

(1985) 03 MP CK 0030

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 963 of 1983

Panchayat Karmachari Sangh and Another

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 14-03-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : AIR 1985 MP 202 : (1985) JLJ 609 : (1985) 30 MPLJ 350 : (1985) MPLJ 320

Hon'ble Judges : V.D. Gyani, J

Bench : Single Bench

Advocate : C.M. Mehta, for the Appellant; G.S. Solanki, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, J.

The present petition is no exception to an unfortunate state of affairs, which as the learned Government Advocate puts it despite all efforts on their part return could not be filed and the petition is to be heard and decided without any return. Matters listed for final hearing are invariably accompanied with requests for adjournments for filing of returns and even after having granted opportunities at such a late stage, a state of helplessness is expressed by the Government Advocates appearing, who at times also change, but the grievance remains the same that despite intimations the officers concerned do not respond, and at times even urgent calls made by the Government Advocates go unattended. Such state of affairs hardly commends anybody. "Delay" is the crying need of the hour. Anxiety for expeditious disposal of cases is contrasted with ever-standing complaint of delay. The Court is left with no choice but to proceed in the matter even in absence of returns for which number of opportunities are already granted. The only way out in such a situation is to decide the matters on whatever assistance and material are available, and this petition, as stated at the

outset, is no exception to such state of affairs.

Shri C.M. Mehta, learned counsel for the petitioners states that the Society was registered, but the registration of the Society was cancelled on some technical point, nonetheless it still functions as an organised body of Panchayat-Secretaries and representing the employees serving in the Panchayats or panchayat groups of the State. Petitioner No. 2 was appointed as a Panchayat Secretary by order dated 5-10-1957 (Annexure-1) by the Collector, Ujjain.

The petitioners by this petition seek a declaration that the petitioner No. 2 and all others similarly placed and posted like him in the erstwhile States of Madhya Bharat, Bhopal and Sironj region, are entitled to be treated as Government servants from the date of their initial appointment as such in their respective Gram Panchayats and claim entitlement to same pay-scales, service conditions and emoluments as being paid to their counterparts, who have come to the new State from Mahakoshal and Vindhya Pradesh regions. They further pray that all the Panchayat Secretaries of the State of Madhya Pradesh should be brought at par in matters of pay-scales and emoluments and uniform service rules or conditions should be made applicable to all of them with benefits of promotions and pension etc., The petitioners also challenge the order dated 1-2-1982 (Annexure-2) issued by the Deputy Director of Panchayats, Ujjain Division, Ujjain. It is prayed that this order should also be quashed. The petitioners' grievance is that this order (Annexure-2) would cause a great loss to the Panchayat Secretaries of the Gram Panchayats, who were initially appointed as Secretaries in the erstwhile Madhya Bharat, Bhopal and Sironj regions and it would result in an unfair discrimination in matters of emoluments, service conditions, promotions and pension, as their services in the erstwhile States named above are not considered and counted for the purpose of seniority as according to the petitioners the Government ought to have counted the services of these Secretaries from their initial appointments as such.

In order to appreciate the claims advanced by the petitioners it is necessary to trace the history of Panchayat Legislation in the erstwhile State of Madhya Bharat, where the Madhya Bharat Panchayat Act (No. 58 of 1949) was in force,. Section 30 thereof provides for appointment of employees of the Gram Panchayats and it was provided under the Act that for the service conditions of the employees in regard to their appointments, emoluments, salary, leave, discipline and removal etc., the Government rules regarding Government employees were to be made applicable. In 1951 the Madhya Bharat Panchayat Niyams were framed and published on 17-11-1951, in the Madhya Bharat Government Gazette. Rule 138 thereof provides for three categories of employees and Panchayat Mantri fell in category No. 1. Rule 141 provides for the appointing authority in case of Panchayat Mantris and it was the Development Commissioner, but however, the powers were also conferred on the Collectors, Rule 143 enumerates the duties of the secretaries, who were to be appointed by the Collector of the concerned district, who also enjoyed the disciplinary powers

in respect of the Secretaries. It is submitted in view of Section 151 that even in matters of leave and payment of salary, rules as applicable to the Government employees of the then State of Madhya Bharat were also made applicable to the Panchayat Secretaries, who were also entitled to the same dearness allowance and travelling allowances as per Rule 151. On coming into being of the State of Madhya Pradesh, a new Panchayat Act, known as Madhya Pradesh Panchayat Act No. 7 of 1962, was enacted, Section 72 thereof provides for appointment of Secretaries and Section 390 is a saving clause in the matter of such appointments. Section 390 read with Section 388 of the Act provides that such employees (coming from the State of Madhya Bharat) would be deemed to be the employees of the Gram Panchayats constituted under this Act. Even after coming into force of the Madhya Pradesh Panchayat Act, the rules as were framed under the Madhya Bharat Panchayat Act, referred to above, were made applicable to the Panchayat Secretaries in matters relating to appointments and service conditions. As no rules were framed under the new Panchayat Act of 1962, which in turn was repealed by the M. P. Panchayat Adhiniyam (No. 35 of 1981). Section 62 of this Act provides for appointment of Secretaries of Gram Panchayats. It further provides that persons holding the charge of Secretary of Gram Panchayat immediately before the commencement of this Act shall continue to function as such till Secretaries are appointed in accordance with this Section. It is to be noted that this Act provides for no saving clause regarding employees of Gram Panchayats. The petitioners, however, contended that in view of Section 24 of the General Clauses Act, permanent employees working as Secretaries of Gram Panchayats will be deemed to be the Secretaries and employees on the same terms and conditions in regard to their pay-scales etc., It is significant to note that the Panchayat Act of 1981 does not make any provision for those permanent employees, who were already working as permanent employees of the Gram Panchayats, which were constituted under the repealed Act,. Panchayat Secretaries coming from Mahakoshal and Vindhya Pradesh regions were Government servants as such and on formation of the State of Madhya Pradesh they were absorbed as Government servants as such, although they were discharging duties as Panchayat Secretaries and are still discharging the same.

It is contended by the learned counsel for the petitioners that numerous representations submitted by the petitioners to the respondents claiming and clamouring for similar service conditions, pay-scales and benefits for the Panchayat Secretaries coming from the Madhya Bharat, Bhopal and Sironj regions have failed to yield results. Vide order, Annexure-2, they were treated as Government Servants and the petitioner No. 2's name is mentioned at serial No. 1 in this order. As there is no such post as Gram Sahayak in the Panchayat Act of 1981, the Government by subsequent order dated 17-6-1982 (Annexure-2A), re-designated the Gram Sahayak as Secretary of Gram Panchayats. Thus, the Secretaries of the Gram Panchayats, who were appointed as such in the erstwhile State of Madhya Bharat under the Madhya Bharat Act also became Panchayat

Secretaries under the new Panchayat Act of 1981. Certain salient features of this order are :

(a) for the purpose of seniority the period already served under the Madhya Bharat Act has been excluded and even in matters relating to their basic salary the order, Annexure-2, does not take into account the increments earned by the petitioner No. 2;

(b) Previous service is not merely excluded from consideration for the purpose of determining the seniority, it also results in making the service conditions unsecure and even the pension benefits are materially affected.

It is for this reason that the petitioners have challenged the order, Annexure-2, as arbitrary and discriminatory.

It is further contended that this discriminatory treatment on the part of the respondent-State is violative of Articles 14 and 15 of the Constitution. Pointedly reference has been made by the petitioner No. 2 to the fact that the Panchayat Secretaries, who belonged to the erstwhile States of Madhya Bharat, Bhopal and Sironj were given the benefit of Panday Pay Commission and thereafter the Choudhary Pay Commission and the petitioner himself was getting Rs. 205/- as basic pay per month in the grade of Rs. 155-252 as on 31-1-1982, which was disbursed from the Gram Panchayats' Fund. But by the impugned order (Annexure-2) he is being treated as a fresh appointee and put in the grade of Rs. 155-252. Learned counsel contends that such an unjust deduction in pay on the ground that petitioner No. 2 had served in a State geographically different, amounts to a discrimination prohibited by the Constitution. There are many others like him suffering such monetary loss, although they have been in continuous employment as the petitioner 2 is since 1957. It is contended that he cannot be differently treated in matters of payment of salary and the pay-scales from the similarly placed Panchayat Secretaries coming from the Mahakoshal region.

The petitioner's contentions is that if his past service in the erstwhile State of Madhya Bharat is taken into account and his entitlement to annual increments is granted, he ought to have been put in the grade of Rs. 545-525, but to his misfortune the petitioner's wails have not been granted to him and to many others like him, who were working in there respective Gram Panchayats of the erstwhile States of Madhya Bharat, Bhopal and Sironj. In contrast Panchayat Secretaries coming from Mahakoshal and Vindhya Pradesh regions are presently drawing salary in the grade of 485-740. This discrimination in the matter of pay-scales as applicable to a cadre or class of Panchayat Secretaries similarly placed, learned counsel contends, in no case can be permitted under the Constitution. Treating the petitioner No. 2 as a fresh incumbent to the post is also illegal. Panchayat Secretaries drawn from the erstwhile Mahakoshal and Vindhya Pradesh regions discharging the same and similar functions as the petitioner No. 2 are not treated as fresh incumbents. Their present pay-scales, therefore,

mainly differ and the principle of "equal pay for equal work" is grossly violated by the respondents by Annexure-3. Annexure-3 does not merely reduce the pay-scale of the petitioner No. 2, but also leads to a change in his legal status. He is made temporary from a permanent post, which amounts to reduction in rank. The petitioners in order to support their claim have given examples of teachers serving in private schools or educational institutions subsequently taken over by the Government and given the same pay-scales and service benefits as are extended to teachers in Government Schools. Learned counsel therefore, contends that it does not stand to reason why the Panchayat Secretaries be not similarly treated.

Before proceeding further, it may be (mentioned?) that no return as such has been filed by the respondents in spite of repeated opportunities given at the late stage of final hearing having been sought and granted. But can a welfare State oppose such a claim as advanced by the petitioner, which is essentially and strictly in consonance with the spirit of the Constitution. Article 39(1) of the Constitution proclaims as a directive principle. The constitutional goal is of "equal pay for equal work". Learned Government Advocate was not in a position to dispute this proposition and rightly so. However, it was submitted that it is a question of availability of funds. But even this fact has not been properly placed. But realising the difficulty which may ultimately ensue as a result of a direction to be made in the matter, it should be taken into account, although not pleaded, equalities of post and equality of pay are all matters primarily for the executive Government and experts' bodies, like the pay Commissions and not for the Courts. Persons holding identical posts may not be treated differently in the matter of their pay merely because they are drawn from different geographical regions.-- See *Randhir Singh Vs. Union of India (UOI) and Others*, . Articles 14 and 16 of the Constitution read with its preamble makes the things clear. The principle of "equal pay for equal work" is deducible from these Articles and can be properly applied to the present case. There is no rational, either advanced or advanceable to deny the relief to the petitioners. In the instant case on the basis of the averments made by the petitioners, not controverted by the respondents Articles 14 and 16 of the Constitution are held to have been violated.

For the reasons aforesaid, this petition deserves to be allowed and is accordingly allowed. The order Annexure-2, filed by the petitioners, is liable to be quashed and is hereby quashed. The respondents are directed to bring on par the present petitioners and all the Panchayat Secretaries serving in the State irrespective of the States or regions they are drawn from and pay them equally, their pay scales and service conditions be made uniform and the Panchayat Secretaries who are drawn from the erstwhile States of Madhya Bharat, Bhopal and Sironj regions should be paid the same basic pay and their services in the erstwhile States be counted for the purposes of their seniority with all the ancillary benefits of annual increments. They should also be paid the same pension and given the same promotions as their counter-parts coming from Mahakoshal and Vindhya Pradesh regions. However, there shall be no order as to costs. Security amount, after

verification, be refunded to the petitioners.