

(2019) 11 MP CK 0110
In the Madhya Pradesh High Court
Case No : Writ Petition No. 24029 Of 2019

Rajkumar Upadhyay

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Citation : (2019) 11 MP CK 0110

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Vikas Jaiswal, Arvind Sharma

Final Decision : Allowed

Judgement

1. Petitioner has filed the present petition seeking a direction to the respondent to grant him the benefit of 5th and 6th Pay Commissions.

2. Petitioner was initially appointed in Oil Seed Corporation Federation on 17.09.1990. Since the said Federation went into liquidation, therefore petitioner and all other employees were sent to different departments on deputation. The petitioner was also sent on deputation to Panchayat and Rural Development Department, Jila Panchayat Ashoknagar. He continued in the deputation and vide order dated 03.09.2014 he was absorbed as Assistant Development Extension Officer in Janpad Panchayat, Aron, District Guna. He was given the pay scale as per the recommendation of 6th Pay Commission. The case of the petitioner is that during deputation, he was not given the benefit of 5th and 6th Pay Commissions for which he was entitled as his counterparts have been given the benefit.

Similarly placed person appointed in Oil Federation were sent on deputation to various Government departments and they were granted the benefit of 5th and 6th pay commission. Later on the state government withdrew the same which became the subject matter of various writ petitions before this court. One of the writ petition bearing No. 5680/2009(s) (Dinkar Pratap Singh Chouhan Vs. state

of M.P.) was decided on 21.7.2011 in favour of the petitioner and thereafter Writ Appeal filed by the State Govt. has been dismissed and thereafter the SLP No. 31673/2011 has also been dismissed. By placing reliance over the aforesaid decision, one writ petition filed by Yashwant Aphle had also been allowed vide order dated 26.8.2013 passed in W.P.No. 7725/2009 and recovery of amount was quashed.

The order passed in the case of Yashwant Aphle (supra) is reproduced as under -

"Petitioner employees of M.P. State Cooperative Oil Seed Growers Federation on deputation to Zila Panchayat Hoshangabad vide this petition while seeking quashment of orders dated 24.6.2009 and 11.8.2009; whereby recovery has been effected in respect of certain pay extended to the petitioner in lieu of the fixation as per Vth Pay Commission further seeks direction to the respondents to extend the benefit of Vth Pay Commission.

At the outset it is urged that the issue raised in this petition has been answered in W.P.No.5680/2009 (s) Dinkar Pratap Singh Chouhan and another Vs. State of M.P and others decided on 23.3.2011.

The said writ petition was disposed of with a direction to the respondents to grant the benefit of Vth and VIth Pay Commission. The State Government aggrieved by said order preferred Writ Appeal No.361/2011 which was dismissed on 27.7.2011. The Division Bench while dismissing the writ appeal observed:

"4. From the facts of the case it is clear that the respondents employees were sent on deputation on the terms and conditions fixed by the Government. Subsequently the General Administration Department clarified that the respondents employees shall be entitled the D.A and other allowances at par with the Government employees. The Government also sanctioned the post against which respondents employees are working. It is also a fact that the appellant department M.P. State Cooperative Oil Seed Growers Federation has become defunct and there is no possibility to send the respondents employees back to their parent department. Virtually the respondent employees have been absorbed in their present post of deputation. In such circumstances, the direction issued by the learned Single Judge that the respondents employees are entitled the benefits of 5th and 6th Pay Commission recommendations is in accordance with law.

5. Learned Government Advocate appearing on behalf of the appellants/State has submitted that the respondents employees are entitled salary as per the salary they were receiving in their parent department. In support of his contention learned Government Advocate relied on the judgment of the Division Bench of this Court in the case of State of M.P and others Vs. Vinod Mohan Shrivastava ILR (2008)MP 1869. However, the aforesaid argument cannot be accepted because the respondents employees were sent on deputation as per the norms and conditions fixed by the Government. Apart from this there is no more the parent department of the respondents employees and the parent department

has become defunct. Hence the respondents employees are working under the control of the State Government. Hence they are entitled for the same benefit.

An SLP (Civil) No.31673/2011 preferred there against was dismissed on 15.4.2013.

Since the issue raised in this petition is similar to that Dinkar Pratap Singh Chouhan and another Vs. state of M.P and others (supra) while quashing the order of recovery dated 2.7.2009 the respondents are directed to abide by judgment/ decision rendered in Dinkar Pratap Singh Chouhan and another Vs. State of M.P and others (supra).

The petition is allowed. There shall be no costs."

A co-ordinate bench of this court has already held that employees of Oil Federation during deputation period are entitled for the benefit of 5th and 6th pay commission. Petitioner is entitled for the benefit of 5th and 6th Pay Commissions as per his entitlement at the relevant point of time. Hence the petition is allowed. Respondents are directed to extend the benefit of 5th and 6th Pay Commissions to the petitioner as also to pay the arrears within the period of 90 days from production of certified copy of this order.

C.c. as per rules.