(2004) 07 MP CK 0036

In the Madhya Pradesh High Court

Case No : Writ Petition No. 15726 of 2003

Nathuram Dubey APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 13-07-2004

Acts Referred:

Citation : (2004) 4 MPLJ 112

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : R.K. Verma, for the Appellant; Harish Agnihotri, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

By this petition, the petitioner has sought the following reliefs:

(i) That an order/direction may kindly be passed directing the respondents to make the payment of the entire increments fell due w.e.f. 1-1-1990 until date, along with interest @ Rs. 18% p.a.

(ii) That an order may also be passed directing the Respondents to revise the pay of the Petitioner after admissibility of the increment that too in view of the recommendations of the Pay Commission w.e.f. 1-1-1990, uptil date, keeping in view the recommendations of Fifth Pay Commission. Accordingly his pay may kindly be directed to be revised.

(iii) That a direction may also be issued to the Respondents to make the payment of the pay for the period w.e.f. 1st May, 1987 to 17th June, 1987 when he was on medical leave.

The petitioner was appointed on the post of Sub-Auditor in the office of Deputy Director, Panchayat and Social Welfare Department, Shahdol on ad hoc basis. The order of ad hoc appointment is Annexure A/1 dated 14-2-1985. Since the date of his appointment, the petitioner started discharging his duties of the said post. It be seen that during the period of ad hoc, he was being paid with annual increment vide Annexure A/3 dated 19-1-1994 which is an order issued by Deputy Director, Panchayat and Social Welfare, Shahdol. In pursuance to Annexure A/3, the benefit of annual increment was being provided to the petitioner which he enjoyed. Later on vide order dated 1-2-1990, the petitioner was appointed on the post of Sub-Auditor on probation for a period of one year. However, the annual increments were not being provided to him with effect from 1-2-1990, as a result of which he submitted representation Annexure A/4, A/5 and A/6 to Treasury Officer and Deputy Director, Panchayat and Social Welfare Department. The grievance of the petitioner is that the annual increment be paid to him with effect from 1-1-1990.

In the return, the case setforth by respondents is that the petitioner has not passed the departmental examination during his probation period or even thereafter which is a pre-requisite condition for confirmation on the said post. Since the petitioner has not passed the departmental examination, therefore, he is not entitled for the annual increments. In para 4 of the return further it has been pleaded that in terms of rule 8(7) of the M.P. Civil Services (General Conditions of Services) Rules, 1961 (hereinafter referred to as ''the Rules'') since the petitioner has not passed the departmental examination, therefore, he is not entitled for the annual increment. Thus, it has been prayed that this petition be dismissed.

I have heard Shri R.K. Verma, learned counsel for the petitioner and Shri Harish Agnihotri, learned Government Advocate for the respondents. On going through the appointment order Annexure A/2 dated 1-2-1990, nowhere it is found that passing of a particular examination is pre-supposed. Since this was not the condition in Annexure A/2, the action of withholding of annual increment of respondent is per se illegal. It be seen that while the petitioner was serving on the post of Sub-Auditor as an ad hoc employee, he was being provided with annual increments. In this regard Annexure A/3 dated 19-1-1994 is quite relevant. However, when he was appointed as probationer on the said post, for the best reason known to the respondents, the annual increments have been withheld. The learned Government Advocate could not point out any provision of law that how and in what manner the action of respondents withholding the annual increment is justified. No rule has been pointed in this regard. Since there is no condition precedent in Annexure A/2 dated 1-2-1990 by which the petitioner was appointed as probationer on the post of Sub-Auditor, according to me, the action of withholding all annual increments on account of non-passing of the examination is arbitrary. The contention of Shri Agnihotri, learned Government Advocate that the annual increment is not being paid to the petitioner in view of Rule 8(7) of the rules. I have gone through the said rule and having perused it, I could not find any substance in the submission made by learned Government Advocate. Nowhere in the said rule, it has been so contemplated that the passing of examination is a pre-requisite condition for the payment of annual increment. For ready reference, it would be apposite to re-write the said rule:

8. Probation.-

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) xxx xxx xxx

(7) A probationer, who has neither been confirmed, nor a certificate issued in his favour under sub-rule (6), nor discharged from service under sub-rule (4), shall be deemed to have been appointed as a temporary Government servant with effect from the date of expiry of probation and his conditions of service shall be governed by the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960.

On going through the aforesaid rule, it has become clear, as clear like a noon day, that the petitioner is not covered on the stand as stated by the respondents in their return. On the contrary, if the said rule is read in proper perspective, it is clear that a probationer who has neither been confirmed nor a certificate issued in his favour under sub-rule (6), nor discharged from service under sub-rule (4) he shall be deemed to have been appointed as a temporary Government servant with effect from the date of expiry of probation and his conditions of service shall be governed by the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960. Since the said rule does not contemplate passing of any examination and the passing of a particular examination is not pre-supposed and nowhere in Annexure A/2 this condition has been mentioned, according to me, the action of respondents for not making the payment of annual increment is to be set aside.

Resultantly, the petition succeeds and is hereby allowed. Respondents are directed to make the payment of annual increment to the petitioner forthwith preferably within a period of two months with simple interest @ 5% per annum. The petitioner shall also be entitled for all consequential benefits.

