(2018) 07 MP CK 0090

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No.183, 184, 186, 187, 188, 190, 191, 193, 194, 195 Of 2018

Mp Road Transport Corporation — APPELLANT

Vs

Rajya Parivahan Karamchari Mahasangh Through Jitendra Kumar — RESPONDENT

Date of Decision : 11-07-2018

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Industrial Dispute Act, 1947 — Section 10, 10(2)

Citation : (2018) 07 MP CK 0090

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Kirti Patwardhan, J. Baheti

Final Decision : Disposed Off

Judgement

The petitioners / Corporation haveÂ filed the present petition being aggrieved by the order dated 18/12/2014 passed by the Presiding Officer,

Labour Court, Ujjain in Case no. 98/2014-ID Act Reference.

Learned counsel for the petitioners submits that the issue raised in this petition has finally been decided by this Court in WP no. 8822/2013

vide order dated 09/03/2017, which is reproduced for the sake of reference.

WP-8822-2013

Â (MANAGINGÂ DIRECTORÂ MPÂ ROAD

TRANSPORT CORPN. AND 4 ORS. Vs RAJYA

PARIVAHAN

KARAMCHARI MAHASANGH AND ORS.)

09-03-2017

Shri G.S. Patwardhan, learned counsel for the petitioners.

Shri S.H. Moyal, learned counsel for the respondent.

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a

common order, they are being disposed of by this Court. Facts of the Writ Petition No.8822/2013 are narrated hereunder.

The petitioner before this Court, M.P. Road Transport Corporation and others have filed this present petition being aggrieved by the order

dated 26.02.2013 pronounced on 01.04.2013, passed in case No.72/08D/ Reference, by the Presiding Officer, Labour Court, Ujjain.

Facts of the case reveal that the petitioner No.1 is corporation constituted under the provisions of Road Transport Corporation Act, 1958 and

the respondent No.1 is a trade union registered under the Trade Union Act.

As the corporation was facing financial crunch, a scheme was framed in the year 2000 known as Voluntary Retirement Scheme and scheme

was finally introduced in the year 2004 known as VRS scheme 2004. It has been stated in the writ petition that based upon the VRS scheme,

options were invited from the employees and employees with open eyes accepted the scheme of VRS and the dues were paid to them while

granting retirement to them.

Petitioners have further stated that certain petitioners raised grievance in respect of the voluntary retirement scheme 2004 and respondent

No.1-tradeunion took shelter of Section 10 of the Industrial Dispute Act, 1947. The appropriate government made a reference under Section

10 (2) of Industrial Dispute Act, 1947 to the labour court for adjudication. Following reference was made by the appropriate government for

adjudication:-

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xbZ LosfPNd lsok fuo`fRr oS/k ,oa mfpr gS \ ;fn ugha rks og fdl lgk;rk ds ik= gSa ,oa bl laca/k esa fu;ksDrk dks D;k funsZ'k fn;s tkuk pkfg;s

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The aforesaid reference makes it very clear that tribunal was required to decide the fact whether the employer has paid the terminal dues as

per the rules or not while granting voluntary retirement to the workmen and in case, the terminal dues have not been paid as per rules, what

reliefs the employees are entitled for?

Statement of claim was filed by the workmen as well as by the union. In the present case, it was stated by the employer that a sum of

Rs.2,65,000/- was paid to the employee and while granting the dues, the payscale, which was being given to the workmen based upon the

recommendation of 4th pay commission along with 20% of interim relief based upon the recommendation of 5th pay commission was taken

into consideration.

It has been argued by Shri Patwardhan, learned counsel that matter before the labour court was in respect of payment of dues made at the

time of grant of voluntary retirement, however, the statement of claim was submitted by the workmen claiming dues right from the year 1998

and the workmen have also claimed certain benefits from 1994 i.e. encashment of leaves etc.

Respondents also filed a counter statement of claim and it was demonstrated that they have calculated the VRS amount based upon the pay-

scale granted to the employees by the corporation (4th pay commission) and 20% D.A . based upon recommendation of 5th pay commission.

Shri Patwardhan, learned counsel has argued that the labour court has passed the award and has held that complete dues to the workmen

have not been paid and the labour court has gone to the extent in holding that dues are to be paid based upon the recommendation of 5th pay

commission and the payscale has to be granted based upon the recommendation of 5th pay commission and the workmen are certainly

entitled for grant of pay-scale on the basis of recommendation of 5t h pay commission. His contention is that no decision was taken by the

corporation or the State Government for granting the aforesaid pay-scale (5th pay commission) and therefore, the impugned award deserves

to be set aside.

On the other hand, Shri S.H. Moyal, learned counsel has vehementally argued before this Court that the respondents have not granted the

complete amount, while granting VRS to the employees and it was a coercive action on the part of the respondent in granting VRS as the

workmen were forced to accept the VRS framed and implemented by the employer.

He has further stated that workmen are certainly entitled for grant of amount of VRS by taking into account the recommendation of 5th pay

commission, therefore, the calculation done by the labour court is not erroneous. His contention is that award passed by the labour court does

not warrant interference.

Heard the learned counsel for the parties and perused the record.

In the present case, it is not in dispute that a reference was made by the appropriate government and the labour court was required to answer

the reference i.e. whether the workmen have been paid the dues while granting voluntary retirement and in case, workmen have not been

paid the emoluments to what reliefs they are entitled for? The labour court has passed the award that workmen are entitled for pay-scale on

the basis of recommendation of 5th pay commission has held the workmen are entitled for higher amount as per the impugned award.

In the present case, it is undisputed fact that workmen have accepted voluntary retirement under the VRS scheme and a similar issue came

up before Hon'ble Supreme Court in the year 2008 and Hon'ble Supreme Court in the case of Ramesh Chandra Sankla Vs. Vikram Cement

reported in 2008 (14) SCC, 58 in paragraph Nos.98, 99 and 100 has held as under:-

98. From the above cases, it clearly transpires thatpowers under Articles 226 and 227 are discretionary and equitable and are required to be

exercised in the larger interest of justice. While granting relief in favour of the applicant, the Court must take into account balancing interests

and equities. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities

may project.

As observed by this Court in Shiv Shankar Dal Mills v. State of Haryana, (1980) 1 SCR 1170, Courts of equity should go much further both to

give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of

justice, equity and good conscience.

99. In our considered opinion, taking into accountfacts and circumstances in their entirety, the order passed and direction issued by the

Division Bench of the High Court was in furtherance of justice. Not only it has not resulted in miscarriage of justice, in fact it has attempted

to put status quo ante by balancing interests and leaving the matter to be decided by a Competent Authority in accordance with law.

100. Even otherwise, according to the workmen, theywere compelled to accept the amount and they received such amount under coercion

and duress. In our considered opinion, they cannot retain the benefit if they want to prosecute Claim Petitions instituted by them with the

Labour Court. Hence, the order passed by the Division Bench of the High Court as to refund of amount cannot be termed unjust, inequitable

or improper. Hence, even if it is held that a `technical' contention raised by the workmen has some force, this Court which again exercises

discretionary and equitable jurisdiction under Article 136 of the Constitution, will not interfere with a direction which is in consonance with the

doctrine of equity. It has been rightly said that a person ""who seeks equity must do equity"". Here the workmen claim benefits as workmen of

the Company, but they do not want to part with the benefit they have received towards retirement and severance of relationship of master

and servant. It simply cannot be permitted. In our judgment, therefore, the final direction issued by the Division Bench needs no interference,

particularly when the Company has also approached this Court under Article 136 of the Constitution.

In the aforesaid case, workman has disputed the amount granted by the employer. In the present case, statement has been made that the

workmen were not granted the amount as per the VRS scheme, however, nothing prevented the workmen to refuse the offer made by the

employer.

This Court in the case of Managing Director and others Vs. Prantiya Rajya Parivahan and another (W.P. No.1247/2007(s)) wherein again,

there was a dispute in respect of grant of wages as per 5th pay commission to the employees by the corporation and the issue was also in

respect of grant of dearness relief to the employees of the corporation and the petition preferred by the petitioner in identical circumstances was dismissed.

The matter has finally travelled to the Apex Court and the Apex Court in Civil Appeal No.321/2013 has passed the following order:-

The present appeal arises out of judgment and order dated 1st July, 2011 passed by the High Court of Judicature of Madhya Pradesh, Bench

at Indore. The High Court in paragraph 8, after taking into consideration the settlement dated 3rd February, 1988 arrived at between the

Managing Director, M.P. State Road Transport Corporation and the M.P. Transport Workers Federation, has held that all the employees of

the Corporation are entitled to the same rate of dearness allowance as is being payable to the employees of the M.P. State Government prior

to the Fifth Central Commission's report having been accepted by the State Government for its employees but this report has not been

implemented so far as the employees of the State Road Transport Corporation is concerned.

We have heard learned counsel for the parties.

We do not find any good ground to interfere with the impugned judgment for the simple reason that in terms of the agreement it was agreed

between the

M.P. State Road Transport Corporation, the appellant No.1 herein and the Prantiya Rajya Parivahan Karmachari Sangh respondent No.1 that

the same amount of dearness allowance which is payable to the State Government employees would be payable to the employees of the M.P.

State Road Transport Corporation. It is not in dispute that even those employees of the State Government who have not opted for the revised

pay scale recommended by the Fifth Central Pay Commission, are being paid the old pay scale but the amount of dearness allowance is

higher than what is being paid to the employees who have opted for the pay scale given by the Fifth Central Pay commission. As the

employees of the M.P. State Road Corporation having not been given the benefit of the revised pay scale recommended by the Fifth Central

Pay Commission, they are being paid the old Fourth Central Pay Commission pay scale, however they are entitled for the

dearness allowance which is payable to the employees of the State Government who are getting the old pay scales.

It is pertinent to mention here that the Division Bench of the Madhya Pradesh High Court has clarified regarding the payment of the

increased dearness allowance to the employees who have opted for Voluntary Retirement Scheme during their service period before having

retired voluntarily.

Payment of arrears of dearness allowance be made to the existing employees as well as those who have retired voluntarily, till the time they

were in service, by making an advertisement in the newspaper inviting applications form the employees and the employees who have already

retired voluntarily. Appellant No.1 shall get the details from the employees and shall verify from the records and make necessary payments

within two months.

The amount deposited before the Industrial Tribunal shall be returned to the M.P. State Road Transport Corporation appellant No.1 for

disbursement.

In view of the above, the civil appeal is disposed of.

Pending applications, if any, shall also stand disposed of.

The order passed by the Apex Court makes it very clear that employees of M.P. State Road Transport Corporation have not been given the

benefit of revised pay-scale as recommended by the 5th pay commission and, therefore, the award passed by the tribunal deserves to be

quashed and is accordingly quashed.

In light of the judgment delivered by the Apex Court, it is held that the employees of M.P. Road Transport Corporation will be entitled for the

same dearness allowance, which was payable to the employees of State Government, who were getting the old pay scale.

Resultantly, in light of the judgment delivered by the Apex Court, the petitioner corporation does not have any choice except to grant dearness

relief, which was applicable at the time of VRS to the employees by the corporation at par with the employees of State Government (scale of

4th pay commission) as the same has not been done.

Resultantly, the respondents shall recalculate the VRS amount by taking into account the pay-scale of old 4th central pay commission and the

Â dearness allowance which was given to the employees of State Government at the time VRS was granted to the employees by the

corporation.

The exercise of recalculating the amount and making the payment of the amount in terms of the order passed by the Hon'ble Supreme Court

to each and every individual through bank account be concluded within a period of 4 months from the date of receipt of certified copy of this

order.

Respondents have also paid the gratuity to the employees of the corporation by taking into account the pay which was given at the time they

were granted VRS, meaning thereby, the dearness allowance, which was being paid by the State Government (pay scale of 4th pay

commission) was not taken into account while granting gratuity. Respondents shall also recalculate the gratuity in respect of employees, who

have not been granted the pay-scale keeping in view the old 4th pay commission and at the relevant point of time, the dearness allowance,

which was applicable to the employees of State Government, who were getting old pay scale, the exercise of calculating the gratuity amount

and payment be also done within 4 months and the amount be deposited in the bank accounts of the employees.

Shri Moyal has fairly stated before this Court that the matter has attained finality in light of the judgment delivered by the Apex Court.

The petition stands allowed. The award stands modified to the extent as aforesaid. The employees shall be entitled for the similar benefit

which has been extended to identically placed person by the Hon'ble supreme Court in Civil Appeal No.321/2013.

By the aforesaid order, this Court has modified the award of the Labour Court and held that the employees of the Corporation are entitled for

gratuity amount at par with the state government employee and the direction was given to pay the amount within a period of four months.

In view of the aforesaid, present petition is disposed of and the order dated 09/03/2017 passed in W.P no. 8822/2013 shall apply mutatis-

mutandis. The petitioners are directed to comply with the order of the labour Court and make the payment within a period of three months

from the date of receipt of this order and if the amount is not paid within the stipulated period, the same shall carry the interest @ 8% per annum from the date of passing of this order till its payment.

C c as per rules.

