recruitment rule or quota being fixed, the same would not adversely affect the right of the Petitioner to receive 100% grant in aid, once the Petitioner is regularized on a post carrying 100% grant w.e.f. 12.9.84. In that view of the matter, the impugned order - Annexure P/1 so far as it directs for payment of only 67% salary to the Petitioner is unsustainable. Circular-dated 9.5.96 - Annexure P/7 on the basis of which this action is taken will not apply in the case of the Petitioner, in view of the fact that Petitioner is found to be regularized and entitled to be appointed against a post carrying 100% grant in aid by the Supreme Court as is evident from the order passed on 5.8.91, in SLP No. 11865/90 w.e.f. 12.9.84.

6. In that view of the matter, the petition has to be allowed and is accordingly allowed. Impugned order-dated 29.3.2001 - Annexure P/1, so far as it directs for payment of only 67% salary to the Petitioner is quashed. Respondents are directed to pay 100% salary to the Petitioner in accordance to the regularization ordered in the case of the Petitioner and continue to make payment subject, however, to the reduction in the grant in aid brought into force by amendment to the Adhinyam of 1978 i.e... reduction @ 20% per annum. However, the reduction in view of the Amendment to the Adhinyam shall be enforced in the case of the Petitioner in accordance to the directives issued by the Supreme Court in the SLP, which are pending in the case State of MP v. Sharik Ali (grant in aid cases), payment of salary to the Petitioner shall be made strictly in accordance to the directions issued by the Supreme Court in the said case. Payment of arrears and other benefits to the Petitioner in pursuance to this order be granted within a period of three months from the date of receipt of certified copy of this order.

7. As salary to the Petitioner has been reduced illegally and Petitioner had to file writ petition on different occasions to enforce his legitimate rights, the amount of arrears to be paid shall carry interest @ 6% per annum from the date due till payment.

8. Accordingly, petition stands allowed and disposed of with the aforesaid.