
(1983) 04 MP CK 0029

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 225 of 1979

Prasanna Kumar Sharma

APPELLANT

Vs

Registrar, M. P. High Court and another

RESPONDENT

Date of Decision : 16-04-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) ILR (MP) 44 : (1983) JLJ 650 : (1983) MPLJ 496

Hon'ble Judges : K.N. Shukla, J

Bench : Single Bench

Advocate : S.D. Sanghi and N.K. Sanghi, for the Appellant; S.R. Joshi, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.N. Shukla, J.

This is a petition by an employee of this Court under Article 226 of the Constitution of India, praying for a suitable writ or direction to the respondents to grant him benefit of two advance increments from 7-9-1969 and for a lump-sum payment of Rs. 25 in accordance with the Memo issued by the State of Madhya Pradesh, in the General Administration Department, dated 19-4-1968 (Annexure-B).

Petitioner was appointed temporarily as a lower-division-clerk in the High Court, vide order dated 13-8-1965. He was confirmed on 5-9-1977. The petitioner passed the Hindi type-writing examination on 7-9-1969. He claimed that after passing the said examination he became entitled to two advance increments and a lump-sum payment of Rs. 25 from the date on which he passed the examination, vide G. A. D. Memo No. 7587/CR-670/ I(iii), Bhopal, dated 19th April, 1968. He made representations to respondent No. 1, but the same were rejected on 7-4-1970, 20-10-1970 and 13-7-1973. Petitioner, therefore, sought a Writ of Mandamus or any other appropriate direction to the respondents to grant

him two advance increments and make a lump-sum payment of Rs. 25 in accordance with the above mentioned G. A. D. Memo.

Respondent No. 1 in his return submitted that the petitioner was appointed temporarily. Condition No. (v) of the order of appointment was to the effect that he should qualify himself in English and Hindi typewriting, if not already qualified, within six months of his appointment. The petitioner did not qualify himself in compliance with the said condition and, therefore, was not entitled to claim the benefit of the said G. A. D. Memorandum dated 19-4-1968. Further, it was submitted that the petitioner was governed by Paragraph 2 of the G. A. D. Memo in question, which lays down that existing lower-division-clerks appointed temporarily may be given a notice to pass the Hindi typewriting examination within a period of one year or otherwise their services will be liable to be terminated. Since, according to respondent No. 1, the petitioner did not pass the Hindi typewriting examination within one year from the date of the said G. A. D. Memo, he was not entitled to grant of advance increments and a lumpsum payment of Rs. 25, as provided in Para I(i) of the said G. A. D. Memo. Besides, respondent No. 1 opposed the petition on the ground of laches and delay.

Admittedly, petitioner along with others, was appointed temporarily until further orders as a lower-division-clerk by order dated 13-8-1965. The order of appointment contained a condition to the following effect:

(v)-that they qualify themselves in English and Hindi typewriting if not already qualified to the satisfaction of the Registrar, within six months of their appointment.

This appointment was made prior to the G. A. D. Memo dated 19-4-1968 and, therefore, this condition in the letter of appointment had no relevance to the right granted by the State Government under the G. A. D. Memo in question. Besides, this condition did not entitle respondent No. 1 to deny petitioner's claim for advance increments. The only option which respondent No. 1 had in view of this condition was to terminate his service on his failure to pass the English and Hindi typewriting. Obviously, respondent No. 1 did not consider it proper to terminate his services and, therefore, noncompliance with this condition could not be pressed into service for denying the right, if any, conferred on the petitioner under the G. A. D. Memo in question, which was issued long after the petitioner's appointment.

The next question is whether under the said Memo petitioner was entitled to the grant of advance increments and a lump sum payment of Rs. 25 after passing the Hindi typewriting examination on 7-9-1969. The G. A. D. Memo dated 19-4-1968 may be reproduced for the sake of convenience:

GOVERNMENT OF MADHYA PRADESH

General Administration Department.

MEMORANDUM No. 7587/CR-670/I

(iii), Bhopal, dated, the 19th April, 1969.

To

All Departments of Government, The President, Board of Revenue, All Commissioners of Divisions, All Heads of Departments, All Collectors, Madhya Pradesh.

Subject:-Grant of advance increments to qualified Lower Division Clerks/Typists.

In supersession of the orders contained in this department's Memorandum No. 3033/Cr./372-I-(iii) 63, dated the 4th December, 1963, the State Government are pleased to decide that:

(i) The Lower Division Clerks, who do not possess typing qualification in Hindi at present but pass the typewriting examination in Hindi conducted by any of the agencies recognised in this department's Memo No. 562-1547-I(iii)/61, dated the 15th March, 1963, will be granted two advance increments with effect from the date following the date on which the examination passed was held. In addition a lumpsum of rupees twenty five will also be granted to typewriting examination from the above mentioned agencies if they have received training in the private institutions and not in the Government training institutions. This amount will be given only once.

(ii) Candidates for the post of Lower Division Clerks, in future, will be entitled to two advance increments at the time of their appointment if they possess the certificate of passing the typewriting examination in Hindi conducted by any of the agencies recognised in this department's memo cited in sub-para (i) above.

(iii) No advance increment will be granted in future for passing the typewriting examination in English either to new recruitments or those who are already in service.

The existing Lower Division Clerks who have been appointed temporarily until further orders as English Typists may be given a notice to pass the Hindi typewriting examination within a period of one year from the date of issue of these orders, otherwise their services will be liable to be terminated.

The grant of advance increments will not have the effect of postponing the ordinary annual increments earned by the employees.

The above facilities cannot be availed of by an official in addition to those provided in the Education Department Memorandum No. 6109/ 2071 /II-CC, dated the 17th December, 1962.

By order and in the Name of Government of Madhya Pradesh.

Sd/-

M. L. Chopra,

Deputy Secretary to Govt, of Madhya Pradesh,
General Administration Department.

Para I(i) of this Memo does not prescribe any period within which a lower-division-clerk was required to pass the Hindi typewriting examination for qualifying to the benefit of two advance increments and a lumpsum payment of Rs. 25. It merely provides that such clerks after passing the typewriting examination in Hindi, conducted by any of the agencies recognised by the department, will be granted two advance increments with effect from the date following the date on which the examination passed was held and in addition to it a lumpsum of Rs. 25.

Learned Government Advocate urged that the case of the petitioner fell within Para 2 of the said Memo. Perusal of this Paragraph will show that it does not relate to payment or non-payment of advance increments. It only authorises the appointing authority to give a notice to a temporary lower-division-clerk to pass the said examination within a period of one year from the date of issue of the order otherwise his services will be liable to be terminated. The plain reading of this Paragraph indicates that it deals with an entirely different situation and empowers the appointing authority to give a notice as mentioned therein. Admittedly, no such notice was ever given to the petitioner and he was continued in service and confirmed on 5-9-1977. The scope of authority exercisable under Para. 2 of the G. A. D. Memo in question was entirely different and it did not affect the operation of Paragraph I(i) of the said Memo, which entitled a lower-division-clerk to the grant of two advance increments. This right was not hemmed by any condition and by no means the provision made in Paragraph 2 of the Memo affected the right of such a clerk to claim advance increments after passing the Hindi typewriting examination.

Thus, I find that neither by the condition of his appointment nor by the provision made in Paragraph No. 2 of the G. A. D. Memo, dated 19-4-1968, respondent No. 1 could refuse grant of two advance increments and payment of a lumpsum of Rs. 25 to the petitioner.

As regards the plea of delay and laches, it is not an inflexible universal rule of law that a discretionary relief under Article 226 of the Constitution must necessarily be refused on the ground of delay. Admittedly the petitioner is a High Court employee and he was making representations for redressal of his grievances. It is nobody's case that interests of other employees will be adversely affected if the petitioner is granted this petty relief of grant of two advance increments and payment of a lumpsum of Rs. 25. It will be unjust to throw out the petition on the ground of delay even though there is patent injustice and interests of other parties are not affected if the relief claimed by the petitioner is granted to him.

In these circumstances the petition is allowed and respondent No. 1 is directed to give the petitioner benefit of two advance increments in accordance with the G. A. D. Memo dated 19-4-1968 from 7-9-1969 and also the benefit of a lumpsum

payment of Rs. 25. There will be no order as to costs. The outstanding amount of security deposit shall be refunded to the petitioner.