
(2011) 07 MP CK 0075

In the Madhya Pradesh High Court

Case No : Writ Petition No. 383 of 2009

R.P. Dwivedi

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 130 FLR 938

Hon'ble Judges : Keshav Kumar Trivedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—Petitioner by this petition under Article 226 of the Constitution of India has come before this Court complaining that despite the fact that he has worked on the post of Upper Division Clerk, right from 25.9.1999 he has not yet been paid salary of the said post and even after decision of this Court in his petition setting aside the order of reversion the rightful salary is not paid to him therefore he is required to file this petition.

2. It is contended that the petitioner was appointed on the post of Lower Division, Clerk (LDC, for short). The initial appointment order was issued on 25th November, 1980. The petitioner was considered by the Departmental Promotion Committee and was promoted on the post of Upper Division Clerk (UDC, for short) vide order dated 2.5.1990. However, by order dated 17.12.1990 the promotion of the petitioner was cancelled. He approached the State Administrative Tribunal (S.A.T., herein after), by filing Original Application No. 3919/1990 and the aforesaid Original Application was entertained and interim order was passed on 29.12.1990, directing that if the petitioner is not reverted, he be permitted to continue on the post of UDC. It is contended by the petitioner that he has throughout worked on the post of UDC. Later on, after abolition of the S.A.T., the said Original Application of the petitioner came on transfer to this Court, where it was registered as W.P. No. 6538/2003, and the said matter came

up for hearing on 10.4.2007 before this Court. It was found that the respondents have relied upon

A return filed in a similar matter which was O.A. No. 3918/1990. The said O.A was registered as W.P. No. 6537/2009 and the same was allowed by this Court. It was held by this Court that the reversion of the petitioner on the post of L.D.C was not justified. It was further found by this Court that since the Tribunal has already granted stay in favour of the petitioner, giving effect to the order of reversion was not justified and, therefore, the order of reversion dated 17.12.1990 was set aside by this Court. It was specifically ordered that the petitioner shall be treated as UDC.

3. After passing of the order by the Court, another order was passed by the respondents on 16.7.2007 and they cancelled the order of reversion of the petitioner dated 17.12.1990. Accordingly, posting order was issued on the post of UDC and the petitioner has continuously worked.

4. However, instead of giving the benefit, of pay scale of the promotional post to the petitioner, the pay fixation was done vide Memo dated 16.11.2007 (Annexure P/4). It was stated that the petitioner will get the benefit of notional pay fixation w.e.f. the date of promotion till date of taking over charge after passing of the order in the year 2007 and will get the salary with effect from the date when he has taken over the charge. The petitioner represented that, such course was not open. The petitioner has already discharged the duties as Upper Division Clerk on the strength of stay granted by the Court. Accordingly, it is contended that the petitioner is entitled, to get full salary of the post of Upper Division Clerk from the date when he took over the charge after his promotion and all other consequential benefits, such as revision of pay and payment of arrears of salary be given to him. According to the petitioner denial of such claim is unjustified.

5. This petition was entertained by this Court on 21.1.2009, notices were issued to the respondents. On 15.2.2010 and 25.2.2010 Counsel for the respondents has prayed and was allowed time to file return. However, till date no reply/return whatsoever has been filed. In fact, the respondents have not paid any heed to the representation of the petitioner and have also not taken any vigilant steps to file return in the present petition. Therefore, there is no other course left open to this Court except to allow this writ petition.

6. Consequently, the present petition is allowed. Respondents are directed to pay entire salary of the post of Upper Division Clerk to the petitioner from the date when he took over the charge of the promotional post after his promotion as ordered on 2.5.1990 and the pay of the petitioner be revised in the pay scale applicable to the post of Upper Division Clerk w.e.f. the aforesaid date and all the arrears be calculated and paid to the petitioner within a period of three months from the date of receipt of certified copy of this order.

7. Since the petitioner was not at fault for delayed payment and was ever since vigilant to make such claim he will also be entitled to interest at the rate of 6%

per annum from the date the arrears of salary amount was due till actual date of payment.

8. With the aforesaid direction, petition stands allowed and disposed of. No order as to costs. Ordered accordingly.