

(2012) 06 MP CK 0028

In the Madhya Pradesh High Court

Case No : Writ Appeal No's. 137 and 202 of 2012

M.P.S.E.B.

APPELLANT

Vs

Brajendra Singh Kushwah and Others
 Brajendra Singh
Kushwah Vs M.P.S.E.B. and Others

RESPONDENT

Date of Decision : 19-06-2012

Acts Referred:

Madhya Pradesh Vidyut Sudhar Adhiniyam, 2000 — Section 18(1)(b)

Citation : (2013) LabIC 1266 : (2012) 5 MPHT 183 : (2013) 1 MPLJ 87

Hon'ble Judges : Sujoy Paul, J;Sheel Nagu, J

Bench : Division Bench

Advocate : Vivek Jain in Writ Appeal No. 137/2012 and Mr. Alok Sharma in Writ Appeal No. 202/2012, for the Appellant; Navnidhi Parharya, Advocate in Writ Appeal No. 137/2012 and Mr. Vivek Jain, Advocate in Writ Appeal No. 202/2012, for the Respondent

Judgement

Sheel Nagu, J.—Both these appeals have been filed assailing the final order dated 27-1-2012 passed by the Writ Court in Writ Petition No. 2459/2010. Since both the present writ appeals arise out of a common order passed by the learned Single Judge, both have been heard analogously, and are being decided by this common order.

2. The sole and pivotal question, which arises for consideration is, whether after dissolving of the Rural Electricity Co-operative Societies ("REC Societies" for brevity) leading to absorption on deputation of all its employees in the M.P. State Electricity Board ("Board" for brevity), they are entitled to pay parity vis-?-vis, the original employees of the Board on the principle of "equal pay for equal work" or on the basis of the terms and conditions contained in the order of their absorption.

3. The learned Single Judge while allowing the writ petition has placed reliance on the decision rendered by "another Single Bench of this Court on 13-9-2011 in Writ Petition No. 12029/2010, Electricity Supplies Union Vs. State of M.P. and

others, extracts of which are reproduced in extenso in the impugned order.

4. The challenge made to the impugned order by the Board in Writ Appeal No. 137/2012 revolves around the question of award of appropriate pay scale to the employees of the erstwhile REC Societies and consequent revision of pay, which deserves an answer within the four corners of the terms and conditions of the order of absorption and, therefore, it is contended by the Board that pay parity on the strength of the principle of "equal pay for equal work" cannot be invoked.

5. On the other hand, the challenge to the same impugned order in Writ Appeal No. 202/2012 by the absorbed employees of the erstwhile REC Societies, namely, Gramin Vidyut Sahkari Samiti Maryadit, Pichhore, District Shivpuri is to the extent that though their writ petition has been allowed, but all the reliefs claimed by these employees in Writ Petition No. 2459/2010 have not been granted by the learned Single Judge while passing the impugned order in specific terms. For convenience, the relief Clause No. 7 in Writ Petition No. 2459/2010 is reproduced below:-

7. (1) This Hon''ble Court may kindly be pleased to allow the petition and the respondent-department may kindly be directed to treat the petitioners similar to the employees those who joined the Board initially.

(2) This Hon''ble Court may kindly be directed to pay all the arrears and to pay the higher pay scale to the petitioners as other similarly situated employees are getting.

(3) This Hon''ble Court may kindly be directed to revise and pay fringe and other consequential benefits/allowances to the petitioners, with immediate effect.

(4) Any other relief, which this Hon''ble Court deems fit in the facts and circumstances may also kindly be granted.

(5) Cost of the petition may kindly be awarded.

6. In view of the above factual background giving rise to the instant dispute, it becomes obvious that applicability of the ratio laid down in the judgment, dated 13-9-2011 in Writ Petition No. 12029/2010, Electric Supply Employees Union Vs. State of M.P. and others, on which heavy and sole reliance has been placed by the learned Single Judge while passing the impugned order, deserves to be scrutinized.

7. The abovesaid decision in Writ Petition No. 12029/2010 was a common judgment delivered in two writ petitions, i.e., W.P. No. 1962/2010, Electricity Supply Employees Union Vs. State of M.P., and Writ Petition No. 12029/2010. Electric Supply Employees Union Vs. State of M.P. and others, which were decided together due to similarity of controversy involved.

8. A perusal of the abovesaid decision rendered in Writ Petition No. 12029/2010 and W.P. No. 1962/2010 elicits that the Court while rendering the judgment dated 13-9-2011 was moving on the foundational assumption that pursuant to

the order passed by the M.P. Electricity Regulatory Commission, Bhopal, ("Commission" for brevity), dated 20-2-2002, the employees serving in the REC Societies, were granted pay scale at par with the employees serving with the Board.

9. It is pertinent to point out at this juncture that the salary received by the employees of the erstwhile REC Societies immediately prior to their absorption was paid in a pay scale undisputedly inferior to the pay scale admissible to the existing employees of the Board/Company.

10. The foundational order dated 20-2-2002 of the Commission, which is on record (vide Page 105 in W.A. No. 137/2012), discloses that the Commission while dealing with the petition filed by the Government of Madhya Pradesh (Department of Energy) seeking cancellation of licences of 12 Gramin Vidyut Sahkari Samitis (REC Societies) including REC Society Pichhore, District Shivpuri took into account various factors including the precarious financial conditions of the REC Societies to accord revocation of the licences of the said 12 REC Societies by exercising powers conferred on the Commission under Sections 18(1) (b) and (2) (d) of the Madhya Pradesh Vidyut Sudhar Adhiniyam, 2000 w.e.f. 15-3-2002 on certain terms and conditions, which are narrated below:-

(i) The regular employees of the above societies shall be taken over by the Board on the same terms and conditions as existing in the Society except that no deputation allowance shall be paid.

(ii) As regards daily wages employees of the Societies, the Board may do their screening and absorb those daily wages employees, who are found eligible. Those employees, who are not found eligible for absorption by the Board will remain in the respective Societies and the concerned Societies shall take appropriate action for their removal or otherwise within a period of 2 years from the date of cancellation of licence. During this period (2 years), the Board will make available sufficient funds for payment of wages of such daily wage employees.

(iii) As regards Amarpatan Society, having regards to Hon''ble High Court's order, dated 16-8-96 in respect of Writ Petition No. 3432/96 by Shri Nagendra K. Nigam and other 70 employees, their service conditions shall not be altered until the disposal of the petition.

(iv) M.P.S.E.B. while taking over the Societies has to ensure that all up-to-date orders passed by the Hon''ble M.P. High Court, are taken into consideration and strictly complied.

(v) M.P.S.E.B. and the concerned Societies shall issue a joint notice in the newspapers that from "a prescribed date" the consumers of the respective Societies shall be the consumers of the Board. Such notice shall be published atleast 15 days in advance of the proposed date of take over.

(vi) The Registrar, Co-operative Societies shall take further appropriate action for

the future of the Societies, whose supply/distribution licence stand cancelled.

11. From a bare perusal of the very first condition to which the sanction for revocation of licences of the 10 REC Societies was made subject to, indicates that the services of the regular employees of the dissolved REC Societies were taken over by the Board on the same terms and conditions as existing in the Society; meaning thereby that the service conditions prevailing immediately prior to dissolution of the REC Societies would continue to prevail even after absorption of the services of the REC Societies employees in the establishment of the Board. Therefore, w.e.f. 15-3-2002, the petitioners/respondents herein, though became employees of the Board, but continued to enjoy and be subjected to such service benefits and obligations respectively, as were prevailing immediately prior to 15-3-2002. This leads us to the undisputed irresistible conclusion that since the salary enjoyed by the petitioners/respondents herein prior to 15-3-2002 was in a scale inferior to the scale in which the existing employees of the Board enjoyed their salary, the pay disparity, which existed between the petitioners/respondents herein and the original employees of the Board continued to exist even after 15-3-2002.

12. The tenor and import of the said order of the Commission, dated 20-2-2002 can further be gathered from perusal of the order dated 9-8-2005 passed by the Commission, whereby the Commission was dealing with the dispute raised by the employees of the Rural Electricity Co-operative Society Limited Banda (Belai), District Sagar of pay disparity and other benefits vis-?-vis the employees of other REC Societies. In Paragraphs 4 and 7 of this order dated 9-8-2005, the reference of order dated 20-2-2002 finds mention. The plain reading of order dated 20-2-2002 and order dated 9-8-2005, indicate that the Commission had taken a conscious decision that the employees of the erstwhile REC Societies will be absorbed in the Board on their present pay scale and that the question of grant of directions for pay revision of such employees docs not lie within the jurisdiction of the Commission as it lies exclusively within the domain of the Board or the concerned Company where the employees of the erstwhile REC Societies were absorbed. The Commission further clarified in its said order dated 9-8-2005 that its earlier order dated 20-2-2002 did not place any bar on the possibility or prospects of future pay revision of such absorbed employees by the Board/Company.

13. The subsequent order dated 5-3-2004 (Annexure A-3) issued by the Board requesting the companies at Jabalpur, Bhopal and Indore to issue consequential orders of absorption was again subject to the same terms and conditions with a further clarification/rider that the pay scale of the absorbed employees shall be the same as they were enjoying before absorption.

14. Consequential orders of absorption in respect of Pichhore REC Society were issued on 30-6-2004, vide Annexure P-1 in Writ Petition No. 2459/2010. This consequential order of absorption further contained the same conditions as mentioned in the earlier orders.

15. Thereafter, the order dated 9-8-2005 was issued, which has already been explained above and, therefore, does not require elaboration.

16. It is further not disputed that neither the foundational order of grant of sanction by the Commission to revoke the licences of 10 REC Societies including one at Pichhore nor the consequential order of absorption issued by the Board and the respective companies were challenged by any of the petitioners/respondents herein. The petitioners, thus, acquiesced to the terms and conditions contained in the order of the Commission dated 20-2-2002 as well as the consequential orders of absorption, which in specific terms prescribed that the service conditions enjoyed by the petitioners/respondents herein would continue to exist after absorption. In other words, the petitioners/respondents herein accepted the said condition without any demur at the time of absorption and, therefore, are now estopped from raising any grievance in regard to the said conditions, which according to them has given rise to pay disparity.

17. The Board by the orders issued in 2006 and 2007 revised the pay scales of the absorbed employees of REC Societies including that of Pichhore REC Society by extending the benefit of the pay scale of 1-4-1989 and of 1-4-1994 w.e.f. 1-4-2006 and 1-4-2007 respectively.

18. The grievance of the petitioners/respondents herein is that the Board acted in a discriminatory manner by extending the pay scale of 1-4-1989 w.e.f. 1-4-2006 and the pay scale of 1-4-1994 w.e.f. 1-4-2007 for the absorbed REC Societies employees while, on the other hand, the original employees of the Board were extended the said pay scales prior to 15-3-2002.

19. Thus, the entire case of the petitioners/respondents herein is based on the assumption that once having been absorbed in the regular establishment of the Board, their service conditions are at par with the service conditions of the original employees of the Board. This assumption is fallacious being based on the foundational disparity, which existed not only since prior to the date of absorption but continued even thereafter, which was never challenged by the petitioners/respondents herein. Accordingly, the petitioners/respondents herein, now, cannot raise a plea of disparity in the pay scale, which existed since prior to the date of absorption and continued, even thereafter, and has now assumed magnified proportions merely on account of pay revisions having taken place since absorption till today.

20. It is pertinent to point out that the Madhya Pradesh State Electricity Board (Class III and Class IV Employees) Revision of Pay Regulations, 2001 ("Regulations of 2001" for brevity) is of no avail to the petitioners/respondents herein in view of inapplicability of the said Rules to the REC Societies absorbed employees to whom the pre-revised pay scales were not applicable as per Clause 1 (c) (vi) of the said Regulations. These Regulations of 2001, expressly exclude those employees of the dissolved REC Societies, who were not enjoying pay in the pre-revised pay scales. Undoubtedly, the petitioners/respondents herein were

enjoying pay in pay scales inferior to the pre-revised pay scales enjoyed by the original employees of the Board.

21. The judgment dated 13-9-2011 in W.P. No. 12029/2010, on which heavy reliance has been placed by the Writ Court while rendering the impugned order, has been delivered on the following two assumptions:-

(i) That, the employees serving the REC Society (Manawar) were at par with the employees of the M.P.S.E.B. in the matter of pay-scales; and

(ii) Since the REC Society (Manawar) employees were treated at par with the M.P.S.E.B. employees in the matter of pay scales, the bar contained in Clause 1 (c)(vi) of the Regulations of 2001 will not apply.

22. The above said two features persuaded the Single Bench of this Court, while rendering the judgment dated 13-9-2011 in W.P.No. 12029/2010 by issuing directions for treating the employees of REC Society (Manawar) at par with the M.P.S.E.B. employees in the matter of pay scale and accordingly issued the directions for grant of all benefits to such absorbed employees as were extended to the original employees of the Board.

23. In the present case, the distinguishing feature is the pay disparity, which existed not only since prior to the date of absorption, but also continued subsequent thereto on account of the terms and conditions contained in the order of the Commission granting sanction for revocation of 10 REC Societies and the consequential orders of absorption. It is neither pleaded nor it is the case of the petitioners that there was parity of pay scale before or after absorption between the absorbed employees vis-?-vis, the original employees of the Board. Resultantly, the petitioners not having challenged the terms and conditions contained in the order of sanction for revocation of licence dated 20-2-2002 and also contained in the order of absorption issued by the Board, are now estopped from challenging the necessary fallout/consequence of pay disparity stemming out of the said unchallenged terms and conditions.

24. Learned Counsel for the Board has placed reliance on various decisions including the Division Bench decision of this Court dated 27-7-2007 in Writ Appeal No. 1361/2006 rendered at the Principal Seat, wherein the Division Bench while dealing with facts and circumstances similar to the ones existing in this case, upheld the order of the Single Bench passed in Writ Petition No. 463/1999 by holding in Paragraphs 18 and 19 of its decision as follows:-

18. Submissions of Mr. Ruprah, learned Counsel is that as the applicant's case was considered by the society for promotion and at the time of absorption, it was mentioned that they would be absorbed on the same terms and conditions as existing in the society and he was Junior Engineer and, therefore, he was entitled to be promoted as Assistant Engineer as such Junior Engineers, who have been similarly placed under the services of the Board have been promoted. As is perceivable, the Board had issued further guidelines/terms and conditions as per

order/circular, dated 5-6-2004. On reading of the further terms and conditions it cannot be said that the employee who has been absorbed in the Board, will get the benefit of the Board, as if he was an employee of the Board from very inception. The Board at the time of absorption has fixed the terms and conditions and on a perusal of such terms and conditions, it is quite clear that the Junior Engineer shall be given the designation, but would not be considered for promotion by applying the Board's Regulations, as if he was in the Board's services. The said terms and conditions fixed by the Board are in consonance with the decision rendered in Ram Parvesh Singh (supra), wherein, it has been held that the Board has no obligation towards the employees of the previous owner's undertaking. Be it noted to arrive at such a conclusion. Their Lordships have placed reliance on the decision rendered in Bhola Nath Mukherjee and Others Vs. Govt. of W.B. and Others,

19. In view of our preceding analysis, we do not find any merit in the present writ appeal and accordingly, the same stands dismissed. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs.

25. In view of the above, it appears that the decision of the Single Bench rendered on 13-9-2011 in W.P. No. 12029/2010 was based upon different set of facts and circumstances, where the parity between the absorbed REC Societies employees and the original employees of the Board was not disputed. Thus, the said decision in W.P. No. 12029/2010 and the reliance placed thereupon is of no avail to the petitioners/respondents herein, in the present case, where no such parity existed either before or after absorption. Thus, this Court is impelled to hold that the reliance placed by the Writ Court on the order dated 13-9-2011 passed in W.P. No. 12029/2010 while passing the impugned order is misplaced. In the conspectus of the above facts and circumstances and the findings rendered, the Writ Appeal No. 137/2012, M.P.S.E.B. Vs. Brajendra Singh Kushwah and others, is allowed, whereas Writ Appeal No. 202/2012, Brajendra Singh Kushwah Vs. M.P.S.E.B. and others, is dismissed and the impugned order dated 27-1-2012 passed in Writ Petition No. 2459/2010 is set aside. No order as to costs.