

(2015) 04 MP CK 0004

In the Madhya Pradesh High Court

Case No : WP Nos. 17665, 18433, 19838, 19891, 21641, 21659, 21745 and 21747/2012, 900, 3116, 3143, 3674, 3752, 5505, 8575, 8922, 11006, 11213, 11793, 14540, 20262, 22225, 22376 and 22410/2013, 1223, 1643, 1796, 2084, 2412, 3578, 3580, 3582, 3587, 3642, 3873, 3878,

Nitya Ranjan Das and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2015) 3 MPHT 171 : (2015) 2 MPLJ 450

Hon'ble Judges : Alok Aradhe, J.

Bench : Single Bench

Advocate : A.K. Pathak, Praveen Verma, Sanjay K. Agrawal, V.K. Shukla, Vikram Singh, C.V. Rao, Sidharth Seth, Pratyush Tripathi and B.C. Dubey, for the Appellant; Naman Nagrath, Senior Advocate, Girish Kekre and Lalit Joglekar, Government Advocates, Advocates for th

Final Decision : Disposed off

Judgement

Alok Aradhe, J.—In this bunch of the writ petitions, the petitioners have challenged the validity of the impugned orders by which the respondents have modified the date of entitlement of the petitioners for grant of Senior Grade/ Selection Grade/Grade Pay. For the facility of reference, the facts from Writ Petition No. 17665/2012 are being referred to.

2. The petitioner was appointed as an Assistant Professor in Commerce on ad hoc basis vide order dated 1.12.1984. Thereafter his services were regularized by an order dated 4.3.1987. The University Grants Commission (in short "the Commission") issued an order dated 27.7.1998 which deals with the revision of pay scales of teachers in the university and colleges in the light of revision of pay-scales of the Central Government Employees in view of the recommendations of 5th Pay Commission. The criteria for grant of selection grade pay-scale was

provided in the said order i.e. "minimum length of service for grade of lecturer (Senior Scale)" is four years in case the candidates having P.Hd. degree, five years in case the candidates having M.Phil. degree and six years in case the candidates holding the post of Lecturer (Selection Grade).

3. Thereafter the Commission issued another notification dated 24.12.1998 with regard to revision of pay-scale and minimum qualification for appointment of teachers in the university. The Higher Education Department of State of Madhya Pradesh vide an order dated 11.10.1999 implemented the provisions of the notification dated 24.12.1998 issued by the Commission. Paragraph 8A of the aforesaid order provides for relaxation of five year working experience for senior selection grade pay scale for the cases stated therein as the same would amount to anomaly and their eligibility would be determined on the basis of total length of service. Paragraph 8 A reads as under:

4. The petitioner was given the senior pay-scale vide order dated 21.4.1999 with effect from 4.3.1995. Thereafter by an order dated 2.7.2002 the benefit of selection grade pay-scale was accorded to the petitioner with effect from 2.7.2002. By an order passed in the month of January, 2012 the petitioner was held entitled to the benefit of Selection Grade Pay-Scale with effect from 27.7.1998. However, by the impugned order dated 4.8.2012 the entitlement of the petitioner to the benefit of Selection Grade Pay Scale has been modified from 27.7.1998 to 4.3.2000 on the ground that the mistake crept in the order passed by the Higher Education Department of Government of M.P. with regard to the relaxation granted in respect of five years experience in senior pay-scale has been rectified. Accordingly, by identical orders in all the writ petitions, the date of entitlement of the petitioners for grant of selection/senior grade pay-scale has been modified unilaterally. In the aforesaid factual backdrop, the petitioners have approached this Court.

5. Learned counsel for the petitioners submitted that the impugned order is arbitrary and is violative of Articles 14 and 16 of the Constitution of India. It is further submitted that the respondents have not taken into account the order dated 11.10.1999 passed by them which has neither been diluted nor rescinded. It is also submitted that the order dated 29.1.2008 providing for clarification in the order dated 11.10.1999 is prospective in nature. It is also submitted that the Commission while framing directions has relaxed the embargo by inserting clause 7.8 in the Scheme and the impugned order has been passed in flagrant violation of principles of natural justice inasmuch as neither any notice nor any opportunity of hearing was afforded to the petitioner.

6. Mr. Naman Nagrath, learned senior counsel submitted that in the facts and circumstances of the case the compliance with the principles of natural justice would amount to exercise in futility as the petitioners have nothing to say before the authority. In support of his submission, learned senior counsel has placed reliance on the decision in the case of Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others, . It is further submitted that object of compliance with

principles of natural justice has two facets, namely, to enable the employee to know the nature of allegations made against him; and to afford an opportunity of hearing to him. In the instant case, the bona fide mistake is sought to be rectified. It is further submitted that in any case the employees can be given post-decisional hearing. It is further submitted that since the amount is paid in excess, the petitioners, therefore, are not entitled to retain the same. In support of the aforesaid submission, learned senior counsel has placed reliance on the decision in the case of Shiv Sagar Tiwari Vs. Union of India and others, and Chandi Prasad Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, .

7. I have considered the respective submissions made by learned counsel for the parties. In Chandi Prasad Uniyal (supra) the Supreme Court after taking into consideration various decisions rendered by it held that the even if by mistake of the employer, the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers the excess payment has been made by mistake or negligence, the excess amount so made could be recovered. The decision in Chandi Prasad Uniyal (supra) was referred to a three-Judge Bench of the Supreme Court in view of the conflict expressed in the decisions rendered in the cases of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, and Sahib Ram Vs. State of Haryana and Others, . The three-Judge Bench of the Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer), , held that the law laid down in Chandi Prasad Uniyal (supra) in no way is in conflict with the observations made by the Supreme Court in Shyam Babu Verma (supra) and Sahib Ram (supra) and it was held that an employee cannot retain the amount received by him on account of irregular/wrong fixation of pay even in the absence of any misrepresentation or fraud on his part. Thus, there cannot be any dispute that the amount so paid to the employee can be recovered by the employer.

8. However, the moot question which arises for consideration in the case at hand is whether excess amount that has been paid to the employee even in the absence of fraud or misrepresentation on the part of such employee can be recovered without compliance with the principles of natural justice. The principles of natural justice are regarded as important procedural safeguard against undue exercise of power by an authority. The chances of an administrative authority taking decision in ignorance of other factors are reduced as if the hearing is given to the person concerned who will bring all the issues involved in the situation. In such a case the decision making authority shall take into account all the relevant facts and issues involved in the decision and would come to a right decision. Thus, the principles of natural justice is considered as an effective method to protect the interest of individual as he can participate in administrative process affecting him.

9. In the case of Nand Kishore Sharma and Others v. State of Bihar and Others, 1995 Supl. (3) SCC 722 the Supreme Court held that having paid the arrears to

the employees, the State Government could not have recovered the same without compliance with the Rules of Natural Justice. In the case of *The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others*, it was held by the Supreme Court that in all cases of violation of principles of natural justice, the Court exercising jurisdiction under Article 226 of the Constitution of India need not necessarily interfere and set at naught the action taken by an authority. The Court has to consider the genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice while considering the effect of violation of the principles of natural justice.

10. In the cases at hand, the petitioner was granted the benefit of senior pay-scale with effect from 4.3.1995 by an order dated 21.4.1999. Thereafter vide an order dated 2.7.2002 the benefit of selection grade was extended to him. Thereafter in January, 2012, the petitioner was held entitled to the benefit of selection grade with effect from 27.7.1998. It is pertinent to mention here that the notification dated 24.12.1998 issued by the Commission was adopted by the State Government vide order dated 11.10.1999 which contained clause 8A which deals with exemption with regard to requirement of minimum period of service. Thereafter the State Government issued an order dated 29.1.2008 by which the clause 8 contained in the order dated 11.10.1999 was clarified and it was provided that there shall be no exemption with regard to minimum service of five years in senior pay scale. Thereafter by an order passed in the month of January, 2012, the petitioner was entitled to the benefit of Senior Grade with effect from 27.7.1998.

11. By the impugned order the entitlement of the petitioner for grant of selection grade pay-scale has been modified from 27.7.1998 to 4.3.2000, admittedly, without compliance of principles of natural justice. The aforesaid order has been modified unilaterally with regard to date of entitlement of the petitioners which would result in adverse consequences i.e. recovery of the amount from the petitioner. Thus, the benefit which was accorded to the petitioners is sought to be taken away without following the principles of natural justice. It is possible for the petitioners to contend that the order dated 29.1.2008 is prospective in nature and does not apply to the case of the petitioner as the benefit has already been granted to him and the said order does not provide for reopening of the cases where the benefit of Senior Grade/Selection Grade/Grade Pay has already been extended. In other words, the petitioners have not admitted that any excess amount is paid to them. The petitioners assert their entitlement to the amount in question.

12. The genesis of action contemplated against the petitioner i.e. issuance of the impugned order by which the date of entitlement of the petitioner has been unilaterally modified appears to be 29.1.2008. The said order was issued to clarify clause 8A contained in the order dated 11.10.1999. Undoubtedly the prejudice would be caused to the petitioners if the amount is recovered from

them without affording an opportunity of hearing to them. The petitioners may have plausible defence to put forth before the authority. However, the same is required to be considered and dealt with by the competent authority.

13. In the considered opinion of this Court, the action of the respondents in passing the impugned orders are in breach of principles of natural justice therefore, the same cannot be sustained in the eye of law. Accordingly, the same are quashed. However, the respondents would be at liberty to issue notice to the petitioners indicating the grounds on which the date of entitlement for grant of Selection Grade/Selection Grade/Grade Pay are sought to be modified and to pass a fresh order containing reasons in accordance with law after affording an opportunity of submitting reply to the petitioners. It is made clear that this Court has not expressed any opinion on the merits of the claim made by the petitioners and the competent authority would be at liberty to examine the case of the individual petitioner on its own merit.

14. With the aforesaid directions, the writ petitions are disposed of.