
(2016) 06 MP CK 0053
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 273 of 2016

M.P. Audyogik Kendra Vikas Nigam (Jabalpur) Ltd.	APPELLANT
Vs	
Abhay Tiwari	RESPONDENT

Date of Decision : 21-06-2016

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2017) 1 JabLJ 220

Hon'ble Judges : Shri Rajendra Menon, ACJ. And Shri Anurag Shrivastava, J.

Bench : Division Bench

Advocate : Shri Piyush Dharmadhikari, learned Government Advocate, for the Respondent/State; Shri Sanjay Agrawal, learned counsel, for the Respondent; Shri H.S. Chabbra, learned counsel, for the Appellant

Final Decision : Dismissed

Judgement

1. In this appeal filed under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khandpeeth ko Appeal) Adhiniyam, 2005 exceptions are sought to orders passed by the writ Court in the matter of allowing the writ petition filed by the respondents/employees and granting them a particular higher pay scale.
2. In W.A. No.273/2016 challenge is made to order dated 20.7.2015 passed in W.P. No.3631/06(S) and an order dated 9.12.2015 passed in R.P. No.851/2015 whereby the review application is dismissed.
3. Similarly, in W.A. No.274/2016 challenge is made to order dated 20.7.2015 passed in W.P. No.3626/2006(S) and order dated 9.12.2015 passed in R.P. No.850/2015.
4. As the questions of law and the facts are identical in both these appeals, these are disposed by this common Order and for the sake of convenience the pleadings and the documents available in W.A.No.273/2016 is being referred to in the order.

5. Respondents were initially appointed as Assistant Engineers in the M.P. Audyogik Kendra Vikas Nigam (Jabalpur) Ltd. hereinafter referred to as the Corporation in the pay-scale of Rs. 2000-3500/-.

6. On 19.06.1998 the Madhya Pradesh State Industrial Development Corporation passed an order granting a pay-scale of Rs. 2200-4000/- to all its Assistant Engineers.

7. The respondent no.5 is the holding company and the Corporation with Offices in Jabalpur, Bhopal, Gwalior etc. are the subsidiaries or sister companies where the employees are working. Based on the decision taken by the respondent no.5 corporation on 2.7.1998 the appellant company also issued an order proposing to grant the pay-scale of Rs.2200-4000/- to its employees and the matter was placed before the Board of Directors. On 21.7.1998 the Board of Directors approved the proposal and on 23.9.1998 the revision of pay was granted to the employees concerned. Thereafter, under the M.P. Pay Revision Rules, 1998 on 8.12.1998 this pay was further revised to Rs. 8000-13500/-.

8. However, on 04.04.2002 the State Government passed an order whereby it was held that on 19.6.1998 the order passed by the respondent no.5 Corporation is not proper as the approval of the State Government has not been sought. Therefore, on 1.5.2002 a decision was taken to withdraw the benefit and accordingly on 21.5.2002 the benefit granted was withdrawn.

9. Writ petitions were filed challenging there actions and the writ petition having been allowed this appeal under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khandpeeth ko Appeal) Adhiniyam, 2005.

10. Earlier the respondents/employees had filed W.P. No.2678/2002 which was disposed of by vide orders in the year 2002 directing the State Government to consider the representation and take a decision. But when the representation was rejected by the State Government on 19.10.2005 the impugned action was challenged before the writ Court. The writ Court took note of an order passed under similar circumstances by the Gwalior bench of this Court in W.P. No.1245/2002 and allowed the writ petition.

11. Appellants herein challenge the said order passed by the writ Court mainly on two grounds. The first ground raised by them was that the withdrawal of revision of pay-scale granted was because of the objection and circular of Finance Department and as this aspect of the matter was not considered by the learned writ Court there is an error. Secondly, it was pointed out that the judgment rendered by the Gwalior Bench of this Court was not applicable. It was distinguishable and therefore the learned writ Court committed an error.

12. Initially the writ appeals filed were disposed of on 4.11.15 and it was observed that these grounds cannot be raised for the first time in the writ appeal. The appellant may prefer a review before the single Judge. Learned writ Court having dismissed the review petition now this appeal.

13. Shri H.S. Chhabra, learned counsel for the appellant, took us through the order dated 1.8.2006 passed by the Gwalior Bench of this Court in W.P. No.1245/2002 and invited attention to the findings recorded by the Gwalior Bench in Para 7 of the aforesaid order which reads as under:

"7. From the facts stated above, it is clear that the petitioners have been working on the post of Asstt. Engineer and their pay scales have been revised at par with the government employees i.e. Asstt. Engineer who were working at different government departments and they have been given the pay scale of Rs.2200-4000 w.e.f. 1.1.96. The other government owned corporations have also given the same pay scale of Asstt. Engineer and it is admitted fact that the petitioners have been given the benefit according to the order of Revision of Pay - Scales up to June 2002 and the impugned orders have been passed without giving any opportunity of hearing. Consequently, the order is penal in nature. This Court in a similar case has quashed the order on 18.7.06 in W.P. No.1249/2002."

He argues that the Gwalior Bench interfered into the matter because the impugned action was taken without grant of opportunity to the employees and the order Penal in nature was passed without hearing the employees. It is stated in this case that it is not the position as after the earlier writ petition filed by the petitioners i.e. W.P. No.2678/2002 was disposed. Their representation were considered and a detailed order passed by the State Government and as an opportunity of representation or hearing has been granted, the judgment rendered by the Gwalior Bench cannot be made applicable. That apart it is argued that learned writ Court did not take note of the circulars of the State Government and the Finance Department the reason given by the State Government for denying benefit to the employees of Corporation and without analysing the aforesaid reason, quashed the action and therefore, the benefit granted is unsustainable .

14. Refuting the aforesaid, Shri Sanjay Agrawal, learned counsel for the respondents, apart from pointing out that in Para-7 of the said order of the Gwalior Bench of this Court various other reasons have also been indicated. He submits that for employees working in the M.P. Audyogik Kendra Vikas Nigam Ltd. at Gwalior, Indore and various other places similar petitions have been allowed and Asst. Engineers working in the Nigams establishment at Indore, Gwalior and various other places are getting the pay scale in the scale of Rs. 2200-4000/- and even after orders passed by the Indore Bench and Gwalior Bench, the benefit has not been withdrawn nor any action taken for granting opportunity of hearing for complying the Government circular and policies. He refers to a judgment rendered by the Indore Bench of this Court on 11.3.2005 in W.P.(S)No.2074/2004 where the writ Court had directed for grant of benefit for the pay-scale in the scale of Rs. 2200-4000/- to the employees and similar action taken for withdrawal quashed. Similarly, he invites our attention to another judgment of Gwalior Bench in the case of W.P.(S).2779/2004 decided on

04.08.05 where similar benefits of pay-scale in the scale of Rs. 2200-4000/- has been granted to the employees. Accordingly, he submits that even though the Vikas Nigam at Jabalpur may be a different or independent company but all the Nigams function under the aegis of main controlling company respondent no. 5 and 6 Corporation i.e. M.P. State Industrial Development Corporation and when employees working in Gwalior and Indore who also do similar work are getting the same pay merely on the basis of financial crisis, a technical objection raised, the appeal does not require any consideration. He submits that even after orders passed by the Gwalior Bench of this Court in the matter of interfering on one ground i.e. that the order is penal in nature and has been passed without grant of opportunity, the orders granted the benefit have not been withdrawn after grant of opportunity on the contrary the orders passed by the Indore Bench and the Gwalior Bench referred to herein above have been implemented. Consequently, he argues that the employees working in Indore and Gwalior as Asst. Engineers and discharging similar duties are getting pay in the scale Rs. 2200-4000/- and if the contention of the respondents are accepted that employees working in the Nigam at Jabalpur will get a lower pay scale. This according to Shri Agrawal, would be discriminatory in nature and as the appellants herein are similarly situated like Audyogik Kendra Vikas Nigam Limited Gwalior and Indore and it being an instrumentality of the State, a government company working under the control of the State Government there cannot be discrimination in the matter of payment of Pay-Scale.

15. We have heard learned counsel for the parties at length and we have considered the rival contentions. The learned writ Court has taken note of the judgments rendered by the Gwalior Bench and has allowed the writ petition. The Gwalior Bench in the order passed on 1.8.2006 in W.P. No.1245/02 has taken note of the factual aspects and has indicated in Para-7 which is reproduced here in above, it is seen that apart from taking note of the consequence of the order being penal in nature and it being passed without grant of opportunity, the learned writ Court had adverted to consider the question and has found that in other Government Owned corporation the pay scale of the Asst. Engineers has been revised and it has been fixed at Rs. 2200- 4000/- with effect from a particular date therefore, it has been directed that similar benefits should be granted. That being so it is not correct to say that the Gwalior Bench allowed the W.P. No.1245/02 only because a penal order was passed withdrawing the benefit without grant of opportunity. On the contrary, the order passed by the Gwalior Bench does take note of the benefit being granted to similarly situated employees working in other state owned corporation. That apart, the Indore Bench in its order passed on 11.3.2005 in W.P.S. No.3070/04 has given a detailed reason and after following certain judgments of the Supreme Court in the matter of parity in pay scales so also the orders passed by the Indore Bench in other W.P. No.5304/96 granted the benefit.

16. Even though in the judgments relied by the learned Single Judge a detailed analysis, of the issue and State Governments circular eh.. may not be

undertaken, but the fact remains that Asst. Engineers working not only in the M.P. Audyogik Kendra Vikas Nigam Ltd. at Jabalpur, Gwalior, Indore and other state owned corporations were initially appointed in the pay-scale of Rs.2200-3500/- but on the basis of the policy decision taken by the M.P. Industrial Development Corporation, the parent organisation a decision was taken on 19.6.98 to grant the pay scale to Asst. Engineers in the Scale Rs.2200-4000/-. Thereafter, the Board of Directors of the present appellant company also accepted the same.

17. When action was proposed to be taken for withdrawal of this benefit not only in Jabalpur, but also in Gwalior and Indore the matter was agitated before this Court and with respect to the employees working in Gwalior and Indore in the light of the orders passed by the Benches of this Court at Gwalior and Indore they are getting the benefit of higher pay-scale. That being the factual position there is no reason as to why similar benefits should not be granted to the employees working in the appellant's corporation at Jabalpur. All employees working in various corporation at Gwalior, Indore and Jabalpur are Asst. Engineers. They are all discharging similar duties. When the respondent counterparts in Gwalior and Indore who are discharging similar duties are getting certain benefits, there is no reason as to why merely because the appellant company is a different company the pay-scale in the corporation at Jabalpur should be lower than that at Indore and Gwalior.

18. We find that based on the orders passed by the Gwalior and Indore Benches of this Court, when identically situated employees doing similar duties and holding the same posts are getting a higher pay-scale, the appellant a model employee and an organ of the State should also follow suit and should grant similar benefits.

19. All the Audyogik Kendra Vikas Nigam at Jabalpur, Indore and Galior even though independent companies are instrumentalities of the State Government, owned and controlled by the State and there all employees similarly situated in the companies should be treated in a similar manner.

20. Without going into the technicalities in the matter, on this ground alone the appeals are liable to be dismissed, that apart, once the Board of Directors of the appellant company had approved the same and when employees working in Gwalior and Indore are getting the same benefits, we see no reason to make any indulgence into the matter.

21. Accordingly, finding no case for interference into the matter on the grounds raised, the appeals stand dismissed.