

(1981) 10 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 575 of 1980

Ramesh Kumar Mishra

APPELLANT

Vs

State of M. P. and others

RESPONDENT

Date of Decision : 21-10-1981

Acts Referred:

Madhya Pradesh Subordinate Accounts Service (Recruitment and Conditions of Service) Rules, 1965 — Rule 34, 35

Citation : (1983) J LJ 358 : (1983) MPLJ 204

Hon'ble Judges : G.L. Oza, J

Bench : Single Bench

Advocate : P.C. Pathak, for the Appellant; R.R. Verma, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, J.

This petition has been filed by the petitioner, who is a District Treasury Officer, Durg, seeking a direction for quashing of the order passed by the Sahayak Sanchalak dated 24-6-1978, an order by the same authority dated 30-7-1979 and the order passed by Awar Sachiv, Government of Madhya Pradesh, Finance Department, Bhopal dated nil of March 1980.

According to the petitioner, he appeared in the examination conducted by the Public Service Commission, Madhya Pradesh in 1969. He was appointed in the Madhya Pradesh Accounts Service by an order which was delivered to him on 21-6-1971 and he joined his duties on 21-6-1971. The order of his appointment was issued in the pay scale of Rs. 300-300-25-400-EB-30-550-550-25-700-700-EB-25-850. This pay scale of the petitioner was revised on the recommendations made by Pandey Pay Commission and the Pay Commission's recommendations were made applicable to the employees of the State from 1-1-1972. The Accountant General, Madhya Pradesh fixed the petitioner's pay on 1-1-1972 at Rs. 425 and on the basis of the revised pay scale in the Madhya Pradesh

Accounts Service, according to the petitioner, he was entitled to the pay scale of Rs. 425-25-500-680-EB-40-800-50-1050.

According to the petitioner, he passed the prescribed departmental examination on 25-11-1972 and the petitioner's pay was fixed at Rs. 490 in accordance with the pay scales revised by the Pandey Pay Commission, it is also alleged by the petitioner that he was confirmed with effect from 21-6-1973. According to the petitioner, on his confirmation, he was entitled to an increment and, in fact, an increment was given to the petitioner after passing his departmental examination on 21-6-1972 during the probationary period and he, therefore, contends that he was entitled to another increment on his confirmation and thereafter entitled to increments.

According to the petitioner the annual increment fell due on 22nd June of every year and, therefore, he was entitled to the second increment on 22-6-1973 raising his pay to Rs. 475 and according to him, this was not given to him whereas he was allowed to draw the next increment on 21-6-1974 according to the pay slip issued by the Accountant General, Madhya Pradesh.

The petitioner thereafter made representation to the Deputy Director, Treasuries, Raipur Division but it was returned with a direction that he should get his pay regularised from the Accountant General, Madhya Pradesh. According to the petitioner, after October 1976, as all the Gazetted Officers were re-Gazetted for purposes of pay and allowances the petitioner could not make a representation to the Accountant-General. He, therefore, submitted his representation to the next higher authority i. e. Director of Treasuries and Accounts, who is also the head of the department and according to the petitioner this representation was rejected by order dated 24-6-1978, which he has filed as Annexure "J" and which is one of the orders sought to be quashed by this petition.

The petitioner submitted his appeal through proper channel to the Secretary, Finance Department. His appeal was rejected vide order dated 30-7-1979 which is another order which the petitioner seeks to be quashed. The petitioner alleges that he also made a review petition to the State Government on the ground that in all other services of the State after the Pandey Commission's report was accepted, after passing of the departmental examination, they were given the benefit of increments without any stop regularly. But according to him, by the order passed by the State Government dated 19-3-1980 his review petition was rejected, which is Annexure "N" which is the third order the petitioner seeks to quash.

According to the petitioner the petitioner was appointed in the Accounts Service and Rules 34 and 35 of the M.P. Accounts Service (Recruitment and Conditions of Service) Rules, 1965 as they stand, do not permit the stoppage of increment upto completion of 3 years service as after the Pandey Commission's report, the revised pay scale is not as it originally stood in Rule 34. It is also alleged by the petitioner that Rule 35 is applicable only to the case of probationers and on

confirmation the Fundamental Rules will be applicable as Rule 35 only pertains to "pay during probation".

In the return filed by the State Government facts are not disputed. What is contended by the State is that as the petitioner being in the Accounts Service he is governed by M. P. Accounts Service (Recruitment and Conditions of Service) Rules, 1965 and these rules apparently will over-ride the provisions contained in the Fundamental Rules in view of the language of Rule 21 of the Fundamental Rules and according to the respondent State, in view of Rule 35 of the M. P. Accounts Service (Recruitment and Conditions of Service) Rules, 1965 as the petitioner earned one increment during the probation on his passing the Departmental Examination, he is not entitled to a second increment unless he completed 3 years service and that being so, the claim of the petitioner is not justified.

According to the respondent State, Rule 35 would be applicable even after the petitioner was confirmed and he could not contend that after his confirmation, he will be governed by Fundamental Rules.

It is not disputed even by the learned counsel for the petitioner that if the special rules made for a particular service are to any extent inconsistent with the Fundamental Rules, the special rules will govern. But the contention of the learned counsel for the petitioner was that Rule 35 will not be applicable after the petitioner is confirmed and it was further contended that the language of Rule 35 may be alright in view of language of Rule 34 as it stood originally, as in Rule 34 the pay scale is indicated to be 300-300-25-400-EB-30-550-25-700-700-EB-25-850. This repetition of 300-300 indicates that the appointee will not be entitled to an increment until he completes 2 years service and in this view, what is stated in Rule 35 appears to be that after passing his Departmental Examination during the period of probation he will be entitled to one increment but thereafter he will only get the increment after he completes 3 years service. But according to the learned counsel for the petitioner after the pay scales were modified in accordance with Pandey Commission's report, the pay-scale which is now available in Accounts Service, there is no repetition of the basic pay for two years as originally was in Rule 34 and after this report was accepted, it was stated by the learned counsel, Rule 34 has been amended and the pay scale has been shown as accepted on Pandey Commission's report where there is no repetition of the original pay scale.

It is, therefore, plain that the sole question that arises in this petition is about the interpretation of Rule 34 and Rule 35. These two rules, originally as they stood, read :-

Scale of Pay:-The scale of pay admissible to the members of the service shall be such as may be sanctioned by Government from time to time. The scale sanctioned at present is Rs. 300-300-25-400-EB-30-550-550-25-700-700-EB-25-850.

""Pay during Probation:-An officer appointed to the service by direct recruitment shall draw pay at the minimum of the scale during the period of probation. He shall be eligible to draw the first increment only after passing the Departmental Examination. In the case where this increase in pay accrues during the period of probation consequent on one's passing the examination earlier, the date of subsequent increment will still continue to be at the end of 3 years of completed service. If an increment of an officer is withheld on account of his failure to pass a departmental examination, it shall be allowed to him on passing such examination from the first day of the month following that in which the examination concerned is held and the period during which the increment is withheld shall count for increment in the time scale.

After the amendment in 1980 in Rule 34, the pay scale mentioned in this rule has been substituted and it reads now : Rs. 425-25-500-30-680-EB-40-800-50-1050. This amended position of Rule 34 is also not disputed by learned Deputy Advocate General who appeared for the State. Rule 34 only talks of the pay scale admissible to the members of the Service and after the amendment in 1980, the scale has been stated as stated above. It is not now in dispute that in this pay scale which is now stated in Rule 34, there is no repetition of initial pay as it was originally and on this basis, it was contended that on appointment under this rule, a person will be entitled to the first increment after one year.

Rule 35 starts with a heading "Pay during Probation" and the first part of it shows that a person directly recruited shall draw the minimum of the pay scale during the period of probation. It is not in dispute that the normal period of probation is two years and it could only be extended for one year more. It is also not in dispute that the period of probation could not continue for more than 3 years. The first part of this rule, therefore, shows that a person appointed by direct recruitment will get the minimum salary during his period of probation but this does not say anything about the pay scale after his confirmation.

It is further stated in this rule that he shall be entitled to draw the first increment after he passes his Departmental Examination. It is, therefore, clear that this is an exception carved out from the principle stated in the first part of this rule. To this extent, there is no dispute between the counsel for the petitioner and the learned Deputy Advocate General. It is the next part of this rule which is the subject-matter of controversy. This part of the rule reads : -

In the case where this increase in pay accrues during the period of probation consequent on one's passing the examination earlier, the date of subsequent increment will still continue to be at the end of 3 years of completed service.

It was contended by the learned counsel for the petitioner that this language indicates that even if an increment is earned earlier as Rule 34-originally as it stood- did not contemplate an increment upto the end of two years service, it was provided in this rule that then the next increment will only be after

completion of 3 years service so that even by passing the Departmental Examination earlier, the person concerned does not go beyond the pay scale indicated in Rule 34, as in Rule 34 a person after completing 3 years service will only be entitled to two increments. Therefore, this rule provides that even if he earns the first increment earlier on account of passing the Examination, he will only get the second increment after the end of 3 years service. But it was contended by the learned counsel for the petitioner that this interpretation, in the light of the amended Rule 34 where it is not provided that a person will not get the increment upto the end of 2 years service will not be justified.

It was also contended by the learned counsel for the petitioner that the heading of this rule 35 talks of "Pay during Probation" and it, therefore, clearly appears that this rule will only apply to a person continuing in probation upto the end of 3 years service. But it cannot be made applicable to a person who is confirmed on 2 years service.

Learned Deputy Advocate General contended that although Rule 34 has been amended and in the pay scale now substituted, there is nothing to indicate that for the first 2 years there will be no increment. But, according to him, Rule 35 itself is a self-contained rule and in the first part it clearly provides that during the period of probation a person will not be entitled to an increment. He will draw the minimum salary. According to him, the second part of the rule provides an exception, which is a sort of incentive given to the employees to pass the Departmental Examination and it provides that on passing of the Departmental Examination although ordinarily a person may not be entitled to an increment during the period of probation but he will be given one increment after his passing of the Departmental Examination during the period of probation. But in order to keep him equal to all others who may not be able to pass the Departmental Examination earlier, the last part of the rule, which is the matter of controversy, provides that the second increment will only be granted after completion of period of 3 years service. In substance, the argument of the Deputy Advocate General leads to the inference that although when an employee passes the Departmental Examination earlier, he is given the advantage of one increment during the period of probation but the rule is such that still he will not get any advantage over others as he will get the second increment only after completion of 3 years service.

Learned Deputy Advocate General further contended that heading of this rule "Pay during Probation" no doubt governs the first two parts of this rule but this part, which is controversial and stated above, will govern even the cases of those who are confirmed after completion of period of 2 years service. This argument leads to an inference that a person who may be good enough to be confirmed within the requisite period of two years will be treated alike with those who may not be good enough and may have to be continued on probation for 3 years. Such a situation does not appear to be logical intention of this rule to treat those who are good enough to be confirmed within 2 years in the similar manner to

those who are not good enough to secure confirmation within 2 years and have to be continued on probation for 3 years, and in order to solve this, it appears that the heading or the first phrase of the rule is significant. This Rule 35 falls in Part VIII-Pay. Under this part, Rule 34 starts with the words "Scale of Pay" and it provides the scale of pay of the person entering into service. Rule 35 starts with the words "pay during probation" and thereafter the rest of the rule is mentioned. This is, therefore, apparent that it could not be contended that these words "Pay during Probation" printed in the capital in the first part of this Rule 35 are redundant or they have been added without any purpose. If the argument of the learned Deputy Advocate General is accepted it will only mean that this Rule 35 will govern even the cases of those who are confirmed, then these starting words appear to be meaningless. An attempt was made to suggest that they are just the heading of the rule and, therefore, not much significance could be attached to them. Even if these words "Pay during Probation" are read as heading, it could not be disputed that it is the part of the Statute (rules) itself. It could not be described as marginal notes which may not be part of the rules themselves.

As regards "Headings" the observations from Craies on Statute Law are significant:

They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to go to explain its enactments, but as affording as it appears to me a better key to the constructions of the sections which follow them than might be afforded by a mere preamble.

Similarly, even about "Sub-headings", the following observations from the same author are significant: -

It was at one time supposed that Courts of law would not recognise the division into parts or the headings as substantive parts of the Act. But they have now won recognition as a kind of preamble to the enactments which they precede, limiting or explaining their operation.

And ultimately quoted the decision of the House of Lords in *Lang v. Kerr, Anderson & Co.* (1078) 3 App. Cas 529 : 536 LC 542 Lord Hatherley as under: -

So, too, in *Lang v. Kerr, Anderson & Co.* the House of Lords held that the headings in a local Act should be considered as limiting the generality of terms used in the Act as those headings were referred to in the body of the Act itself. Lord Cairns said: "These headings in this Act are not to be looked upon as marginal notes, inserted, perhaps, not by Parliament, but by the printer, because they are referred to in the body of the Act itself". And Lord Hatherley said that the parts or divisions of the Act were parts of the body of the Act itself, and not marginal notes.

The observations clearly go to show that even the headings will provide an

important key to interpretation of the rule of the Statute. It is very clear that the heading here which is more or less a part of the rule itself but stated in capitals clearly go to show that this rule is provided for pay during the probationary period. The Hindi version of this rule also clearly indicates that these words- are not anything else but the part of the rule itself. Rule 35 in Hindi reads:-

The principle of interpretation quoted above has also been accepted by their Lordships of the Supreme Court in *Bhinka and Others Vs. Charan Singh*, and their Lordships approving a passage quoted by their Lordships from "*Maxwell on Interpretation of Statutes*" stated thus :-

The headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words.

If there is any doubt in the interpretation of the words in the section, the heading certainly helps us to resolve that doubt.

It is, therefore, clear that if these words are read as part of the rule itself, there is no doubt left that this rule governs only the case of probationers and not those who are confirmed. Even if these words are read as a heading, being the part of the rule itself, the observations quoted above go to show that it provides at least a key to interpretation of the language of this rule and, as discussed earlier, the logical conclusion can only be that if a person continues on probation then alone this rule will be applicable as he cannot be treated on the same basis as a person who was good enough to be confirmed within the prescribed period of probation i.e. 2 years.

In this view of the matter, in my opinion, there is no doubt that the petitioner after he was confirmed was entitled to next increment and Rule 35 could not be used to stop him from getting that increment. The amendment made in Rule 34 where there is no repetition of the same pay for first 2 years and in spite of this amendment in Rule 34, Rule 35 has not been amended also goes to show that Rule 35 will only be applicable to the case of probationers only.

It is not disputed that first 2 parts of this rule are meant for probationers only. But an attempt was made by the learned Deputy Advocate General to contend that the third part i.e. the controversial part quoted above will govern not only the probationers but also the confirmed employee. But there are no words in this rule which could be used to draw this distinction between the first two parts and the third part and this, therefore, also is an additional reason which goes to show that this rule was only meant for those who continue on probation for 3 years.

It is also significant that this rule provides for a second increment only after completion of 3 years service. The use of 3 years in this rule is significant as it is apparent that under the rules no one could continue on probation for more than 3 years and this also indicates that this rule was enacted only for those who continue on probation. In the light of the discussion above, therefore, it is clear

that as soon as the petitioner was confirmed after completion of his period of 2 years, this rule cannot be invoked to deny him what otherwise under Rule 34 he is entitled to i.e. the second increment on completion of 2 years service.

It was also contended by the petitioner that in rules laying down conditions of service of other services in the State, rule like Rule 35 has not been provided and an employee after completion of his period of probation gets his second increment if he has earned one after passing his examination during the period of probation. The learned Deputy Advocate General frankly conceded that this situation or the rule like 35 is only in the conditions of service of Accounts Services and the rules for other services do not contain such a rule although there is no challenge to the rule by the petitioner on the basis of discrimination nor it is necessary in view of the interpretation which is clear enough as discussed above.

In this view of the matter, therefore, the petition is allowed. The impugned orders could not be justified. They are, therefore, set aside and it is directed that the petitioner's pay shall now be fixed in the light of the interpretation of the rule stated above considering the petitioner to be entitled to second increment after completion of 2 years' service. In the circumstances of the case, parties are directed to bear their own costs. The security amount deposited by the petitioner shall be refunded to the petitioner.