(2014) 11 MP CK 0100

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6548/2009

Ram Gopal Kewat APPELLANT

Vs

Secretary, The State of Madhya Pradesh RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Citation : (2014) 11 MP CK 0100

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : A.K. Gupta, Learned Counsel, Advocate for the Appellant; Amit Pandey, Learned Panel Lawyer, Advocate for the Respondent

Judgement

Vandana Kasrekar, J.—With the consent of learned counsel for the parties, the matter is heard finally.

2. The petitioner has filed the present petition challenging the order dated 12/6/2009 passed by respondent No. 3 thereby retiring the petitioner retrospectively w.e.f. 31/12/2007. A show cause notice was issued to the respondents and the respondents have filed their reply also.

3. The contention of learned counsel for the petitioner is that the petitioner cannot be superannuated retrospectively w.e.f. 31/12/2007. Learned counsel further submits that the said order is passed due to non-availability of the service book of the petitioner. He further argued that as the petitioner has worked on the said post from 31/12/2007 to 12/6/2009 and, therefore, the salary cannot be recovered from him.

4. On the other hand, learned Panel Lawyer for the respondents submits that the order dated 12/6/2009 by which the petitioner was superannuated retrospectively w.e.f. 31/12/2007 was passed because service book of the petitioner was not available with the Office and, therefore, learned Penal Lawyer support the impugned order.

5. Heard both the parties.

6. In the present case, the respondents have passed an order dated 12/6/2009 by which they have retired the petitioner retrospectively w.e.f. 31/12/2007 and also directed to recover the amount of salary paid to the petitioner after 31/12/2007. Hon''ble the Apex Court in the case of State of Bihar and Others Vs. Pandey Jagdishwar Prasad, has held as under :

"24. Considering the fact that there was no allegation of misrepresentation or fraud, which could be attributed to the respondent and considering the fact that the appellant had allowed the respondent to work and got works done by him and paid salary, it would be unfair at this stage to deduct the said amount of salary paid to him. Accordingly, we are in agreement with the Division Bench decision that since the respondent was allowed to work and was paid salary for his work during the period of two years after his actual date of retirement without raising any objection whatsoever, no deduction could be made for that period from the retiral dues of the respondent.

29. It should also be kept in mind that the respondent might have expected that the second date of birth shown in the service book was accepted by the authorities for that reason he was allowed to continue in his service and was paid salary. In the absence of any proof that the respondent had manipulated his date of birth by entering a second date at a later stage, and that he had any malafide intentions to continue his service, beyond his date of retirement, we are of the view that the decision in Radha Kishun Vs. Union of India, would not be applicable in the facts of the present case."

7. From perusal of the aforesaid paragraphs, it is clear that the respondents have not made any allegation of misrepresentation or fraud of the petitioner and as the respondents have allowed to work to the petitioner, therefore, it would be unfair, at this stage, to deduct the said amount of salary to him. Keeping in view the aforesaid judgment of the Hon''ble Apex Court as the respondents have allowed the petitioner to work and got the work done by him and paid salary, certainly not entitled to be recovered. This is a case where the petitioner was permitted to continue beyond the age of superannuation due to non-availability of the service book of the petitioner in the Office and, therefore, the question of recovery, in the peculiar facts and circumstances of the case, does not arise. So far as the period of counting of two years'' service of the petitioner is concerned, the same relief cannot be granted to the petitioner since there is a dispute regarding date of birth of the petitioner as recorded in the service book.

8. Resultantly, the writ petition is disposed of with direction that the respondents are restrained from recovering any amount from the petitioner after 31/12/2007. However, the period of two years of service shall not be counted towards service of the petitioner. His pension and retiral dues will be calculated w.e.f. 31/12/2007.

9. The writ petition is, accordingly, disposed of with no order as to cost.

10. Certified copy as per rules.

