

(2015) 04 MP CK 0099

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2702 of 2015

Mohan Lal Choudhary

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 04 MP CK 0099

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : J.P. Sen, Learned Counsel, for the Appellant; Janhavi Pandit, Learned Dy. Govt. Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.

1. Petitioner by way of present petition under Article 226 of the Constitution of India seeks direction to the respondents to grant two advance increments in lieu of he having acquired Diploma in Education (D.Ed) qualification while in service.

2. The aforesaid relief has been claimed on the basis of the decision of the Apex Court in Asha Saxena V. State of M.P and others: SLP (Civil) No. 18881/06 wherein the claim of Assistant Teachers appointed prior to 16.6.1993 for grant of two advance increments in lieu of acquiring (B.Ed/D.Ed/B.TI) was upheld (In respect of grant of two advance increments it has a relevance because w.e.f. 17.6.1993 relevant rule for recruitment of teachers provided for B.Ed/D.Ed/B.TI as an essential qualification for appointment).

3. It has been held in Asha Saxena (supra) that:

The appellant herein was appointed as a Lecturer in the Government Girls' Higher Secondary School, Mama Ka Bazar, Gwalior, Madhya Pradesh, on 19.9.1981. Prior to entry into service, the appellant had in 1972 acquired B.Ed.

Degree. According to the appellant, at the time of entry into service she was entitled to two advance increments in accordance with a Circular issued by the State Government on 21.9.1974, which reads as follows:

"Pointwise clarification of the queries born in connection with Pandey Commission Revised Pay Scales fixation is as follows:

1. Benefit of advance increment to trained teachers from Revised Pay Scales:

Two increments were given to trained teachers in Unified Revised Pay Scales and from trained person on the post of teacher at the time of initial appointment allowing advance increments orders wise for fixing their initial pay Rs. 95/- in 90-170.

It has been decided regarding three advance increments to ladies on first appointment and two advance increments on account of being trained, if any teacher gets training on his own expense advance increments shall be payable to him/her.

On the basis of this decision advance increments are to be allowed in Revised Pay Scale.

Similarly if any person got training at his/her own expense before entry into Government service, he/she should also be allowed to advance increments in initial pay at the time of appointment.

So far as the question of allowing three advance increments to lady teachers is concerned, it is clarified that from Revised Pandey Pay Scale the tradition of giving three advance increments to ladies on appointment to the post of teacher is dispensed with.

2. Employees of local Institutions Schools taken over by Government the services under the local institutions are to be considered for weightage and taken over teachers working in local institutions. From dated 1.10.1963 and 26.10.1965 on being under Government control the need for allowing services weightage on pay fixation in Revised Pay Scale.

3. Because at the time of absorption services rendered by the teachers in question in local bodies were allowed for pay fixation, service of this period according to M.P. Revised Pay Rule 73, their services for local bodies be accepted as a continuous service.

By the name and order of The Governor of Madhya Pradesh Sd/-"

It is the appellant's case that since she was denied the said benefit she made several representations to the concerned authorities which did not meet with any positive response. Accordingly, on 4.5.2001, she filed an application, being O.A. No. 477/2001, before the State Administrative Tribunal of Madhya Pradesh, Gwalior Bench, for being given the benefit of two advance increments and the payment of arrears accrued therefrom. The Tribunal by its order dated 17.4.2002

allowed the application and directed the respondents to re-fix the pay of the appellant after granting two advance increments and to also make payment of the arrears within three months from the date of receipt of the order.

Subsequently, without implementing the order of the Tribunal, the respondents filed a writ application before the High Court on 25.2.2005, being Writ Petition (S) No. 714/2005. The High Court took up the writ application for consideration, along with several other writ applications, and, ultimately, by its judgment and order dated 23.3.2006 allowed the writ application upon holding that those petitioner who had acquired the B.Ed. or B.T.I. Degree before entering into service would not be entitled to the benefit of two advance increments, having regard to amendment of the Rules with effect from 17.6.1993. As far as the appellant herein was concerned, except for recording the submission made by the counsel for the State of Madhya Pradesh to the effect that the Circular of 21.9.1974 had been subsequently withdrawn by a Circular dated 18.12.1975, nothing further has been said about the subsequent Circular and the entire judgment was focussed upon the subsequent amendments, and, in particular, the amendment of 1993. In fact, even the Circular of 18.12.1975 referred to and possibly relied upon by the High Court, was not on record nor does it ever seem to have been produced either before the Tribunal or the High Court. It has not also been produced before this Court. On the date when the appellant was appointed, the Circular of 21.9.1974, therefore, appears to have been very much in force as was considered and pointed out by another Division Bench of the Madhya Pradesh High Court, Gwalior Bench, which directed that the benefit of the said Circular dated 21.9.1974 be made available to the writ petitioner who were before the High Court.

Even before the said Division Bench a question had been raised as to whether the Circular of 21.9.1974 had been superseded or not, but learned counsel appearing for the State of Madhya Pradesh could not enlighten the Court in that regard.

Having regard to the above we are of the view that the High Court should not have relied merely upon the submission made on behalf of the State of Madhya Pradesh that the Circular of 21.9.1974 had been withdrawn by a subsequent Circular dated 18.12.1975 and proceeded with the matter, particularly when the said Circular dated 18.12.1975 was never even produced before the Court.

Since the said Circular was not produced either before the Tribunal or before the High Court or even before us, we do not think that any further opportunity is required to be given in that regard.

Accordingly, we allow this appeal and set aside the impugned judgment of the Madhya Pradesh High Court to that extent only. We direct that the appellant will be entitled to the benefit of the Circular of 21.9.1974 and the benefits which were directed to be given to her in terms of the order of the State Administrative Tribunal stand restored. The time for making payment of arrears is extended by

a period of six months from date.

There shall be no order as to costs."

4. Petitioner in the instant petition is not Assistant Teacher/Teacher appointed prior to 16.6.1993 but is Shiksha Karmi appointed under the provision of Madhya Pradesh Panchayat Samvida Shala Shikshak (Appointment and Conditions of Contract) Rules 2001 and as amended in 2003 and were subsequently appointed as Adhyapak in pursuance to policy decision of the State Government.

5. Petitioner since is not Assistant Teacher/Teacher appointed by the State Government prior to 16.6.1993 is not entitled for the benefit claimed by him for grant of two advance increments in view of B.Ed./D.Ed./BTI.

6. In view whereof, no relief can be granted to the petitioner.

7. In the result, petition fails and is hereby dismissed. There shall be no costs.