
(2015) 08 MP CK 0063
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5327 of 2015

Ranjana Saxena

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Citation : (2015) 08 MP CK 0063

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : C.B. Patne, Learned Counsel, for the Appellant; Aniket Naik, Learned Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.C. Sharma, J—The petitioner before this Court has filed this present petition being aggrieved by the action of the respondents in not granting the benefits of Senior Grade Pay Scale of Rs. 3000-5000/- (revised to Rs. 10000-15200/-), Selection Grade Pay Scale of Rs. 3700-5700/- (revised to Rs. 12000-18300/) and consequential placed in the Pay Band-IV i.e. the pay scale of Rs. 37400-67000 + AGP Rs. 9000/- by counting the services of the petitioner from the date of initiate appointment in terms of the provisions of Rule 13(5) of the M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1967. 2- Learned counsel for the petitioner has placed reliance upon the judgment delivered in the case of Dr. Ramesh Chandra Dixit Vs. State of M. P. and Others reported in 2012(3) MPHT 86 and his contention is that the aforesaid order has been affirmed even by the Hon"ble Supreme Court.

2. Learned counsel for the respondent/State has not disputed the aforesaid averments.

3. This Court in the case of Dr. Ramesh Chandra Dixit (supra) has allowed the prayer made by the petitioner therein and the Division Bench of this Court on an appeal preferred by the State Government has affirmed the judgment passed by

the learned Single Judge and paragraph 8 to 10 of the judgment delivered in the case of State of M.P. and Another Vs. Dr. Ramesh Chandra Dixit, (2013) ILR (MP) 2072 : (2013) 4 MPJR 123 , reads as under:-

"8. Rule 5(3) of the Rules of 1967 provides that service namely M.P. Educational Service Technical Branch shall consist all the persons recruited to the service in accordance with the provisions of these Rules. Rule 8 provides that all appointments to the service after the commencement of these rules shall be made by the Government and no such appointment shall be made except after selection by one of the methods of recruitment as specified in rule 7. Rule 7(4) provides that notwithstanding anything contained in sub-rule (1) if in the opinion of the Government, the exigencies of the service so require, the Government may, after consulting the Commission, adopt such methods of recruitment to the service other than those specified in sub-rule (1) as it may, by an order issued in this regard, prescribe. Rule 13(5) provides that if panel of selected candidate by the Commission is not available, the posts may be filled by emergency appointments in the prescribed manner; namely, an advertisement shall be issued by the Government, applications for emergency appointments shall be submitted in the form prescribed in Schedule V and the applications received shall be registered and tabulated according to the criteria prescribed in the table. Proviso of subrule (5) provides that if and when Public Service Commission Panel for these subjects is available, these teachers will be liable to be removed without notice. All the respondents were appointed before coming into force of Rules of 1990. Under the Rules of 1990, rule 4 provides that the service shall consist of the persons namely; persons recruited to the service except on emergency and ad-hoc basis before commencement of these rules. Rule 15 of Rules of 1990 again provides for emergency appointment which is referred hereinabove. Rule 4(2) specifically provides that the persons recruited to the service except on emergency and ad-hoc basis before commencement of these rules shall be persons of service. If we see the provision of M.P. Regularisation of Ad-hoc Appointment Rules, 1986, the following provisions may be referred which read as under:-

2. Overriding effect- These rules shall have effect notwithstanding anything to the contrary contained in any other rules or orders on the subject for the time being force.

4. Scope and application- These rules shall apply for regularization of ad- hoc appointments made on the post and in the department mentioned in the Schedule prior to the 31st March, 1986. Aforesaid provisions specifically provide that these rules shall be applicable for regularization of the ad-hoc appointments made on the posts in the department prior to 31.3.1986. The M.P. Civil Services (General Conditions of Services) Rules, 1961 also deserves to be referred. Rule 12(4) provides as under:-

12. Seniority.-

(4) Seniority of Ad-hoc employees.-

(a) A person appointed on ad-hoc basis shall not get any seniority till the regularization of his services. (b) If a person is appointed on ad-hoc basis by substantially following the procedure laid down by the Recruitment Rules and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service shall be counted for seniority.

Aforesaid provision specifically provides that if a person is appointed on ad-hoc basis by substantially following the procedure laid down by the Recruitment Rules and the appointee continues in the post uninterruptedly till regularization of service in accordance with rules, the period of officiating service shall be counted for seniority.

9. Now in the light of the aforesaid, recruitment under the Rules of 1967 may be looked into. Rule 13(5) of Rules of 1967 provides provision for emergency appointment. The difference between rules 12 and 13(5) is only in respect of interview by the Commission. For ready reference, we quote rule 12 of Rules of 1967 which reads thus:-

12. Direct recruitment by selection-

(1) A selection for recruitment to the service shall be held at such intervals as the Government may in consultation with the Commission, from time to time determine. (2) The selection of candidates for the service shall be made by the Commission after interviewing them. (3) 15 percent and 18 percent of the available vacancies for direct recruitment plus the carried forward vacancies from the last occasion, if any, shall be reserved for candidates who are members of the Scheduled Castes and Scheduled Tribes respectively.

(4) In filling the vacancies so reserved candidates who are members of the Scheduled Castes and Scheduled Tribes shall be considered for appointment in the order in which their names appear in the list referred to in rule 13 irrespective of their relative rank as compared with other candidates.

(5) Candidates belonging to the Scheduled Castes or the Scheduled Tribes, declared by the Commission to be suitable for appointment to the service with due regard to the maintenance of efficiency of administration may be appointed to the vacancies reserved for the candidates of the Scheduled Castes or the Scheduled Tribes as the case may be under sub-rule (3).

(6) If a sufficient number of candidates belonging to the Scheduled Castes and the Scheduled Tribes are not available for filling all the vacancies reserved for them, the remaining vacancies shall be filled from among other candidates and an equivalent number of additional vacancies shall be reserved for candidates belonging to the Scheduled Castes and the Scheduled Tribes for the next selection in the manner indicates in Rule 12(3) above;

Provided that if a sufficient number of suitable candidates is not available in the next selection to fill all the reserved vacancies, including the additional vacancies or such of them as are not filled, shall lapse.

10. Aforesaid provision only provides that if after the interview, a list is issued by the Commission, the same persons shall be treated as direct recruitment while emergency appointment also provides a complete procedure except interview by the Commission. Except this, there is no difference with the emergency appointment. Aforesaid emergency appointment relates to appointment against the posts after an advertisement, inviting applications, examining the requisite qualifications for the posts and proper scrutiny of the applications. Meaning thereby that except interview by the Commission, entire procedure for recruitment as emergency appointment was followed."

4. Not only this, the aforesaid judgment has been affirmed by the Hon''ble Supreme Court and the SLP preferred by the State of M.P. i.e. SLP No. 6269/2012 (State of M. P. & Others Vs. Bangali Babu) has been dismissed. Meaning thereby, the order passed by this Court has been affirmed.

5. In the light of the aforesaid, this Court is of the considered opinion that the petitioner who is an identically placed person, is entitled for the same relief as extended to Dr. Ramesh Chandra Dixit and other identically placed persons.

6. The writ petition stands allowed and the judgment delivered in the case of Dr. Ramesh Chandra Dixit shall be applicable mutatis mutandis in the present case also. The exercise of granting all consequential benefits to the petitioner be concluded within a period of three months from the date of receipt of certified copy of this Court.

7. With the aforesaid observation, the writ petition stands allowed.

8. Certified copy as per rules.