

(2012) 02 CHH CK 0067
In the Chhattisgarh High Court
Case No : W P S No. 6417 of 2010

O P Verma and others

APPELLANT

Vs

State of Chhattisgarh and another

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 3 MPHT 42

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Ajay Shrivastava, for the Appellant; Sandeep Yadav Dy Govt Advocate for the State, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Shri Prashant Kumar Mishra, J

1. Petitioners No. 1 to 4 are retired Chief Municipal Officers whereas petitioner No.5 is a retired Engineer and they claim to be Members of State Municipal Service (Executive) and State Municipal Service (Engineering) at the time of retirement. They have prayed for issuance of a direction to the respondents to make payment of equal pension (revised pension vide circular dated 31/08/2009) with revised Dearness Allowance given to other retired government servant of the State holding that officer of State Municipal Service (Executive) and State Municipal Service (Engineering) are government servant. They have also prayed for a direction to make payment of arrears of Dearness Allowance, if any, since 01/04/2004 along with interest @ 18% per annum as has been given to other retired government servants. Learned counsel for the petitioners has relied on judgment rendered by the Madhya Pradesh State Administrative Tribunal, Gwalior in the matter of Vidhya Sagar Kulshreshtha Vs. State of M.P. and others decided on 03/07/1993 which has been affirmed by the Hon"ble Supreme Court in S.L.P.(Civil) No.17605/93 by an order dated 14/12/1993. In the said case the petitioner was a member of State Municipal Service (Engineering). He

has also placed reliance on the Full Bench Judgment of the Madhya Pradesh High Court in the matter of Suresh Chandra Sharma and Others Vs. State of M.P. and Others, in which the petitioner was Member of State Municipal Service (Executive). On the basis of aforesaid judgment it has been argued that once Members of State Municipal Service (Executive) and State Municipal Service (Engineering) are declared as government servants they are entitled to similar benefit of pension and other allowance as has been made admissible to the other government servants and discrimination in this regard is violative of Article 14 of the Constitution of India.

2. On the other hand learned State counsel would argue that the services of the petitioners and their pension are governed by M.P. Municipal Service (Pension) Rules 1980 and Rule 10(b) thereof provides that payment to the members of any municipal service shall be made out of the Municipal Employees Pension Fund in the manner prescribed in the relevant Fund Rules and since enough funds are not available the government has its limitation in making payment of equal amount of pension and other benefits to the petitioner. According to the State the funds maintained for Members of Municipal Service is not only for member rendering Executive and Engineering or Health Services but all the members of Municipal Pension Scheme and therefore providing benefits to the aforesaid three categories only would be a discrimination in itself and it would be difficult for the answering respondents having its separate pension fund to pay retiral benefits (including Dearness Allowance) to the present petitioners. It is further stated in the return that from the circular annexed as Annexure P/5 it would be evident that the answering respondents have made best endeavour to treat the Members of the Municipal Services at par with other government servants within its own limitation keeping in view availability of funds.

3. This Court has heard learned counsel for the parties at length and perused the papers annexed with the writ petition.

4. The question as to whether Member of State Municipal Service (Executive) and Member of State Municipal Service (Engineering) constituted u/s 86 of the Chhattisgarh Municipalities Act, 1961 is a government servant and holder of a civil post should not detain this Court inasmuch as the said issue has been dealt with and answered in favour of the petitioners by a Full Bench judgment of the Madhya Pradesh High Court in Suresh Chandra Sharma (supra). In the said judgment, after holding in para 21 to 23 of the judgment that the appointing authority of a Member of State Municipal Service (Executive) and State Municipal Service (Engineering) is the State Government, their seniority is maintained at state level, their age of superannuation is 58 years but the proviso to Rule 29 empowers the State Government to allow a member of the service to continue till he attains the age of 60 years, penalty under Rule 32 can be imposed by the State Government in consultation with the Public Service Commission, suspension can be made by the appointing authority and fundamental rules are also applicable in respect of regulation of pay, joining time, leave, provident

fund, loan, seniority and traveling allowance, the Full Bench held thus in paragraph 24 of the judgment :-

24. From the rules referred to above, it is clear that the right to select for appointment, the right to appoint, the right to terminate the employment and the right to take other disciplinary action coupled with the right to prescribe conditions of service in case of Chief Municipal Officer entirely vest in the State Government. While it is true that u/s 86(3) of the Act the salary, allowances, gratuity, annuity, pension and other payments required to be made to the members of the State Municipal Service in accordance with the conditions of their service are a charge on the Municipal Fund, but as observed by us above, the Municipal Fund itself in substantial part contains income derived from taxes and fees. The charge continues in a particular Municipal Council only till such a member is posted in the Municipal Council and in the event of his transfer from one Council to another the Councils concerned are liable to contribute towards these payments in such proportion as prescribed by the State Government by Rules. As observed by the Supreme Court in *Ramanlal Keshavlal* (supra), it is not necessary that all the factors should be present to infer the relationship of master and servant and the presence of some of the factors such as the right to select for appointment, the right to appoint, the right to terminate the employment are some of the factors which can be determinative of the existence of relationship of master and servant. The relationship of master and servant in the case of the members of service is in no way adversely affected merely on account of the fact that the salary and allowances of such members are a charge on Municipal Fund as the Municipal Fund is itself constituted of moneys received from taxes and fees in the nature of the taxes which would have gone to the State Coffer had the right been not transferred by statute. We may reiterate that insofar as the decision of the Division Bench in *Jagmohanlal* (supra) is concerned, there was no occasion for the Division Bench to consider, the existence of relationship in the light of the 1973 Rules as the matter related to the period prior thereto and that too in respect of a person who had been appointed under the provisions of section 89 of the Act pending constitution of the State Municipal Service (Executive). Rule 11 of the Rules brought into force subsequently obviates any doubt that may have been harboured with regard to the status of the Chief Municipal Officer at the time of the commencement of the said Rule as the said Rule by a deeming provision includes them as members of the service. In this view of the matter, we find that the view expressed by the learned Single Judge in *Alok Awasthy*'s case and followed subsequently by the Division Bench in *C.P. Kulshrestha* (supra) and *Omprakash* (supra) is correct exposition of law on the subject and we, therefore, have no difficulty in holding that the Chief Municipal Officer is "servant" of the State Government and answer the reference accordingly.

5. In the matter of *Vidhya Sagar Kulshreshtha* (supra) also it has been held that Members of State Municipal Service (Engineering) are holders of civil post and are servant of the State Government.

6. Matters concerning pension of a government servant appointed to civil services and post in connection with the affairs of the State of Chhattisgarh is governed by the Chhattisgarh Civil Services (Pension) Rules, 1976. Rule 2 of the said rule make provision regarding application. It is reproduced hereunder for ready reference: -

2. Application. (i) Save as otherwise provided in these rules, these rules shall apply to every Government servant appointed to civil services and posts in connection with the affairs of the State of Madhya Pradesh and who are borne on establishments not declared as non-pensionable. (ii) These rules shall not apply to :- (a) persons in a work-charged establishment; (b) persons in casual and daily rated employment; (c) person paid from contingencies; (d) persons entitled to the benefit to Contributory Provident Fund; (e) persons employed on contract except when the contract provides otherwise; and (f) persons whose terms and conditions of service are regulated by any other rules for the time being in force.

7. From the above quoted provision of Rule 2 of the Rules 1976 it is clear like noon day that the said Rule applies to every government servant appointed to the civil services and post in connection with the affairs of the State of Chhattisgarh. Since the Full Bench of M.P. High Court has already found that Chief Municipal Officer is servants of the State Government there is no doubt or confusion that the provisions of Chhattisgarh Civil Services (Pension) Rules, 1976 would apply with respect to such Chief Municipal Officer and Engineers who are Members of State Municipal Service (Executive) and State Municipal Service (Engineering).

8. In view of the above, this Court holds the following :-

(i) Petitioners who have retired as Members of State Municipal Service (Executive) and State Municipal Service (Engineering) are entitled to be governed under the Chhattisgarh Civil Services (Pension) Rules, 1976 and are entitled to the same benefits in pension and allowances as is admissible to other government servants who are governed under the said Rules, 1976.

(ii) Needless to say that the petitioners are also entitled to all consequential benefits flowing from application of the said Rules from the date of their retirement.

(iii) It is made clear that all Chief Municipal Officers and Engineers who were Members of State Civil Service (Executive) and (Engineering) at the time of their retirement shall be governed by this judgment and the State Government shall not compel individual members to rush to this Court seeking similar relief.

The writ petition is allowed to the above extent.