
(2018) 06 MP CK 0145

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2784, 19507 Of 2012

Sandeep Kumar Shukla & Others

APPELLANT

Vs

State Of Madhya Pradesh & Another

RESPONDENT

Date of Decision : 28-06-2018

Acts Referred:

Citation : (2018) 06 MP CK 0145

Hon'ble Judges : VANDANA KASREKAR, J

Bench : Single Bench

Advocate : K.C. Ghildiyal, Divesh Jain

Final Decision : Disposed Off

Judgement

Both these above writ petitions are being decided by this common order as the common question as well as the facts are involved in all both the writ

petitions. However, for the sake of brevity, facts have been taken from Writ Petition No.2784/2012.

2. The writ petition was initially filed by the petitioner claiming the following reliefs:-

(i) A writ order or direction in the nature of certiorari thereby quashing the order dated 20/01/2012 passed by respondent No.3 (Annexure-P/12).

(ii) A writ order or direction in the nature of mandamus thereby directing the respondents to grant the benefit of the pay scale of Rs.3000-5000 to the

petitioner as admissible to a Shiksha Karmi Grade-III under the 5th Pay Commission w.e.f. 01/01/1996 alongwith its arrears and interest thereon.

(iii) Any other appropriate writ order or direction which this Honâ??ble court may deem just and proper in the nature and circumstances of the case

including cost of the litigation.

3. It is the case of the petitioner that he was appointed as Shiksha Karmi grade-III on 28/06/1997 in the institution run by respondent no.4 Society

initially for a period of one academic session. The institution is receiving 100% from the State Government hence it is governed by the provisions of

Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978(Adhiniyam 1978

in short) and the rules made thereunder. The term of the petitioner was extended from time to time and he was paid salary by the institution from the

grant being provided by the State Government. He was paid salary in the pay scale of Rs.800-1200 as applicable under fourth pay commission. It is

the case of the petitioner that in the year 1996 the State Government abolished the posts of Assistant Teachers in all Government Institutions and

introduced the cadre of Shiksha Karmis. The corresponding change was made by amending the Madhya Pradesh Ashaskiya Shikshan Sanstha

(Adhyapakon Tatha Anya Karmachariyon Ki Bharti) Niyam, 1979(Recruitment Rules in short) and in place of Assistant Teacher Shiksha Karmis

were introduced.

4. It is stated that with an intention to curtail the grant-in aid to the private institutions, certain amendments were made in the Adhiniyam 1978 through

Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sanday) Sanshodhan Adhiniyam, 2000. The

constitutional validity of the Sanshodhan Adhiniyam was challenged before this court by the Associations of the employees of private aided institutions

in various writ petitions . The petitions were allowed by the Division bench of this court vide order dated 11/01/2002 (2002(1)MPHT 315(DB).

5. The order passed by this Court was challenged by the State of Madhya Pradesh before the Honâ??ble Apex Court in SLP(Civil) No.8534/2002

(Civil Appeal No.6415/2004) and other petitions. The Honâ??ble Apex Court by order dated 06/05/2002 stayed the order passed by this Court and

directed the State Government to continue to pay grant-in aid at the rate of 50% for the year 2002-2003 to the educational institutions. It is stated that

by virtue of the aforesaid order passed by the Apex Court, the petitioner started receiving 50% of the salary from the institution out of the grant

provided by the State Government.

6. While the matter was pending before the Honâ??ble Apex court, the State

Government implemented the recommendations of the 5th pay commission in respect of the employees of the State Government. The employees of the private aided institutions also demanded 50% of the salary at the rate admissible under 5th pay commission. When the same was not paid various writ petitions were filed before this court as well as before the Honâ??ble Apex Court. By virtue of the orders passed by the Apex Court and this Court, the employees of the private aided institutions were granted the benefit of 5th pay commission at the same rate as was being paid to the employees of the Government institutions. The petitioner was however not paid the benefit of fifth pay commission on the ground that there was no corresponding post of Shiksha Karmi in the Government institutions. It was with this grievance that the present writ petition was filed. The State Government filed its reply to the writ petition opposing the prayer made by the petitioner on the ground that the State Government had issued a circular on 04/01/2000 (Annexure-R/1) directing that the benefit of 5th pay commission shall not be applicable to the Shiksha Karmis. On this premises dismissal of the writ petition was sought.

7. Madhya Pradesh Panchayat Adhyapak Samvarg (Employment and Conditions of Service) Rules, 2008 (Adhyapak Recruitment Rules inshort) were framed by the Sate Government whereby the persons serving as Shiksha Karmis and Samvida Shala Shikshaks in the institutions under panchayats were appointed/absorbe in the Adhyapak Samvarg. The Shiksha Karmis and samvida Shala Shkshaks qualified under the rules were deemed to be absorbed/appointed with effect from 01/04/2007.

8. During pendency of the instant petition, Civil Appeal No.6362/2004 and other connected petitions were decided by the Honâ??ble Apex Court vide order dated 07/01/2014 and the Apex Court set aside the order dated 11/01/2002 passed by this . It was directed by the Apex Court that Sanshodhan Adhiniyam, 2000 shall not be made applicable to the employees appointed prior to 2000. The Court also directed to pay 6th pay commission scale to the employees of the private aided institutions in the State of Madhya Pradesh.

9. After disposal of the Civil Appeal No.6362/2004 by the Honâ??ble Apex Court, the State Government issued an order on 03/11/2016 in respect of the Shiksha Karmis, which is reproduced hereunder:-

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10. It appears that after issuance of the order dated 03/11/2016 by the State Government, the Shiksha Karmis were given the benefit of notional

fixation of pay from the date of their absorption as Adhyapak i.e. with effect from 01/04/2007 and started getting salary as Adhyapak on the basis of

the above notional fixation. Subsequently the Commissioner of Public Instructions Madhya Pradesh issued an order on 12/06/2017 objecting to

payment of salary to the Adhyapaks on the basis of notional fixation and it was alleged that the salary of Adhyapak was to be paid from the date of

the order dated i.e. 03/11/2016. As a consequence of the order dated

12/06/2017, the salary of the Adhapers in the private aided institutions was being

reduced. The petitioners in Writ petition No.19507/2012 filed I.A. No.9523/2017 praying for a direction to the respondents not to reduce their salary

pursuant to the order dated 12/06/2017 issued by respondent No.2. Alongwith the IA order dated 03/11/2016 (Document-A) and order dated

07/07/2017 issued by the Urban Administration Department of the State Government granting the benefit of sixth pay commission to the Adhyapers

serving in the schools under municipalities with effect from 01/01/2016 was also filed (Document-B).

11. When the matter came up for hearing before this court it was contended by the learned counsel for the petitioner that in view of the order dated

07/01/2014 passed by the Honâ??ble Apex Court in Civil Appeal No.6362/2004 the petitioner being an employee appointed prior to 01/04/2000 is

entitled to be governed by the Adhinyam 1978 (Unamended). It is further contended that the respondent State in pursuance to the above order passed

by the Honâ??ble Apex Court has issued the order dated 03/11/2016, though belatedly, absorbing the petitioner as Sahayak Adhyapak and granting

the benefit of salary as admissible to Sahayak Adhyapks of Government institutions, the petitioner stands absorbed as Adhyapak in the institution he is

working with. It is however submitted that the entire benefits as accrued to the petitioner on such absorption have not been given to him hence the

direction be issued for the same. It is contended that as the petitioner is an employee of the aided institution, in view of the law laid down by the

Division Bench of this Court in the case of Suresh Kumar Dwivedi V State of M.P. & Others, 1993 MPLJ 663, the petitioner is entitled for the same

salary and allowances as paid to the employees of the Government institution holding same status. It is submitted by the learned Counsel for the

petitioner that in view of the letter dated 03/11/2016, the petitioner is entitled to be treated as absorbed as Sahayak Adhyapak with effect from

01/04/2007 in view of the provisions of the Adhyapak Samvarg Recruitment Rules, 2008. He therefore submits that as the petitioner was paid 50%

salary as Shiksha Karmi with effect from 01/04/2000 without any revision, hence he is entitled for arrears of salary from 01/04/2000 till 31/03/2007 as

Shiksha Karmi of Government institutions after adjusting the amount of salary already paid to him during this period and thereafter salary admissible to

Sahayak Adhyapak with effect from 01/04/2007 alongwith the arrears.

12. Learned counsel for the State does not dispute the fact that the petitioner being an employee appointed prior to 01/04/2000 is governed by the

provisions of Adhiniyam 1978 (Unamended). He also does not dispute that the petitioner has been absorbed as Sahayak Adhyapak in view of the

letter dated 03/11/2016 issued by the State Government. He however submits that the petitioner is entitled to Adhyapak's Salary with effect from

03/11/2016 and not from 01/04/2007 as stated by the counsel for the petitioner. He is also not entitled to any salary prior to his absorption as

Adhyapak.

13. I have heard the learned counsel for the parties. This petition was filed by the petitioner in the years 2012 and the reliefs were accordingly

claimed. However, in view of the order passed by the Honâ??ble Apex Court on 07/01/2014 and the order dated 03/11/2016 passed by the State

Government during pendency of the writ petition, the issue regarding payment of salary to the petitioner from the grant-in aid and absorption as

Sahayak Adhyapak stand concluded. Now it is to be seen as to what further relief the petitioner is entitled to receive from this court.

14. It has not been disputed by the respondents that as per the decision rendered by the Honâ??ble Apex Court in Civil Appeal No. 6362/2004 dated

07/01/2014, the petitioner is an employee under Adhiniyam 1978 (Unamemnded) hence entitled to receive the salary from the grant provided by the

State Government. The petitioner received 50% salary as Shiksha Karmi with effect from 01/04/2000 without any revision like any other employee of

the Private aided institution receiving salary from grant-in-aid. The petitioner has been absorbed as Sahayak Adhyapak pursuant to the order passed

by the State Government on 03/11/2016. The absorption of the petitioner in Adhyapak Samvarg is in accordance with the provisions of Adhyapak

Recruitment Rules under which the Shiksha Karmis in the Government institutions were absorbed. As under these rules, the Shiksha Karmis who had

completed three years of service as Shiksha Karmi were entitled to be absorbed in service with effect from 01/04/2007. Acordingly, the petitioner was

entitled for his absorption as Sahayak Adhyapak with effect from 01/04/2007. In view of the decision of the Division Bench of this court in the case of

Suresh Chandra Dwivedi (Supra) the employees serving in the private aided institutions are entitled for the same salary and allowances as are being received by the employees of Government employees enjoying the same status. Hence the petitioner will be entitled to absorption as Saahayak

Adhyapak with effect from 01/04/2007. He shall also be entitled for the salary of Sahayak Adhyapak from the same date.

15. It has not been disputed by the learned Counsel for the State that after the decision of the Supreme Court, the employees of private aided

institutions have been held entitled for the benefit of 5th pay commission with effect from 01/01/1996 and 6th pay commission with effect from

01/01/2006. It is also not disputed that they are receiving salary admissible under 6th pay commission with effect from 01/01/2006. Arrears of 5th pay

commission and 6th pay commission have also been paid and only a small part of arrears remains to be paid. It is also not disputed by the learned

State Counsel that it is only the cadre of Shiksha Karmis which was not granted the benefit of 5th and 6th pay commission prior to issuance of the letter

dated 03/11/2016.

16. In view of the foregoing discussion, I am of the considered opinion, that the petitioner is entitled to the salary of Shiksha Karmi from 01/04/2000 to

31/03/2007 at the rate the Shiksha Karmis of the Government institutions were paid. Thereafter the petitioner shall be paid the salary of Sahayak

Adhyapak with effect from 01/04/2007 at the rate as applicable to the Sahayak Adhyapaks working in the institutions under the Panchayats or other

local bodies. It is however clarified that while paying the arrears of salary to the petitioner the salary already paid to him during the aforesaid period

shall be adjusted. The other benefit such as Kramonnati etc as granted to the Shiksha Adhyapaks of the Panchayats and local bodies shall also be

granted to the petitioner. Let the benefits be determined and paid within a period of four months.

17. The writ petition filed by the petitioner stands disposed of in the above terms with no order as to cost.