

(1987) 11 MP CK 0045

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1490 of 1986

Om Prakash and others

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 30-11-1987

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1988) JLJ 405 : (1988) MPLJ 473

Hon'ble Judges : Ram Pal Singh, J;C.P. Sen, J;B.C. Verma, J

Bench : Full Bench

Advocate : K.S. Shrivastava, for the Appellant; R.K. Thakur, Govt. Advocate, for the Respondent

Judgement

C.P. Sen, J.

The Division Bench has questioned the correctness of the observations made in Laxmi Narayan Upadhyaya and others vs. Secretary to Government, State of M.P. and another, M.P. No. 2074 of 1983 decided on 24-4-1985 that "on the other hand, the qualification of Higher Secondary with Patwari Training Certificate pass will be operative for those incumbents who have joined their services as Amin with effect from 6-3-1983".

The State Government revised pay scales of Amins in the Irrigation Department under Annexure-II, Part B of M.P. Revision of Pay Rules, 1983, dated 5-3-1983, which came into force from 1-4-1981 as under:--

Annexure-II

Part-B

(See Rule 3)

Other posts on different departments which have been given revised scales other than corresponding scales or given selection grade in revised scales showing existing scales and their revised scales.

S. No.

Name of Post

Existing Scale

Revised Scale

Remarks.

IRRIGATION

Amin

(1) 155-252

(2) 139-200

515-800

For those who are Higher Secondary with Patwari Training Certificate pass. Other existing incumbents to get the corresponding revised pay scale.

The petitioners here were appointed Amins in the Irrigation Department after 5-3-1983. In Laxminarayan Upadhyaya's case (supra) certain Amins appointed prior to 5-3-1983 filed that petition challenging the correctness of this Note and the Division Bench held "consequently, from the discussion aforesaid, this petition is allowed and the note appended under Rule 3 (Annexure II, Part-B, against S. No. 5 in Column 5) of the Rules (Annexure P-5) dated 5-3-1983 relating to the qualifications affecting the rights of the petitioners to the scale of pay Rs. 515-800 is quashed and it is directed that in getting the pay scale of Rs. 515-800, the qualifications prescribed will not come into the way of the petitioners; on the other hand this qualification will be operative for those incumbents who have joined their services as Amin with effect from 5-3-1983". The petitioners in the present case who are Amins and were appointed after 5-3-1983 are aggrieved by the latter part of the order that the qualification requiring Higher Secondary with Patwari Training Certificate pass will be operative for those incumbents who have joined their services as Amins from 5-3-1983 meaning thereby that the Amins so appointed will get the corresponding revised pay scales i.e. Rs. 485-740 in place of Rs. 155-252, and Rs. 445-635 in place of Rs. 139-200. Correctness of this part of the observation in the order has been questioned by the Division Bench while referring the matter to the Full Bench. It is clear that the cases of Amins appointed from 5-3-1983 was not a matter in issue in that petition and there was no occasion for making that observation because in that petition all the petitioners were appointed prior to 5-3-1983. We are of the view that two scales of pay for Amins then existing were revised to Rs. 515-800. This is now the scale of pay for Amins. Note in the remarks column appear to be for the employees holding the post then as Amin. According to this note, Amins with Higher Secondary with Patwari Training Certificate pass will get the scale of pay of Rs. 515-800 while

other Amins to get the corresponding scales of pay of Rs. 485-740 and 445-635 and the note is applicable only to the existing incumbents in actual service prior to 5-3-1983. They have been divided in two classes on the basis of qualifications, those with higher qualifications were given higher scale of pay and those with lesser qualifications were to be placed in lesser scale of pay which has been held to be against the right of equality enshrined under Article 14 of the Constitution and there can be no discrimination and two scales of pay for the post in the same cadre cannot be allowed to stand particularly when earlier both the categories were drawing the same scale pay. It is not necessary for us to consider what scale of pay is payable to the Amins appointed from 5-3-1983 or thereafter and as to whether they can be given different pay scales than the Amins doing the same job who were appointed earlier. That will be for the Division Bench to consider. That question has not been referred to us. Therefore, it is held that the observations in Laxminamyan Upadhyaya's case (supra) that higher scale of pay of Rs.515-800 will be operative for those incumbents who have joined their services with effect from 5-3-1983 and who are Higher Secondary with Patwari Training Certificate pass was not a matter in issue in that petition nor it was required to be decided and is, therefore, obiter and not binding on the Division Bench which is now required to decide this question.