

(2019) 08 MP CK 0069

In the Madhya Pradesh High Court

Case No : Writ Petition No. 16065 Of 2019

Ravindra Kaur Arora

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 08 MP CK 0069

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

Bench : Single Bench

Final Decision : Allowed

Judgement

Parties through their counsel.

Learned counsel for the petitioner as well as the learned government advocate at the outset have stated before this Court that the controversy involved in the present case stands concluded on account of the judgment dated 04.10.2018 delivered by this Court in the case of Dr. Pushpalata Khare Vs. The State of M.P. and others (W.P. No.15130/2018).

The operative paragraphs of the aforesaid judgment read as under:-

"5. The Regulation Issued by the University Grant Commission i.e. Clause-7.0.0 Career Advancement reads as under:-

"7.0.0. Career Advancement

7.1.1 Minimum length of service eligibility to move into the grade of Lecturer (Senior Scale) would be four years for those with PhD., five years for those with M.Phil, and six years for other at the level of Lecturer, and for eligibility to move into the Grade of Lecturer (Selection Grade)/Reader, the minimum length of service as Lecturer (Senior Scale) shall be uniformly five years.

7.1.2 For movement into grades of Reader and above, the minimum eligibility

criterion would be Ph.D. Those without Ph.D. can go up to the level of Lecturer (Selection Grade).

7.1.3 A Reader with a minimum of eight years of service in that grade will be eligible to be considered for appointment as a Professor.

7.1.4 The Selection Committees for Career Advancement shall be the same as those for Direct Recruitment for each category.

7.1.5 The existing scheme of Career Advancement for non academic staff namely, Assistant Director of Physical

Education, Registrar, Assistant Librarian would continue."

The State Government has taken only Clause-7.1.1 into consideration while passing both the order, as referred above and has totally ignored Clause-7.8.0 and the same reads as under:-

"7.8.0 If the number of years required in a feeder cadre are less than those stipulated in this notification, thus entailing hardship to those who have completed more than the total number of years in their entire service for eligibility in the cadre, may be placed in the next higher ccadre after adjusting the total number of years.

This situation is likely to arise as, in the earlier scheme, the number of years required in a feeder cadre were much more than those envisaged under this notification."

6. In the considered opinion of this Court, the regulations issued by the University Grants Commission are binding upon the State Government. The State Government cannot be permitted to deviate from the regulations framed by the University Grants Commission.

7. Not only this, the most important aspect of the case is that while passing the impugned order in case of the petitioner and other identically placed persons, the petitioner was never heard at any point of time. A similar dispute arose in the past and in similar circumstances, a co-ordinate Bench of this Court in the case of Dr. Nitya Ranjan Das v/s State of M.P & Others reported in 2015 (2) M.P.L.J in paragraphs-8, 9, 10, 11, 12 and 13 has held as under:-

"8. However, the moot question which arises for consideration in the case at hand is whether excess amount that has been paid to the employee even in the absence of fraud or misrepresentation on the part of such employee can be recovered without compliance with the principles of natural justice. The principles of natural justice are regarded as important procedural safeguard against undue exercise of power by an authority. The chances of an administrative authority taking decision in ignorance of other factors are reduced as if the hearing is given to the person concerned who will bring all the issues involved in the situation. In such a case the decision making authority shall take into account all the relevant facts and issues involved in the decision and would come to a right

decision. Thus, the principles of natural justice is considered as an effective method to protect the interest of individual as he can participate in administrative process affecting him.

9. In the case of Nand Kishore Sharma and Others v. State of Bihar and Others, 1995 Suppl. (3) SCC 722 the Supreme Court held that having paid the arrears to the employees, the State Government could not have recovered the same without compliance with the Rules of Natural Justice. In the case of State of Karnataka and Another v. Mangalore University Non-teaching Employees' Association and Others, (2002) 3 SCC 302 it was held by the Supreme Court that in all cases of violation of principles of natural justice, the Court exercising jurisdiction under Article 226 of the Constitution of India need not necessarily interfere and set at naught the action taken by an authority. The Court has to consider the genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice while considering the effect of violation of the principles of natural justice.

10. In the cases at hand, the petitioner was granted the benefit of senior pay-scale with effect from 4.3.1995 by an order dated 21.4.1999. Thereafter vide an order dated 2.7.2002 the benefit of selection grade was extended to him. Thereafter in January, 2012, the petitioner was held entitled to the benefit of selection grade with effect from 27.7.1998. It is pertinent to mention here that the notification dated 24.12.1998 issued by the Commission was adopted by the State Government vide order dated 11.10.1999 which contained clause 8A which deals with exemption with regard to requirement of minimum period of service. Thereafter the State Government issued an order dated 29.1.2008 by which the clause 8 contained in the order dated 11.10.1999 was clarified and it was provided that there shall be no exemption with regard to minimum service of five years in senior pay scale. Thereafter by an order passed in the month of January, 2012, the petitioner was entitled to the benefit of Senior Grade with effect from 27.7.1998.

11. By the impugned order the entitlement of the petitioner for grant of selection grade pay-scale has been modified from 27. 7.1998 to 4.3.2000, admittedly, without compliance of principles of natural justice. The aforesaid order has been modified unilaterally with regard to date of entitlement of the petitioners which would result in adverse consequences i.e. recovery of the amount from the petitioner. Thus, the benefit which was accorded to the petitioners is sought to be taken away without following the principles of natural justice. It is possible for the petitioners to contend that the order dated 29. 1.2008 is prospective in nature and does not apply to the case of the petitioner as the benefit has already been granted to him and the said order does not provide for reopening of the cases where the benefit of Senior Grade/Selection Grade/Grade Pay has already been extended. In other words, the petitioners have not admitted that any excess amount is paid to them. The petitioners assert their entitlement to the amount in question.

12. The genesis of action contemplated against the petitioner i.e. issuance of the impugned order by which the date of entitlement of the petitioner has been unilaterally modified appears to be 29.1.2008. The said order was issued to clarify clause 8A contained in the order dated 11.10.1999. Undoubtedly the prejudice would be caused to the petitioners if the amount is recovered from them without affording an opportunity of hearing to them. The petitioners may have plausible defence to put forth before the authority. However, the same is required to be considered and dealt with by the competent authority.

13. In the considered opinion of this Court, the action of the respondents in passing the impugned orders are in breach of principles of natural justice therefore, the same cannot be sustained in the eye of law. Accordingly, the same are quashed. However, the respondents would be at liberty to issue notice to the petitioners indicating the grounds on which the date of entitlement for grant of Selection Grade/Selection Grade/Grade Pay are sought to be modified and to pass a fresh order containing reasons in accordance with law after affording an opportunity of submitting reply to the petitioners. It is made clear that this Court has not expressed any opinion on the merits of the claim made by the petitioners and the competent authority would be at liberty to examine the case of the individual petitioner on its own merit.

8. In the present case, learned Government Advocate has fairly stated before this Court that at no point of time any opportunity of any kind was granted to the petitioner, and therefore, both the impugned orders are certainly bad in law, as they have been passed unilaterally without hearing the petitioner.

9. In the case of the petitioner, there is again an order passed by the University Grants Commission dated 08.06.2001 (page-117) dated 22.12.2005 (page-118) and 17.08.2015 (page-203), and therefore, while issuing the show cause notice and considering the reply of the petitioner, the respondents shall take into account the order passed by the University Grants Commission on the subject from time to time. Not only this, after the judgment was delivered in the case of Dr. Nitya Ranjan Das (supra), again the co-ordinate Bench of this Court has passed an order while deciding the bunch of writ petitions i.e. W.P. No.2860/2017 and other connected writ petitions vide order dated 14.02.2018 and in paragraphs-7 to 10 it has been held as under:-

"7. This court while deciding the case of Dr. Nitya Ranjan Das (supra) opined as under :-

"2. In the considered opinion of this court, the action of the respondents in passing the impugned orders are in breach of principles of natural justice therefore, the same cannot be sustained in the eye of law. Accordingly, the same are quashed. However, the respondents would be at liberty to issue notice to the petitioners indicating the grounds on which the date of entitlement for grant of Selection Grade/Selection Grade/Grade Pay are sought to be modified and to pass a fresh order containing reasons in accordance with law after affording an

opportunity of submitting reply to the petitioners. It is made clear that this court has not expressed any opinion on the merits of the claim made by the petitioners and the competent authority would be at liberty to examine the case of the individual petitioner on its own merit.

Emphasis supplied.

2. A plain reading of the aforesaid paragraph makes it clear that in the show-cause notice, the respondents were required to indicate the grounds on the strength of which they intended to decide the question of entitlement of the petitioners regarding Senior/ Selection Grade or Grade Pay. The show-cause notice reads as under :-

हॉ०कार्यालय आयुक्त उच्च शिक्षा मध्यप्रदेश

सतपुड़ा भवन, भोपाल 462004

ई०मांक 605/471/आउशि/गोप्र/2014 भोपाल, दिनांक 22.08.2015 प्रति,

डॉ०/श्री/श्रीमती संध्या चैबे,

डब्ल्यू०पी० ई०मांक.....

विषय:- विभिन्न याचिकाकर्ता द्वारा माननीय उच्च न्यायालय में वेतनमान स्थापना के संबंध में दायर याचिकाओं पर पारित निर्णयों के संबंध में अपना पक्ष प्रस्तुत करने संबंधी सूचना पत्र।

संदर्भ:- याचिका ई०मांक 8922/2013 एवं अन्य पर म.प्र. उच्च न्यायालय, जबलपुर द्वारा पारित आदेश दिनांक 06.04.2015 एवं संलग्न सूची।

आपके द्वारा संलग्न सूची अनुसार माननीय उच्च न्यायालय में याचिकाएं प्रस्तुत की गई है। याचिका में आपने जिस आदेश को चुनौती दी है, उसके परिप्रेक्ष्य में माननीय उच्च न्यायालय द्वारा आदेश पारित किया गया है कि आपको सुनवाई का अवसर प्रदान कर एवं आपका पक्ष सुनकर यथोचित आदेश विभाग पारित करें। माननीय न्यायालय के आदेश के अनुई०म में ई०पया लिखित एवं मौखिक रूप से आप अपना पक्ष प्रस्तुत करना चाहते हैं तो दिनांक 09 सितम्बर, 2015 को प्रातः 11:00 बजे इस कार्यालय में अपना पक्ष प्रस्तुत करने का कष्ट करें, जिससे माननीय न्यायालय के आदेश के पालन में अनुई०म में यथोचित निर्णय लिया जा सके।

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ई०मांक 606/471/आउशि/गोप्र/2014 भोपाल, दिनांक 22.08.2015 प्रतिलिपि:-

1.- विशेष कर्तव्यस्थ अधिकारी, न्यायालयीन प्रकोष्ठ, कार्यालय-आयुक्त, उच्च शिक्षा, मध्यप्रदेश भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु।

2- प्रभारी आई.टी. सेल, कार्यालय-आयुक्त, उच्च शिक्षा, सतपुड़ा भवन, भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु।

आयुक्त

उच्च शिक्षा, मध्यप्रदेश, भोपाल

8. A bare perusal of the show-cause notice shows that no reason or grounds are

shown regarding deficiency or flaw in the matter of grant of benefits to the petitioners. The basic purpose of issuing the show-cause notice is to give a clear picture to the other side regarding the allegation or deficiency/ fault on their part so that the other party can meet the said points while filing the reply. This is the basic requirement of principles of natural justice. In *Canara Bank and others Vs. Debasis Das and others*-(2003) 4 SCC-557 it was held as under :-

15. The adherence.....Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time Similar view was taken in *Rajesh Kumar and others Vs. Dy. CIT and others*-(2007) 2 SCC-181 in which it was held as under:-

"55. Justice, as is well known, is not only to be done but manifestly seem to be done. If the assessee is put to notice, he could show that the nature of accounts is not such which would require appointment of special auditors. He could further show that what the assessing officer considers to be complex is in fact not so. It was also open to him to show that the same would not be in the interest of the Revenue."

9. The Apex Court in *M/s Kranti Associates Pvt. Ltd. and another vs. Masood Ahmed Khan and others* (2010) 9 SCC 496 has emphasized the need of assigning reasons in administrative, quasi judicial and judicial proceedings. The relevant portion reads as under:-

"47. Summarizing the above discussion, this Court holds: a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially. b. A quasi-judicial authority must record reasons in support of its conclusions. c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasijudicial or even administrative power. e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations. f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies. g. Reasons facilitate the process of judicial review by superior Courts. h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system. j. Insistence on reason is a requirement for both judicial accountability and transparency. k. If a Judge or a quasijudicial authority is not candid enough about his/her decision making process then *M/S Kranti Asso. Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors* on 8 September, 2010 it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism. l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process. m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* (1987) 100 *Harvard Law Review* 731-737). n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and *Anyia vs. University of Oxford*, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions". o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".??

If the present case is tested on the anvil of judgment of this court in the earlier round on as per the judgment of *Kranti Associates* (supra), there will be no scintilla of doubt that the show-cause notice was not issued in consonance with the principles of natural justice. The petitioners rightly pointed out this flaw in their reply to the show-cause notice. The respondents passed the final order, narrated the history of the case, quoted a clause of career advancement scheme and then opined that petitioners reply and arguments cannot be accepted. This kind of order cannot sustain judicial scrutiny.

10. In the light of aforesaid discussion, the show-cause notice and the final order runs contrary to salutary principles of natural justice. Resultantly, the show-cause notice and the final order dated 25.1.2017 are set aside. Liberty is reserved to the respondents to issue fresh show-cause notice taking into account the observation made hereinabove and proceed from that stage in accordance with law. Petitions are allowed. It is made clear that this court has not expressed any opinion on the entitlement of the petitioners."

10. In the present case, no show cause notice has been issued to the petitioner at any point of time, and therefore, the impugned orders passed in the present

writ petition dated 22.08.2015 and 16.10.2015 and the impugned orders passed in another connected writ petition, as referred above, are hereby quashed.

The respondents shall be at liberty to issue proper show cause notice and in case, such show cause notice is issued, the respondents shall give six weeks' time to the petitioner to file a detailed reply to the show cause notice, and thereafter, the respondents will pass a detailed order after receiving the reply of the petitioner by taking into account the regulations issued by the University Grants Commission on the subject from time to time, as they do have a binding force. The respondents shall also be free to take decision in the matter in accordance with law by passing a reasoned speaking order dealing with all the issues raised by the petitioner in the present writ petition as well in the connected writ petitions.

In W.P. Nos.5135/2016 and 5138/2018, there was no interim order, however, as this Court has quashed the impugned orders, the respondents shall release all arrears of salary and shall place the petitioner in the same condition at the same stage of pay scale, which they were receiving, prior to the passing of the impugned order. The exercise of paying salary and arrears of salary be concluded within a period of 90 days from today.

With the aforesaid, the present writ petition as well as all other connected writ petitions stand allowed."

In light of the aforesaid judgement, present petition also stands allowed. The aforesaid judgment shall be applicable mutatis matandis in the present case also.