

(2013) 10 MP CK 0275
In the Madhya Pradesh High Court
Case No : Writ Petition No.: 5169 of 2012

Onkar Prasad Garhewal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0275

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Jitendra Arya, for the Appellant; Rajesh Tiwari, Government Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.—Petitioner was granted Kramonnati after completing 12 years and 24 years of service. However, on the ground that he has been subsequently promoted to a higher post, the benefit of Kramonnati has been withdrawn. It is stated that as per instructions of the State Government, the salary is being fixed in accordance to the provisions of Fundamental Rule 22-A. The question involved in the writ petition with regard to the right of the Government to withdraw the Kramonnati and recovery of the benefit granted on regular promotion has already been considered by this Court, in Writ Petition No. 379/2009 (Smt. Santosh Verma Vs. State of MP and others) and vide order dated 19.7.2011, similar petitions have been decided.

2. In the case of Smt. Santosh Verma (supra), the following principle have been laid down by this Court:

9. The fact remains that the petitioner has retired on 30th June, 2008 and on this date she was drawing the salary of Rs. 9,900/- basic. The Madhya Pradesh Civil Services (Pension) Rules, 1976 (hereinafter "rules" for short) are squarely applicable in the case of the petitioner. The pension is to be fixed on the basis of last emolument drawn, which is defined in Rule 30 of the Rules. In a specific

word it is said that the impression emolument means pay as defined in Rule 9(21) of the Fundamental Rules including dearness pay, if any, as determined by the order of the Government issued from time to time, which a Government servant was receiving immediately before his retirement or on the date of his death as the case may be. A plain and simple reading of this definition makes it clear that the last salary drawn by the petitioner was to be taken into account for fixation of her pension. If computation is done on the basis of this salary, which the petitioner was drawing, there was no question of any excess payment to the petitioner and no recovery whatsoever could have been ordered. In view of this, the order of recovery contained in the pension payment order (Annexure P-5) is per se illegal. The State Government while issuing the memos has made it clear that once the benefit of Kramonnati is granted, if the promotion is subsequently given in a pay scale, which is lesser than the pay scale of Kramonnati, the pay is to be refixed in the manner no loss is caused to the Government employee. In paragraph 4 of the circular order dated 18.08.2005 (Annexure P-7 to the writ petition) this particular aspect has been specifically dealt with and it is said that though on regular promotion after the grant of Kramonnati pay scale the pay is required to be refixed in the pay scale applicable to the promotional post but in case it is found that on account of grant of Kramonnati if a person is getting more salary than the maximum of the pay scale of the promotional post then to avoid the financial loss to such a person, excess amount than the maximum of the pay scale be given as personal pay. Therefore, it is clear that the act on the part of the official respondents was violative of the instructions of the State Government and, therefore, the same is liable to be quashed.

10. The petition is, therefore, succeeds and is allowed. The respondents are directed to revise the salary of the petitioner on her promotion on the post of Lecturer as has been ordered vide order dated 29.08.2005 (Annexure P-2) in appropriate manner in terms of the circular dated 18.08.2005 (Annexure P-7) and calculating the salary of the petitioner on the basis of last pay drawn by her, the pension case of the petitioner be prepared. Entire amount of recovery deducted from the gratuity of the petitioner be refunded to her and proper pension be calculated, arrears of pension and other retiral dues be paid to her within a period of 3 months from the date of production of certified copy of this order. The petitioner will also get interest on the amount so deducted from her gratuity and on the amount of arrears of pension and other retiral dues from the date the same was due till the date of actual payment at the rate of 6% per annum.

3. Keeping in view the aforesaid, the action of the respondents in withdrawing the Kramonnati granted and recovering the amount of higher pay scale granted being contrary to the law laid down in the case of Smt. Santosh Verma (supra), are quashed. Impugned entry in the service book filed-Annexure P/1 is quashed and respondents are directed to proceed in the matter in accordance to the directions already issued in the case of Smt. Santosh Verma (supra). Necessary action be taken within a period of three months, from the date of receipt of

certified copy of this order.

4. With the aforesaid, the petition stands allowed and disposed of. Certified copy as per rules.