
(1985) 08 MP CK 0011
In the Madhya Pradesh High Court
Case No : M.P. 439 of 1984

Ramgopal Shankarlal Vyas

APPELLANT

Vs

District Education Officer, Ratlam and others

RESPONDENT

Date of Decision : 26-08-1985

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)
Madhya Pradesh Revision of Pay Rules, 1983 — Rule 7

Citation : (1986) JLJ 30 : (1986) MPLJ 181

Hon'ble Judges : V.D. Gyani, J

Bench : Single Bench

Advocate : A.K. Sethi, for the Appellant; A.H. Khan, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, J.

By order dated 24-7-1985 this petition was directed to be heard along with Misc. Petitions Nos. 454 of 1984 (Yeshwant Gawate v. State of M.P. & ors.), 455 of 1984 (Vallabhdas Gupta v. State of M.P. & ors.), 440 of 1984 (Badrilal Solanki v. Distt. Education Officer & ors.), 623 of 1984 (Ratansingh v. State of M.P. & ors.) and 975 of 1984 (Kanhaiyalal Vyas v. District Education Officer & ors.). As all these petitions involve a common question of law, the only difference even in facts is with regard to the school or schools in which the petitioners served their length of service the times of promotion as Head Master are also materially the same. They are, therefore, heard together and are being decided by a common order. The order in this petition shall govern the disposal of all these petitions.

The following Chart gives a clear picture of service record of each of the petitioners:

Pet.. No.

Petitioner"s Name

Name of School

Length of Service as Head Master.

Date

of

impugned order

975/84

Kanhaiyalal

Primary School

9 Years.

16-6-1984.

440/84

Badrilal.

Primary School

9 Years.

16-6-1984.

439/84

Ramgopal.

Primary School

10 Years.

16-6-1984.

623/84

Ratansingh.

Middle School

18 Years.

25-6-1984.

454/84

Yeshwant.

Middle School

9 1/2 Years.

25-6-1984.

455/84

Vallabhdas.

Primary School

21 Years.

13-1-1984

The length of service as Head Master is of considerable importance. Four petitioners have served as Head Master for almost about ten years while the two remaining have served for about two decades prior to their reduction in rank as Assistant Teachers.

Material facts are not in dispute. The petitioners' claim of satisfactory service as Head Master; their transfer and posting as Head Master from one school to another and that they were paid Rs. 25/- per month as special pay for working as Head Master are not disputed. Even otherwise they are not very material for deciding these petitions.

A Pay Commission (headed by Shri M.R. Choudhary) was appointed by the State Government known as "Choudhary Pay Commission" for the purpose of revision of pay-scales of various Government servants, including teachers. The recommendations of the Pay Commission Rules known as M.P. Revision of Pay Rules 1983 were framed by the Government. Under the revised pay-scales the Head Master, whose pay-scale was Rs. 169-300 + Rs. 25/- as special pay was revised as Rs. 635-950 without any special pay and the pay-scale of Lower Division Teachers was revised from Rs. 169-300 to Rs. 545-925. On the basis of this revision of pay-scales the petitioners contend that the post of Head Master is higher in rank and carries a higher pay-scale. Now that the petitioners have been reverted back to the post of a teacher they have come out with these petitions with a grievance that this reversion amounts to reduction in rank which could not have been legally done without following the due procedure and affording a reasonable opportunity of hearing to the petitioners, as contemplated by Article 311 of the Constitution which admittedly in these cases has not been done.

The stand taken by the respondent State is that there was no post of Head Master prior to the recommendation of the Choudhary Pay Commission and it was only after the recommendations were accepted and implemented by the State Government that separate posts of Head Masters were created. Prior to this there was neither a cadre nor separate posts of Head Master. Those persons who were senior-most in a particular institution were asked to work and assigned the work of Head Masters for which they were paid a special pay of Rs. 25/- per month.

The respondents also contend that after creation of the post of Head Masters and senior-most teachers in the district were selected on seniority-cum-merit basis and were promoted to the posts of Head Masters in different schools in the

Districts, all over the State. Some of these promotees were actually working as Head Masters even prior to the implementation of the Choudhary Pay Commission. It is also submitted that the promotion to the post of Head Master is based on seniority-cum-merit. There are many others who have been promoted as Head Masters from the post of Lower Division Teachers although they had not worked as Head Masters prior to their promotion.

Petitioners' grievance is not about those who were actually working as Head Masters and as a result of the report of the Choudhary Pay Commission got the benefit in pay-scales and remained and retained the post of Head Master. Their grievance is mainly against their own reduction in rank. Those who had been working for years together as Head Master drawing special pay of Rs. 25/- have now been reverted back to the post of Lower Division Teachers or Assistant Teachers. Their contention is that Article 311(2) of the Constitution of India is violated. Such reversion being unfair and illegal should not be allowed to stand. The respondents on the other hand contend that there was no such cadre of Head Masters in existence, therefore, no question of pay reversion. Thus, the real controversy in these petitions lies in a short compass.

The first question which arises for consideration is whether the orders dated 16-6-1984 and 25-6-1984 passed against the petitioners amount to a reduction in rank. The orders read as follows:

Order dated 16-6-1984

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A perusal of these orders itself goes to show that the petitioners were working as Pradhan Adhyapaks (Head Masters) at the relevant time and were transferred and posted to other Schools as Assistant Teachers, resulting in their being reduced in rank as an Assistant Teacher. The Order dated 16-6-1984 recites and refers to a Memo dated 23-4-1984 issued by the Director, Public Education, Bhopal which resulted in the petitioners' reduction in rank as it was in pursuance to this direction that the petitioners were reduced in rank. On the same day by another order number of other Assistant Teachers were promoted and appointed as Pradhan Adhyapaks (Head Masters) in compliance of the Memo dated 23-4-1984 issued by the Director of Public Education. The petitioners seek to quash both these orders by these petitions.

Order dated 16-6-1984 passed by the District Education Officer. Ratlam is the subject matter of challenge in Misc. Petition No. 440 of 1984, Misc. Petition No. 975 of 1984 and Misc. Petition No. 439 of 1984 while in Misc. Petition No. 454 of 1984 and in Misc. Petition No. 623 of 1984 the order dated 25-6-1984 passed by the Divisional Superintendent of Education Indore Division, Indore is under challenge. Misc. Petitions Nos. 439/84, 440/84 and 975/85 relate to Primary School teachers of Ratlam district while the other two Petitions Nos. 454, 84 and 623/84 relate to Middle School teachers of Indore division, Indore. Misc. Petition No. 455 of 1984 is a petition of representative character and seeks the relief for

all Head Masters suffering like the petitioners. In this petition the petitioner has averred that about 300 to 400 Head Masters in Indore district alone are affected by the order dated 13-1-1984 (Annexure-B) in Misc. Petition No. 455 of 1984 which reads as follows:

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The petitioners contend that by issuing such directions the respondent-State has deprived the petitioners and many others like them the benefit of the revised pay-scales of Head Masters, the post which they were holding for years. In this case the petitioner, Vallabhdas Gupta has put in about 20 years service as Head Master and now he has been denied the benefit of the revised pay-scales by asking him to work as a Lower Division Teacher.

The Memorandum dated 13-1-1984 issued by the respondent No. 1 is challenged on the ground that it is violative of Article 311 of the Constitution of India inasmuch as the petitioners have been reduced in rank and denied the revised pay-scales applicable to the Head Master. The decision by respondent No.1 is assailed as arbitrary, unjust and illegal, violative of Articles 14 and 16 of the Constitution of India.

The respondent State having taken the stand that there was neither any cadre of Head Masters nor post as such has also contended that the continuance of the petitioners on the posts of Head Masters under the previous arrangement is totally "irrelevant" and of no consequence at all.

It is also their contention that mere appointment as Head Master in a particular institution under the previous-arrangement did not vest or create any right in the employee to continue on that post and on transfer he could well have been required to work in the grade of Asstt. Teacher to which he belonged if another senior person in the institution to which he was transferred was available and working as Head Master.

It is admitted by the respondent State that a separate grade and cadre of Head Master has been created in accordance with the recommendations of the Choudhary Pay Commission. It is also admitted that the post created now carries a time scale of higher pay but it is contended that mere creation of a separate cadre and a separate grade would not automatically entitle the petitioners to promotion in the higher grade unless the petitioner in his turn is considered and promoted as Head Master. It is their case that with a view to promote the eligible teachers as Head Master seniority list was prepared and the persons falling within the zone of consideration were duly considered for promotion to the post of Head Masters.

Taking an example from amongst all these petitions of petitioner Vallabhdas in M.P. No. 455/84 who is at S.No. 465 the respondents have averred that Teachers upto Serial No. 291 have been considered for promotion and depending upon the vacancies the petitioner in his turn shall also be considered in due course.

The petitioner Vallabhadas has on the other hand assailed the State policy as unreasonable and arbitrary. It is significant to note that the petitioners who have been working as Head Master for almost a decade and in case of two of them for almost 2 decades are being considered and treated as Asstt. Teachers or Lower Division Teachers and not Head Masters as such. Their seniority is not counted on the basis of their officiating as Head Master but on the basis of their appointment as Lower Division Teacher or Asstt. Teacher and it is this action of the respondent State which is challenged as arbitrary and illegal. The petitioners aver that they had been given the post of Head Master in order of seniority and after refusal by their senior (at the time of offer of Head Mastership the refusal on their part to accept the job on their own volition and to suit their own convenience for remaining in the places of their choice as the acceptance of Head Mastership in Primary Schools and middle school invariably entailed transfer to distant places far away from the Tahsil and District Towns having once refused to accept the offer of being posted as Head Master the petitioners contend that they cannot now be benefited by marring the rights of the petitioners and their like. It is urged that now in view of the revised pay scales those who refused to accept the promotion as Head Master on considerations of monetary gain or loss as in those days the post merely carried a special pay of Rs. 25/- and today it carries and means a substantial difference in pay of those who had refused are now coming forward and the respondent State is benefiting them by ignoring the rightful claims of the petitioners.

The petitioners have yet another grievance which appears to be quite genuine. Their submission is that in view of the new policy adopted by the respondent State they will be required to work under such new promotee Head Masters who have in fact worked for decades under them as Asstt. Teachers and this awkward and anomalous situation is created by the arbitrary and illegal acts on the part of the respondent State. The petitioners have also claimed that having put in more than 9 years, service as Head Master they have become quasi permanent in the post and as such are entitled to the protection under the M.P. Government Servants Temporary and Quasi-permanent Service Rules, 1960. Rule 3 thereof lays down as to who can be deemed to be in quasi-permanent service. The petitioner's long officiation as Head Master for about 10 years in case of four petitioners and 18 and 21 in case of other two is not in dispute. What the respondents have contended is that their officiation was not against the post but merely against the special pay of Rs. 25/-. This contention is wholly untenable (see return para 7 in M.P. No. 455/84)-

On account of the seniority however he was posted as Head Master against the payment of special pay for this additional work.

There can be no officiation as against pay scale. Officiation is always in respect of some post and the fact that the petitioners have worked for such a long period cannot be obliterated or effaced on the much harped ground that there was no regular cadre of Head Master.

It is an indisputable fact that the petitioners had been working as Head Master for decades even prior to the Pay Commission. It can also not be doubted that the petitioners and many others of their like were given these posts only on being refused by those who were seniors to the petitioners but did not like to be transferred in remote village. The question that falls for consideration is whether those who worked for all these years in remote villages as Head Masters on a nominal special pay of Rs. 25/- be denied their rightful claim of revised pay scales, which now appears to be rather attractive even to those who had once refused the offer. The petitioners' officiation although might have been for a meagre amount of Rs. 25/- yet it cannot be ignored. It is not the case of the respondents that the petitioners' officiation as Head Masters was for a limited specific period or that they were appointed to work as Head Master purely on temporary basis. The post, and a large number of them in each District amply establishes the fact that there was well knit, well administered cadre of Head Masters of Primary Schools and Middle Schools in the Districts although the post merely carried a meagre amount of Rs. 25/- as special pay; there were posts of Head Masters which were manned by the petitioners and many others like them the respondents contention that there was no cadre as such is based on too technical a view and interpretation of the term "cadre".

The respondents' contention that the cadre of Head Masters has been created as a result of the Choudhary Pay Commission also appears to be erroneous. What has been done by the Pay Commission is revision of pay scale and not creation of a new cadre or post. In this view of the matter the petitioners' claim and entitlement to the revised pay scales as Head Master appears to be quite justified. The petitioners have also based their claim for seniority as Head Master from the date of officiating in the said post (Head Master) as such and for all practical purposes of seniority officiating in a post is as good as service on regular basis. The respondents contention that in absence of a regular cadre of Head Master of Primary and Middle Schools the petitioner officiating in the post is of no consequence at all cannot be accepted. Decades of service in the post of Head Master cannot be easily legally brushed aside particularly when there are rules such as M.P. Temporary and Quasi -permanent Service Rules, 1960. The time honoured classification of Government Servants "temporary", "permanent" and "officiating" come for sharp criticism by the Supreme Court in a very recent case as reported in *Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others*, . Government Servant serving for decades in a post known to be not a casual vacancy but a regular post experimentally or otherwise kept as "temporary" under the time honoured classification it cannot be said that his long officiating is turned to ashes merely because of the label of "temporary" or "officiating" or holding the post with a special pay.

Now cadre as defined by the fundamental rules means the strength of service or a part of a service sanctioned as a separate unit. A cadre may consist only of permanent post or sometimes as is common these days also of temporary post, see *A.K. Subraman and Others Vs. Union of India (UOI) and Others*, . The fact

that special pay was sanctioned only for those who were appointed as Head Masters amply goes to prove that there existed a cadre of Head Masters although the circumstances in which this cadre was created and the special pay sanctioned for them may not be very clearly emerging from the record of these petitions but it unfailingly points to the fact that there existed a regular cadre of Head Masters who were given a special pay of Rs. 25/-. It may be on refusal by the senior most Teacher or by option on the part of the next one that an Asstt. Teacher was appointed as a Head Master and paid a special pay of Rs. 25/-. Even this special pay of Rs. 25/- had undergone revisions.

The crucial question falling for consideration in these petitions is if there existed a regular cadre of Head Master under the State then the respondent is obliged to consider the petitioners' length of service as Head Master for the purposes of determining their seniority and pay them the revised pay scales as applicable to the Head Masters. The minimum length for service of any of the petitioners in these petitions is over 9 years and maximum 20 and the number of posts of Head Masters in Primary Schools in Ratlam District and Middle Schools in Indore Division even according to the figures given by the respondents exceeds 100 in these two Districts alone. Taking the State as a whole where there are 48 Districts the number of such Head Masters can well be calculated or at any rate can fairly be approximated. It is inconceivable that such a large number of Head Masters were paid special pay and they were allowed to work as such with such special pay for years and years together the same could not have been allowed to continue unless there were sanctioned posts of Head Masters consequently the existence of a cadre cannot be denied. For this reason there appears to be no justification for refusing the petitioners the benefit of the revised pay scales as Head Master actually working when the report of the Pay Commission came the same is true in respect of the petitioners, seniority which has to be determined on the basis of their length of service as Head Masters.

It is to be noted that the petitioners' length of service as (Head Master) has not been disputed by the respondents; what is contended is that there was no regular cadre of Head Masters duly sanctioned as such. The respondents have not urged any other point or placed any other material in any of the petitions to dislodge the conclusion about the existence of a cadre of Head Masters.

With regard to the revised pay scales Rule 7 of the M.P. Revision of Pay Rules 1983 framed by the respondent State under Article 309 of the Constitution of India which came into force on 1-4-81 the petitioners are entitled to the revised pay scales as there is no opposition to their claim on this account, What has been opposed is not even their actual working as Head Master but the denial of the fact that there existed a cadre of Head Masters in the State. It is not disputed that as per Rule 7 of the aforesaid Rules the fixation of initial pay in the revised pay scales has to be made in accordance with Annexure II, Part B framed under Rule 3 of the aforesaid rules at serial No. 23 under the heading Education Department. The petitioners' entitlement to this revised pay scales has in fact

not been disputed on any justifiable grounds except that there existed no cadre of Head Master.

The other grievance made by the petitioners is about their reduction in rank. It is not in dispute that they were working as Head Masters and by the impugned orders they have been asked to join at different places as Asstt. Teachers in other schools. The respondents contend that there is no question of any reversion or any reduction in rank for the reason that the petitioners were not holding any substantive post of Head Master, according to them there was no cadre of Head Masters as such. Therefore no question of any reversion or reduction in rank arises.

Now that it has been held above that there existed a cadre and the fact that the petitioners had served for such a long period extending over a decade and more as Head Master, it cannot be said that asking such Head Masters to join as an Asstt. Teacher does not amount to reversion or reduction in rank.

An order of reversion is in its immediate effect is bound always to be a reduction in rank. Even a reversion from a higher but temporary or officiating rank to a lower substantive rank is in a sense a reduction in rank though it may or may always not be so within the meaning of Article 311 of the Constitution. However the factual position in these petitions is different. The petitioners were appointed to work as Head Masters not for a specific limited period in fact they have worked for almost a decade and more than that and there can be no dispute with regard to the fact that the post of a Head Master is superior in rank to that of an Asstt. Teacher. In such circumstances the petitioners have got a right to that post of Head Master and if for some reason they are reverted to the lower post than the post or rank which they held before is certainly a reduction in rank in the sense in which the expression is used in Article 311 of the Constitution of India. The real test in such matters is to ascertain if the person concerned has a right to the post from which he is reverted. The petitioner Vallabhdas Gupta has put in more than 21 years service as Head Master, an un-controverted fact it cannot be said that he has no right to the post from which he is now sought to be reverted. The same is the case with other petitioners who have put in service as Head Master for over 9 years. If he has a right to the post and in these petitions, the petitioners, do have, then a reversion is punishment which cannot be ordered except in compliance with the provisions of Art. 311 of the Constitution of India. It is not the respondents' case even, that they have complied with Art. 311 of the Constitution. The test as laid down by the Supreme Court in number of decisions to determine what reduction in rank means is (a) whether the servant had a right to the post and (b) whether he has been visited with evil consequences. The facts as they emerge from these petitions unfailingly point to the petitioners' right to the post of Head Master by denying them the benefit of the revised pay scale as applicable to the Head Masters. The respondents are also visiting evil consequences e.g. loss of salary, revised pay and place in seniority list of Head Masters. If a Government servant has a right to a particular

rank, then the very reduction from that rank will act as a penalty, for he will then lose the emoluments and privileges of that rank. In this view of the matter, there remains no doubt that the petitioners have been reduced in rank, and that too without complying with the requirements of Art. 311 of the Constitution of India.

As a result of the discussion aforesaid these petitions deserve to be allowed, they are accordingly allowed.

The petitioners are declared to be entitled to the revised pay scales as applicable to the Head Masters under the M.P. Revision of Pay Rules, 1983 and the impugned orders dt. 16-6-84 and 25-6-84 reverting the petitioners to the post of Lower Division Teachers or Asstt. Teachers are quashed. The respondents are directed to allow the petitioners to continue to act as Head Masters and pay them the revised pay scales as admissible and applicable to them under the M. P. Revision of Pay Rules, 1983. The petitioners are entitled to costs. Counsel's fee Rs. 150/- if certified in each of these petitions. The security deposit be refunded to the petitioners after verification.