
(2013) 07 MP CK 0285
In the Madhya Pradesh High Court
Case No : Conc. No. 1623 of 2012

Sachin Kumar and Vijay Vargiya	Vs	APPELLANT
Shri Ajay Tirki and Another		RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2013) 07 MP CK 0285

Hon'ble Judges : Rajendra Menon, J;A.K. Sharma, J

Bench : Division Bench

Advocate : R.N. Shukla and Mr. R.B. Tiwari, for the Appellant; Kumaresh Pathak, Learned Counsel, for the Respondent

Judgement

1. As all the three contempt applications are filed complaining disobedience of orders passed by Single Benches and Division Benches of this Court and the question involved are common, all the three contempt applications are being decided by this common order. For the sake of convenience documents and pleadings available in the record of Contempt Case No. 1623/2013 is being referred to in the order. Applicants who are Presiding Officers of the Labour Courts have filed these applications for initiating action for contempt against the respondents complaining non-compliance of an order passed by various Single Benches and Division Benches of this Court in the matter of granting pay scale to the Presiding Officers of Labour Court and Member Judges of the Industrial Court by the Single Benches and Division Benches of this Court vide Annexure C/1, C/2 and C/ 3.

2. Before advertng to consider the rival contentions, it is thought appropriate to take note of the judgments as indicated herein above namely Annexure C/1, C/2 and C/3. Annexure C/1 is an order passed by the Gwalior Bench of this Court in W.P. No. 5446/2005 (s)-Satish Shrivastava Vs. State of M.P. and another. Shri Satish Shrivastava entered the services as an Presiding Officer of the Labour Court in the year 1977 and became a Member Judge of the Industrial Court, from

which post he retired on attaining the age of superannuation on 30.9.2004. It was his grievance in the writ petition that based on certain judgments of Single Benches and Division Benches of this Court and based on recommendation of the National Judicial Commission, the Members of the Labour judiciary in the State of Madhya Pradesh are to be treated at par with the Members of the District Courts of the State of Madhya Pradesh and therefore, they are entitled to pay scale and certain other benefits in accordance to the recommendations of Shetty Pay Commission which came into force w.e.f. 1.1.1996. Claiming the said pay scale the writ petition was filed.

3. Be it as it may be the writ petition was allowed and in para 7, 8 and 9 after taking note of certain orders passed by the Supreme Court, the following directions have been issued:-

7. The State of Madhya Pradesh in exercise of powers under Article 309 of the Constitution of India has framed M.P. Labour Judicial (Recruitment and Conditions of Service) Rules, 2006. Rule 3 of the Rules 2006 relates to Constitution of Service and pay scale has been provided for different category of Labour Judges/ Member Judges of the Industrial Courts. The State Government while framing the rules 2006 has removed all disparity and now the member of the Labour judiciary have been granted the pay scale at par with the Member of the State Judicial Service, and therefore the State has in its own wisdom has removed the anomaly if any once and for all.

8. Resultantly, the writ petition is allowed, the petitioner shall be entitled for revised pay scale of Rs. 16750-20500/- w.e.f. 1.1.1996 notionally. The petitioner shall be entitled for enhanced pension on account of notional fixation of salary. It is needless to mention that the State Government shall extend the similar benefit to all other identically placed persons instead of attracting them to approach this Court by filing writ petition.

9. As the recruitment rules framed in the year 2006 provides for specific pay scale to the Presiding Officers of the Labour Court and Members of the Industrial Tribunal, they shall be entitled for the same pay scale which has been granted under the Rules 2006.

(Emphasis Supplied)

4. The State Government challenged the said order in W.A. No. 119/2009 and a Division Bench of this Court dismissed the writ appeal. In the meanwhile, another Writ Appeal was decided by the Division Bench being Writ Appeal No. 784/2009 on 27.10.2009 and in the said Writ Appeal also the law in this regard was laid down which is contained in para 6 and 7 and the same reads as under:-

6. Accordingly, we are inclined to hold that the case of the present appellant is squarely covered by the judgment passed by the Division Bench of this Court in the case of Satish Shrivastava (supra). In view of the aforesaid, we are inclined to allow the present writ appeal and direct the State Government to fix the

revised pension of the present appellant with effect from 01.7.1996 in terms to Rule 11-A(2) of M.P. Judicial Service Pay Revision, Pension and other Retirement Benefit Rules, 2003 along with arrears which will be calculated and paid within a period of three months from the date the certified copy of this order is submitted by the appellant to the respondents.

7. However, before parting we would like to further mention that when the Division Bench of this Court has already taken a view that the Presiding Officers and member judge of Industrial Court are entitled to the same pay scale as that of a District Judge and the members of the lower labour judiciary are entitled to the pay scale equivalent to that of a Civil Judge then the same should be taken note of by the respondents for conferral of the benefit to the officers belonging to the labour judiciary so that they are not forced to approach the Courts for their rights which has already been adjudicated upon by this Court.

(Emphasis Supplied)

5. A conjoint reading of all these orders passed by this Court in the Writ Petition and Writ Appeal goes to show that the Division Bench of this Court has clearly laid down after taking note of the judgments rendered in the case of Satish Shrivastava (supra) that the Presiding Officers and Member Judges of the Industrial Court are entitled to the same pay scale as that of District Judiciary and the Members of the Lower Labour Judiciary are entitled to the pay scale equivalent to the Civil Judges. This finding recorded by the Division Bench in para 7 of the order passed in Writ Appeal No. 784/2009-Raghvendra Nath Shukla Vs. State of M.P. & Others clearly goes to show that the Division Bench after taking note of the judgments rendered by the Single Bench and Division Bench in the case of Satish Shrivastava (supra) has held that the Presiding Officer and Member Judge of the Industrial Court is entitled to the same pay scale as that of District Judge and Member of Lower Judiciary namely Presiding Officer of the Labour Court are entitled to the pay scale equivalent to the Civil Judge and same should be taken note of by the respondents for conferral of the benefit to the officers belonging to the labour judiciary. It has been clearly held by the Division Bench in the order that respondents shall confer the same benefits to all similarly situated persons so that they are not forced to approach this Court for their rights. Now the grievance of the applicants before this Court are that inspite of the fact that the Single Bench in the case of Satish Shrivastava (supra) vide Annexure C/1 and the Division Bench in the case of Raghvendra Nath Shukla (supra) has clearly held that the benefit should be given to each of the Members of the Labour Judiciary, to the applicants the said benefit is not being granted w.e.f. 1.7.1996.

6. After the aforesaid directions were issued applicants herein particularly applicant Sachin Kumar Vijayvargiya represented to the State Government and sought for grant of benefit in accordance to the directions issued by the Single Benches and Division Benches of this Court in the cases as referred to herein above. The State Government, it may be taken note of, passed an order

Annexure C/4 on 4th September 2010 granting the benefit to Shri Satish Shrivastava who had approached this Court but in the last para of this order, it was indicated that this order will be applicable only to Shri Satish Shrivastava and will not be applicable to others. When this was done, the present applicant Shri Sachin Kumar Vijayvargiya represented to the Government and sought for grant of benefit to him in accordance to the directions given by the learned Single Bench and the Division Bench in various judgments including that of Shri Satish Shrivastava. However, it is seen from the record that vide Annexure C/5 this claim of the applicant Shri Vijayvargiya was rejected and the State Government refused to extend the benefit to him.

7. It is the case of each of the applicants herein that once the Division Bench has directed the State Government to extend the benefit to all similarly situated persons, the intention of the High Court was that each individual is not required to approach the Court but the benefit should be uniformly implemented. Instead of doing so, respondents are denying the benefits on unreasonable grounds.

8. Respondents have filed a reply it is submitted by the respondents that the benefit of pay at par with Civil Judge is being granted to the Member of the Labour Judiciary as per the Rules of 2006 and therefore, they have not committed any contempt. Certain additional return has also been filed to explain the position by stating that the benefits are being granted. However, the import of the judgment of this Court are that w.e.f. 1.1.1996 the Member of Labour Judiciary are to be granted the benefit of pay scale as is applicable to the Members of District Judiciary which means that the Presiding Officers of the Labour Court are entitled to the pay scale equivalent to that of Civil Judge w.e.f. the date it is granted to the Civil Judge as per the directions given in the case of Satish Shrivastava (supra). State Government has not extended this benefit.

9. From the material available on record, it is clear that w.e.f. 1.7.1996 (notionally) the said benefit has not been granted to the Members of Labour Judiciary. From the aforesaid, it is clear that the judgments and orders passed by this Court has not been implemented in its totality and State Government is coming out with its own explanation which is nothing but an excuse to deny benefits to the applicants. The same cannot be accepted. Once this Court has issued certain directions as reproduced herein above in a judgment in the case of Satish Shrivastava (supra) and Raghvendra Nath Shukla (supra) and when a specific and clear cut direction has been given and when the same does not give any room for doubt. We are of the considered view that the justification given by the non applicants is nothing but a devise to somehow deny the benefit to the applicant. In spite of the fact that the writ petition was disposed of with the specific directions i.e. the Members of the Industrial Court are to be treated at par with the District Judges and the Presiding Officer are to be treated at par with the Civil Judge. This benefit has not been granted, that being so, respondents have committed deliberate breach and even though repeated opportunities were granted to them, they have not cared to rectify the mistake

by granting the benefit, instead are giving their own interpretation to the orders of this Court as is convenient to them and are trying to somehow deny the claim of the applicant. That apart, a contempt petition was filed on the same lines at Gwalior Bench being Contempt Case No. 753/2012 and the Gwalior Bench in that case has also taken the same view as has been indicated by us herein above. The order passed by the Gwalior Bench in Contempt Case No. 753/2012 on 30.4.2013 reads as under:-

From the order passed in the writ petition, it is clear that the writ court has held that the Presiding Officer of the labour Court is entitled to the pay scale similar to which a civil judge is entitled. The State of M.P. revised the pay scale of judicial officer in accordance with the rules named as M.P. Nyayik Sewa Vetan Punrikshan Niyam, 2003. Rules were made applicable w.e.f. 1.9.1996. In such circumstances, the petitioner is entitled the benefit of the aforesaid rules and pay which was made applicable to a civil judge from the date of his appointment as the Presiding Officer. It is obligatory on the part of the respondents to consider the case of the petitioner on the basis of the aforesaid finding and pass an appropriate order.

Consequently, this petition is disposed of with a direction that the respondents shall consider the claim of the petitioner in accordance with the observations made by us quoted above and pass an order within a period of six weeks from the receipt of copy of the order. No order as to costs.

(Emphasis Supplied)

10. Shri Kumaresh Pathak, learned counsel for the respondents and in the reply filed, respondents have stated that after the Madhya Pradesh Labour Judicial (Recruitment and Conditions) Rules 2006 came into force the applicants are being paid the salary as is applicable to the Civil Judge but as far as their claim from 1.1.1996 is concerned, they simply say that the applicants are not entitled to the said benefit. During the course of hearing Shri Kumaresh Pathak tried to submit that when an SLP was filed before the Supreme Court in the case of Satish Shrivastava the SLP was dismissed as being time barred and as the question of law is kept open the applicants cannot claim the benefit. This argument and justification of the respondents cannot be accepted. The orders passed in all the cases as indicated herein above, not only by the Single Bench but the Division Bench particularly in Writ Appeal No. 784/2009-Raghvendra Nath Shukla Vs. State of M.P. & Others clearly issues a specific direction as is indicated in para 6 and 7 thereof. In the case of Satish Shrivastava (supra) and after taking note of the order passed by the Division Bench in that case in the judgment rendered on 27.10.2009 in the case of Raghvendra Nath Shukla (supra) the specific direction issued to the State Government was to fix the revised pension of the petitioner w.e.f. 1.7.1996 after treating him to be entitled to the benefit of pay in the scale as is applicable to the Civil Judge w.e.f. 1.7.1996. Thereafter, in para 7 it has been clearly held that Presiding Officers and Member Judges of the Industrial Court are entitled to the same pay scale as

that of District Judge of lower judiciary and it should be conferred to them by the State Government. The import of directions issued unequivocally by this Court in all the cases are that the pay scale of Members of the District Judicial Services in the State of Madhya Pradesh was revised w.e.f. 1.1.1996 and benefits were conferred to them w.e.f. 1.7.1996 and by allowing the appeal filed by Satish Shrivastava (supra) the Division Bench directed for grant of actual benefit to him w.e.f. 1.7.1996. Once the direction of this Court as indicated herein above is to treat the Members of the Labour Judiciary in the State of M.P. at par with Members of the State Judicial Services and grant them the benefit w.e.f. 1.7.1996, the justification given by the State Government now that they are only entitled to the benefit after the Rules of 2006 came into force and not prior to the Act is nothing but willful act of the respondents and this Court has granted enough time to the respondents to implement the orders passed. It seems that the respondents are not interested in doing so. They are sitting tight over the matter and therefore, liable to be punished for having deliberately disobeyed the directions issued by this Court.

11. From the aforesaid narration of facts it is clear that even though on the last date of hearing Shri Kumaresh Pathak pointed out that respondents are filing review application against the order dated 30.4.2013 in Contempt Case No. 753/2012 and therefore, the case was adjourned on the last date to enable him to point out to this Court the result of the Review Application filed but till date no Review application has been filed. It is indicated that respondents are proposing to file the review application but merely because respondents are proposing to file review application, there is no reason for us to adjourn hearing of this contempt. Orders were passed in the case of Satish Shrivastava (supra) on 12.8.2008 and the Writ Appeal was decided on 9.7.2009. Even though more than 4 to 5 years have passed, no action is taken by the respondents. Taking note of the totality of the facts and circumstances, we are of the considered view that the non applicants have deliberately and without any justification failed to carry out the order passed by this Court and accordingly, we hold that they have committed contempt of this Court, accordingly holding them guilty of contempt. They are directed to appear before this Court on 23.7.2013 on which date they shall be heard on the question of passing an appropriate order with regard to punishing them for the contempt committed.

List the matter on 23.7.2013.