
(2005) 03 MP CK 0030
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1689 of 2002

Saroj Goswami

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 01-03-2005

Acts Referred:

Citation : (2006) 1 MPLJ 217

Hon'ble Judges : R.V. Raveendran, C.J.; Shantanu Kemkar, J

Bench : Division Bench

Advocate : Sudhir Shrivastava, for the Appellant; T.S. Ruprah, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, C.J.

The Petitioner was initially appointed as a Lecturer on ad-hoc basis by the Department of Collegiate Education on 8-11-1983 for a period of six months on a fixed salary of Rs. 700/- which is equivalent to initial pay in the pay-scale of Rs. 700-1600. Thereafter, periodically she was given ad-hoc appointments for terms of six months each in the years 1984 and 1985 also, on the fixed salary of Rs. 700/- . The Petitioner's services were regularised by order dated 10-3-1987, under the provisions of Madhya Pradesh Regularisation of Ad-hoc Appointments Rules, 1986, ("Rules" for short) and the petitioner was extended the benefit of pay-scale of Rs. 700-40-1100-50-1300-EB-50-1600.

Fourteen years later, the petitioner approached the M.P. State Administrative Tribunal, Jabalpur Bench in O.A. No. 2706/2001 seeking grant of increments for the ad-hoc period of service i.e. from 8-11-1983 to 10-3-1987, the Tribunal rejected the claim by order dated 17-1-2002 following its earlier order dated 12-7-2001 in O.A. No. 1880/2001, Smt. Fahmida Bano v. State of M.P. and the order of the Indore Bench of the Tribunal in O.A. No. 1355/2000, Dr. Smt. Nasreen Rehman Sheikh v. State of M.P. both on merits and on the ground of

limitation. The Tribunal refused to follow its decision in T.A. No. 1547/1988, Dr. P.L. Malik v. State of M.P. decided on 30-7-1990 relied upon by the petitioner, on the ground that the said order was rendered by a Bench which was not duly constituted. The order dated 17-1-2002 of the Tribunal is under challenge in this petition.

The petitioner contends that having regard to F.R. 26 of the M.P. Fundamental Rules, the period during which a person performed duties in a post on a time-scale should count for increments in that time-scale. The petitioner contends that as the order of ad-hoc appointment referred to the scale of Rs. 700-1600, it should be deemed that her appointment was on a time-scale and consequently increments should be granted even for the period of ad hoc appointment.

The petitioner accepted her regularisation under the M.P. Regularisation of Ad hoc Appointment Rules, 1986 (for short "the Regularisation Rules") with effect from that date with her initial pay at Rs. 700/- in the pay-scale of Rs. 700-1600 without protest. She did not demand that her pay should be fixed at any higher stage in the pay-scale, by counting the period of ad-hoc service for grant of increments. She never claimed the benefit of increments for the ad-hoc employment period (1983-87). Therefore, the petitioner cannot be permitted to claim for the first time, in an application filed on 10-9-2001, increments for the period between 1983 to 1987. The application was liable to be rejected on the ground of limitation.

Learned Counsel for the petitioner relying upon the decision in M.R. Gupta Vs. Union of India and others, contended that where the grievance is in regard to fixation of initial pay, the assertion being one relating to a continuing wrong, the question of limitation will not arise. It is contended that the decision of the Tribunal is contrary to the decision in M.R. Gupta.

this Court had occasion to consider the circumstances in which the principles stated in M.R. Gupta will apply, in P.S. Rai v. Union of India, (WP (S) No. 596/2003). this Court held:

The Principle in M.R. Gupta will apply where the re-fixation is sought on the ground of an error in calculation (incorrect computation), or where the entitlement for re-fixation is not disputed. It will also apply to a case where there is no dispute about the applicability of a particular pay scale, but the pay had been wrongly fixed in a different pay scale; or to a case where there was a wrong fixation in the same pay scale contrary to the Rules; or to a case where the fixation of pay was erroneously done by not calculating the initial pay in the pay scale as contemplated under Fundamental Rule 22 (I)(a)(i) corresponding to old F.R. 22 (c).

Where the real issue is adjudication of a right claimed for the first time and which is not admitted, the principle in M.R. Gupta will not apply. Similarly, where a person is regularised or absorbed on a particular post and the pay is fixed in the applicable pay scale but the employee wants pay should be fixed at a higher

level by taking note of previous service rendered on stopgap/ad-hoc/contract basis, then the question involves adjudication of an issue as to whether such service was rendered and whether it should be counted. Though the ultimate consequence of grant of such relief may be re-fixation of pay, the real issue to be adjudicated is not re-fixation but an independent right, which was not claimed or asserted in time. In those cases, if there is delay, the Court or Tribunal will be justified in refusing to adjudicate upon the right belatedly claimed and consequently there can be no re-fixation of pay. In this case, the question is whether ad-hoc service rendered prior to the date of regularisation should be counted for purposes of increments and fixation of pay in the scale when the services of such employee are regularised. That question became stale and was clearly barred by limitation, by the time it was raised. Therefore, the Tribunal was justified in rejecting the claim following its earlier decision in Fahmida Bano. The principle laid down in M.R. Gupta will not apply in such a case.

We will also examine the matter on merits. The M.P. Regularisation of Ad-hoc Appointment Rules, 1986 make it clear that the regularisation will be with effect from the date of the order of regular appointment. It provides for preparation of a selection list as also a waiting list of the persons appointed on ad-hoc basis (in the order of seniority in the ad-hoc appointment). It further provides that the appointing authority shall make regular appointments from the selection list, in the order of seniority; and that persons who cannot immediately be regularised for want of posts (but found suitable for regularisation) will be included in the waiting list and their appointments shall be made against the posts falling vacant in future and against posts which could not be filled from the reserve quota. Both, for the purpose of seniority as also for the purpose of benefit of pay-scale, the date of appointment would be the relevant date. In this case, petitioner was appointed with effect from 10-3-1987 and therefore she will be entitled for seniority and benefit of pay-scale from that date.

Before 10-3-1987, petitioner's appointment was for periods of six months each. It was an ad-hoc or stop gap service and on the basis of such service, the petitioner will not be entitled to the benefits which are given to a person who holds a substantive post. Therefore, the petitioner will not be entitled either to claim seniority or to get benefit of pay-scale attached to the post while working in an ad hoc capacity. Reliance on F.R. 26 is not of any assistance. It merely provides that all duty in a post "on a time-scale" counts for increments in that time-scale. This is if the appointment was to a post on a time-scale, duty performed on such a post, would be counted for increments in that time-scale. Where appointment was not on a time-scale, but on fixed pay, the incumbent will neither be entitled to the benefit of seniority nor pay-scale. The fact that the fixed pay happened to be equivalent to the initial pay in a time scale does not mean that the ad-hoc service was on a time scale. The decision of the Tribunal in Dr. P.L. Malik v. State of MP, T.A. No. 1547/88 and connected cases decided on 30-7-1990 holding that ad-hoc employees are entitled to increments is therefore wrongly decided. The petitioner is not entitled to claim the benefit of increments

for the ad-hoc service between 1983 to 1987.

We are fortified in our view by the decision of the Supreme Court in *Dhyan Singh and Others Vs. State of Haryana and Others*, wherein considering whether temporary service or ad-hoc service rendered in specific schemes could be counted as employment under the State, the Supreme Court observed:

The continuance/engagement of the Appellants under the specific scheme cannot be held to be an employment under any establishment of the Government. Such schemes are taken up for certain contingencies when money for the same is provided either by the Central Government or at times by some foreign countries. But the employment under such scheme not being a part of the formal cadre of the State Government, it is difficult to hold that the period for which an employee rendered service under such scheme can be counted either for the purposes of deciding their pensionary benefits or even for fixing of their salary in the scale of pay once they are regularly absorbed.

The petition is therefore, dismissed, as having no merit.