

(2005) 04 MP CK 0012

In the Madhya Pradesh High Court

Case No : Writ Petitions (S) No's. 5843, 12638 of 2004

Raghwendra Sohgaura and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-04-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Fundamental Rules — Rule 26

Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 — Rule 8, 8(6), 8(7)

Madhya Pradesh Panchayat Service (Recruitment and General Conditions of Service) Rules, 1999 — Rule 25

Madhya Pradesh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 — Rule 11, 2, 4, 5, 7

Citation : (2006) ILR (MP) 28 : (2006) 1 JLR 65 : (2006) 1 MPJR 178 : (2005) 4 MPLJ 536

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Rajendra Tiwari and M. Tripathi, Mahendra Saraf, Malti Dadaria, P. Verma, Prashant Singh, V.S. Choudhary, Atul Upadhyay, Pranay Choubey, Sanjay Singh, Pranay Gupta, Rajendra Pandey and B.P. Yadav, for the Appellant; P.N. Dubey, Dy. A.G., V. Mehta, Government Advocate, Alok Pathak, V.P. Nema and P.S. Yadav, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mishra, J.

In these writ petitions, question involved is about grant of increments on confirmation of services with effect from the date of completion of one year of the initial appointment on probation basis as Shiksha Karmi. There are two sets of Petitioners; some of them have been appointed on probation basis under the rules called M.P. Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 (hereinafter referred to as "the Rules of 1997") in the schools run by Panchayats. Other set of Petitioners have been appointed in the

schools handed over by the State Government to the Municipal body; they were appointed on probation basis under M.P. Municipal Council Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1998 (hereinafter referred to as "the Rules of 1998"). Rules of appointment are the same in particular, Rule 7, under which appointment on probation was ordered, is similar under the Rules of 1997 and the Rules of 1998. In the writ petitions, order of recovery of increments which were released to the Petitioners has been assailed.

Facts are being noted from W.P.S. No. 5843/04. It is averred in the petition that Petitioners were appointed under the Rules of 1997 as Shiksha Karmis. Appointment of Shiksha Karmis grade III are made by Janapad Panchayat whereas Shiksha Karmis Grade I and II are appointed by Zila Panchayats. Petitioners were appointed as Shiksha Karmis grade I, II and III as the case may be. The appointment as Shiksha Karmis in the grade I was in the pay-scale of Rs. 1200-2000/-, grade II in the pay scale of Rs. 1,000-1600/- and in grade III in the pay scale of Rs. 800-1200/-. The appointments were ordered on probation basis. The pay-scales are prescribed in Schedule I of the rules of appointment of Shiksha Karmis. Rule 7 provides for initially appointment on probation basis.

Petitioner's services have been confirmed on completion of 3 years probation, is not in dispute. It is also not in dispute that after confirmation of their services, benefit of the increments has been extended on completion of one year of date of initial appointment. During the period of probation the Petitioners were paid the basic of the pay-scale.

Petitioners have submitted that State Govt. has issued an order (P. 4) dated 4.2.2003. It was directed to make the payment of increments to the Shiksha Karmis on confirmation of their services as contemplated under Rule 7 of the Appointment Rules of Shiksha Karmis; thereafter the increments were released with effect from the date of completion of 1 year of probation. Petitioners are enjoying the benefit based there upon; all of a sudden an order (P-1) dated 8.7.2004 has been issued by the Commissioner of Public Instructions in which it has been directed that the benefit of the increments which has been given to Shiksha Karmis on completion of one year of probation period after confirmation of their services has been extended erroneously; they are entitled for increments after one year of confirmation of their services, hence, the benefit which has been wrongly extended be recovered and the amount be adjusted out of the salary to be paid.

M.P. Shaskiya Shiksha Karmi Sanghtan has filed WPs No. 12638/ 04. Shiksha Karmis were appointed in Municipal Council in the district of Damoh on probation of 3 years. Initially the basic of the pay-scale was given; their services have been confirmed. Appointment was made in the pay-scale as prescribed in Schedule I of the Rules of 1998. Petitioner Association has filed various circulars. Reliance has been placed on circular dated 30.5.1977 which has been issued in the context of memo dated 9.12.1974. Petitioners have submitted that in accordance with the said circular; on services being confirmed the increments which were

not released during the period of probation have to be released on confirmation of their services, for the period of probation, thus, the arrears of increments withheld for want of confirmation were paid rightly. Petitioners have relied upon the circular dated 6.6.1979 which has been referred to in circular dated 4.2.2003 issued by Urban Administration and Development Department of State of M.P.

Petitioners have also relied upon the clarification issued by the Accountant General in respect of FR 26 which provides that if services of a probationer is confirmed at the end of the period of probation exceeding 12 months, he is entitled to claim retrospectively increments which but for the probation, he would have received in the ordinary course.

Common return has been filed by the Respondents in these writ petitions. Reliance has been placed on Rule 7 to contend that Shiksha Karmi is appointed on probation for a period of 3 years which is extendable by Anr. 2 years, maximum period of probation can be 5 years. Rule 7 provides that Shiksha Karmis will be paid fixed pay i.e. the minimum of the pay scale with dearness allowance during the probationary period; only after confirmation Shiksha Karmi is appointed in regular pay-scale. Appointment is as an apprentice. In districts of Damoh, Chhindwara, Rewa and Seoni the benefit of increments was released after confirmation on completion of one year probation, when information was received, amount paid of extending benefit of increments has been ordered to be recovered in instalments. Other civil servants were appointed on regular cadre from the date of initial appointment, hence, on confirmation they are given benefit of increments for the period of probation. Shiksha Karmis are paid every month minimum in pay-scale, hence, no interference is called for.

Learned Counsel for the Petitioners have submitted that the release of increments was in accordance with law. Shiksha Karmis cannot be denied the benefit of increments; when increments are released to other panchayat employees and employees in other services; once probation period comes to an end, on confirmation of their services. Learned Counsel for the Petitioners have relied upon the circular dated 9.12.1974, 30.5.1977 and 6.6.1979 to contend that increments are not to be released only in the case when no order has been passed of confirmation, on completion of period of probation, otherwise an incumbent is entitled, once the services are confirmed for release of increments which would have been released but for his being on probation. Clarification issued by the Accountant General has also been pressed into service. It is submitted that Rule 7 nowhere debar release of the increments, once services are confirmed. It is alternatively submitted that when amount has been paid by the Respondents, recovery of the same is not proper; same is liable to be quashed. It is further submitted that State Govt. has issued a circular providing for benefit of the increments during the ad hoc officiation period; in the light of the decision of Dr. P.L. Malik's case, thus, Petitioners cannot be treated differently as they were appointed on better footing as probationer, even ad hoc employees have to be given the benefit of the increments during ad hoc

officiation.

Shri P.N. Dubey, learned Dy. A.G. for Respondents, has submitted that as the appointment was on basic of pay-scale, the appointment has to be treated as an apprentice not as full-fledged Shiksha Karmis; the benefit was erroneously extended which has been withdrawn. He has submitted that once the appointment is on fix pay for 3 years, increments could not have been released on confirmation of services after completion of 3 years for the period of probationer.

Rule 7 of the Rules of 1997 is quoted below:

7. Probation. - Every person directly recruited to the post of Shiksha Karmis shall be appointed initially on probation of three years, extendable upto five years for a particular school so that he serves in that school for full probation period. The performance will be assessed by the appointing authority at the end of each year. After three years the Shiksha Karmis may be appointed in the regular pay scale of the Panchayat on the basis of his work, conduct and performance. In case the performance is not found satisfactory, he may be allowed to continue on the probation for Anr. one to two years to improve after which his performance will be assessed again at the end of extended period and if not found satisfactory, his services shall be terminated. But in no case the probationary period shall be extended beyond the maximum period of five years. Shiksha Karmis will be paid fixed pay equivalent to minimum of the pay scale with admissible dearness allowance during the probation period.

Rule 7 of the Rules of 1997 of appointment of Shiksha Karmis in Panchayat is similar for the employees of Municipal Council under the Rules of 1998. The appointment under the Rules is made as Shiksha Karmis not as apprentice as submitted by the Respondents. Shiksha Karmi has been defined in Rule 2(h) of the Rules of 1997 to mean the person appointed by Zila Panchayat or Janapad Panchayat as the case may be for teaching in the schools under their control. Schedule I has been framed under the Rule 2(b) of the Rules of 1997. Schedule I is quoted below:

S.No. Shiksha Karmi Grade *No. of Posts Pay Scales Appointing Authority

(1) (2) (3) (4) (5)

1. Grade-I ? 1200-40-2000 Zila Panchayat
2. Grade-II ? 1000-30-1600 Zila Panchayat
3. Grade-III ? 800-20-1200 Janpad Panchayat

*Note - (1) The assessment of posts for different grades of Shiksha Karmis for each school will be certified by the concerned Deputy Director. Education or Assistant Commissioner, Tribal Welfare, as the case may be.

(2) The Government will from time to time approve the number of posts of

Shiksha Karmis for each Panchayat on receiving the duly certified proposals.

Classification and scale of pay of Shiksha Karmis is regulated by Rule 4 of the Rules of 1997. Rule 4 of the Rules of 1997 is quoted below:

4. Classification and Scale of Pay -The classification of Shiksha Karmis and their scales of pay shall be as given in the Schedule I. Number of the posts shall not be increased except with the prior approval of the Government or an Officer duly authorized by the Government.

Rule 5 of Rules of 1997 provides for Methods of selection and Recruitment to the cadre of Shiksha Karmis after the commencement of these rules shall be made by the method of direct recruitment, by promotion as specified in Schedule IV, Rule 7 provides for probation. Rule 8 deals with the promotion. Rule 11 provides condition of service other than mentioned in the Rules shall be the same as applicable to other employees of Janapad Panchayat or Zila Panchayat as the case may be.

The Rules of 1997 and the similar Rules of 1998 nowhere provide for the concept of apprentice as suggested by the Respondent. Appointment is made as Shiksha Karmis as provided in the order of appointment also, word apprentice has not been mentioned. The appointment has been made as Shiksha Karmi in the pay-scale for concerned Grade I, II or III as provided in schedule though the basic pay of scale was to be given during the period of probation, thus, I have no hesitation in rejecting the submission raised by Respondents, that initial appointment has not been made as Shiksha Karmis but as apprentice; merely an employee is kept on probation, nature of appointment as provided in the Rules as Shiksha Karmi is not changed.

There are other rules also which have been framed under Panchayat Act called M.P. Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 (hereinafter referred to as "the Rules of 1999"). Rule 25 is relevant; same is quoted below:

25. Probation and confirmation - (a) All appointments to the Panchayat service or post whether by direct recruitment or by promotion shall be made on probation. The period of probation shall be of two years:

Provided that the appointing authority may for sufficient reason to be recorded extend the period of probation for a period not exceeding one year.

(b) During the period of probation of employees, a six monthly confidential report shall be written and it shall include comments on his work, efficiency and devotion to duty.

(c) On the successful completion of probation, the probationer shall be confirmed in the service or post to which he has been appointed.

(d) No person shall be confirmed in a post in the Panchayat Service unless he has completed the period of his probation satisfactorily and has passed the

departmental examination, if any, and has successfully undergone training, if any laid down by the State Govt. or by the Panchayat for the holder of such post.

Explanation - Confirmation under this sub-rule may be made with effect from the date of continuous officiation of the person after completion of the period of probation, if any, in that post of the date from which the permanent post is substantively vacant, whichever is later.

(e) If the probationer does not complete his probation satisfactorily, the direct recruitment candidate shall be discharged from the Panchayat Service without paying any compensation and the candidate appointed by promotion shall be reverted to the post substantially held by him before the promotion.

Rule 25 provides that on successful completion of probation, probationer shall be confirmed in the service on the post to which he has been appointed. An incumbent has to complete the period of probation satisfactorily. Explanation to Rule 25(d) of the Rules of 1999 makes it clear that confirmation under this sub rule may be made w.e.f. the date of continuance of officiation of the person or the date from which permanent post is substantively vacant whichever is later.

The appointment of the Petitioners has been made on the vacant post. Services of the Petitioners have been confirmed, is not in dispute. Before coming to the circulars which have been relied upon by the Petitioners, I deem it proper to refer the M.P. Civil Services (General Conditions of Services) Rules, 1961 (hereinafter referred to as the Rules of 1961") in the context of which aforesaid circulars relied upon by the Petitioners which have been issued. Rule 8 of the Rules of 1961 provides for appointment on probation. Rule 8 of Rules of 1961 is quoted below:

8. Probation. - (1) A person appointed to a service or post by direct recruitment shall ordinarily be placed on probation for such period as may be prescribed.

(2) The appointing authority may, for sufficient reasons, extend the period of probation by a further period not exceeding one year.

(3) A probationer shall undergo such training and pass such departmental examination during the period of his probation as may be prescribed.

(4) The services of a probationer may be terminated during the period of probation if in the opinion of the appointing authority he is not likely to shape into a suitable Government servant.

(5) The services of a probationer who has not passed the departmental examination or who is found unsuitable for the service or post may be terminated at the end of the period of his probation.

(6) On the successful completion of probation and passing of the prescribed departmental examination, if any, the probationer shall, if there is a permanent post available, be confirmed in the service or post to which he has been appointed, either a certificate shall be issued in his favour by the appointing

authority to the effect that the probationer would have been confirmed but for the non-availability of the permanent post and that as soon as a permanent post becomes available he will be confirmed.

(7) A probationer, who has neither been confirmed, nor a certificate issued in his favour under Sub-rule (6), nor discharged from service under Sub-rule (4), shall be deemed to have been appointed as a temporary Government servant w.e.f. the date of expiry of probation and his conditions of service shall be governed by the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960.

It is provided in Sub-rule 8(6) of the Rules of 1961 that on completion of the probation period and on passing the departmental examination as provided; services shall be confirmed in case post is not available for confirmation, appointing authority shall issue certificate of confirmation but for availability of the post and services shall stand confirmed as soon as post becomes available. Sub-rule (7) of the Rule 8 provides that in case a person has not been confirmed nor any certificate has been issued as required under Sub-rule 6 of Rule 8 the servant shall be treated as temporary Govt. servants.

State Govt. has issued a circular with respect to release of increments on successful completion of the probation period on 30.5.1977. The relevant portion is quoted below:

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Further clarification was issued on 30.5.1977 by M.P.G.A.D. vide circular No. 3.6/77/3/1 in which it has been clarified that an incumbent whose services have not been confirmed and certificate has not been issued shall remain on temporary basis; the benefit of increments shall not be released. It is clearly provided in the circular quoted above that an incumbent is entitled for release of the increments; once services have been confirmed; I do not find any embargo in Rule 7 not to give the benefit of the increments on confirmation of the services. F.R. 26 is relevant, it is quoted below:

F.R. 26. Service which counts for increments-

The following provisions prescribe the conditions on which service counts for increments in a time-scale-

(a) All duty in a post on a time scale counts for increments in that time-scale:

Provided that, for the purpose of arriving at the date of next increment in that time scale, the total of all such periods as do not count for increment in that time scale, shall be added to normal date of increment.

A.G.I. 1. Increment before the end of probation-

The service rendered by a Government servant who holds substantively a permanent post in a cadre and is merely appointed on "probation" to Anr. post counts for increment in the post in which the service is actually rendered, that is, the post which he holds on probation. In such a case, therefore, it is permissible for the Government servant to draw an increment even before the end of his probation.

Accountant General has also issued Anr. clarification for release of increments on confirmation of the services of the probationer under Fundamental Rule 26 thus:

A.G. 1.2. If a probationer is confirmed at the end of period of probation exceeding 12 months, he is entitled to claim retrospectively increments which, but for his probation, he would have received in the ordinary course.

It is clear from the circular of the State Govt. and the clarification issued by the Accountant General that probationer is entitled for the release of the increments on conformation of services for the period of probation, hence, direction was rightly issued as per communication (P.4 in W.P.S. No. 5843/2004) dt. 4.2.2003 to give the benefit of the increments, latter makes reference to the circular dated 6.6.79 issued by the General Administration Department in the context of the notification dated 9.12.74, thus in my opinion, the benefit of increments was rightly extended to the Petitioners on successful completion of period of probation of 3 years for the period of probation.

The appointment of Shiksha Karmi is provided in the pay scales as mentioned in

the schedule for a period of 3 years increments are not released; fixed salary is given but the fact remains that appointment was made in the scale of pay with the rider that for 3 years, basic minimum of the pay-scale shall be paid during probation; once the services have been confirmed, benefit of increments has to be given, even for the period of probation.

The Petitioners were legally entitled for release of the increments as the appointments were made as Shiksha Karmis on the vacant posts; their services have been confirmed; the appointment was made in the pay-scale; on confirmation, the increments have to be released.

Yet Anr. aspect be noted; State Govt. has issued a circular dated 18.8.93 on the strength of the decision of the apex Court in Dr. P.L. Malik v. State of M.P. and Ors. 1991 MPST 15, in which it is provided that an employee during the ad hoc officiation period, shall be entitled for the benefit of the increments. Petitioners were not appointed on ad hoc basis, they were appointed on probation as Shiksha Karmis as per the Rules; they stand on better footing than ad hoc employees. Rules of appointment were framed by the State Govt. after matter travelled to the Supreme Court. The apex Court directed framing of the rules to provide safety and security to the service tenure; adhocism came to an end due to framing of the rules which has prevailed for more than a decade during which appointment used to be made on ad hoc basis every year for particular session or few months as the case may be. Petitioners, who have been appointed as per the rules in the service of Panchayat or Municipal Council, are entitled for at least similar treatment with other employees of Panchayat or such other local bodies; they cannot be treated less favourably as their status is better than the ad hoc employees who have been given the benefit of the increments during the ad hoc officiation period, thus, the Petitioners were rightly given the benefit of the increments, same has been wrongfully withdrawn and was not wrongfully extended as suggested by the Respondents.

It may also be mentioned that Petitioners have also relied upon decision in Sahib Ram v. State of Haryana and Ors. 1995 SCC 248, wherein upgraded pay-scale was given due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee; it was held by the apex Court that the amount paid shall not be recovered as there was no misrepresentation by the employee. In this case, I find the benefit was admissible, even otherwise same could not have been taken away once it has been given on the strength of the decision in Sahib Ram v. State of Haryana and Ors. (supra).

Respondents" Counsel relied upon a decision in State of Karnataka and Others Vs. G. Halappa and Others, . It was a case of absorbes and regular recruits from the category of contract teachers. Apex Court has held that there was distinction between the two increments were given to regular recruits, unlike those absorbed under 1990 Absorption Rules, they were held not entitled to fixation of higher pay-scale on the basis of service rendered on "contract basis". The

distinctive feature here is that appointment was made under the Rules of 1997 and 1998 of appointment of Shiksha Karmis, it was not on contract basis; it was on regular basis on probation, hence the said decision is of no assistance, has a different field to operate. In Anr. decision relied upon in State of Rajasthan Vs. Gopi Kishan Sen, , it was laid down by the Supreme Court that on the basis of higher educational qualification different pay-scale can be prescribed to trained and untrained teachers. Same case has no relevance as question of different pay-scales is not involved in the case. Similar is the decision of the apex Court in State of Mysore and Another Vs. P. Narasing Rao, , the question involved, was of classification of 2 grades of Tracers which was held not to be violative of Article 14 and 16 of the Constitution of India which is not the question involved here; as I find that appointment was not as apprentice for the same reasons, decision in V. Markendeya and Others Vs. State of Andhra Pradesh and Others, is not attracted, wherein the question was of parity of non grade supervisor with graduate supervisor; same was held to be permissible classification.

In my opinion, Shiksha Karmis are entitled for release of increments on confirmation of their services, they are entitled to claim retrospectively increments which but for their probation, they would have received in the ordinary course. In view of above discussion, all the writ Petitioners are allowed. The order of recovery of the amount paid on release of increments to the petitioners is hereby quashed. Parties to bear their own costs as incurred.