
(2013) 07 MP CK 0371

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3328 of 2012 (s)

Satish Shrivastava

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Citation : (2013) 5 MPHT 35 : (2013) 3 MPLJ 691

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Shobha Menon, assisted by C.A. Thomas, for the Appellant; Amit Kumar Sharma, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—The petitioner a retired Member Judge of Industrial Court, M.P. has approached this Court by way of filing this petition under Article 226 of Constitution of India, ventilating his grievance against the recovery order dated 28-6-2011 and also claiming the benefit of proper fixation of pension after the release of D.A. w.e.f. 1-4-2004 on the grounds that the petitioner was initially appointed in the Labour Judiciary under the provisions of M.P. Industrial Relations Act, 1961 and the Rules made in the year 1965. In terms of the decisions taken by the respondents/State, after deciding certain writ petitions and after decision of the Apex Court, the petitioner was to be fixed in the pay scale of Rs. 16750-20500 notionally w.e.f. 1-1-1996 and accordingly his pension was to be fixed. While doing so, the D.A. which was to be paid to the petitioner in tune of the Rules made in the year 2003 was not added with his salary as a result the petitioner suffered the monetary loss. Even his pension after retirement has not been fixed properly, therefore, he is required to file the present writ petition. It is contended that since the recovery has been ordered while issuing the Final Payment Order to him, such order of recovery is also bad in law and is liable to be quashed. It is contended that in terms of the rules made by the respondents themselves, the Presiding Officers of the Labour Judiciary are also to be treated

at par with the Judicial Officers of the State Government and that being so, the petitioner would be entitled to proper fixation of salary after inclusion of the D.A. in appropriate manner. If this is worked out properly there would not be any recovery from the petitioner. On the other hand, he would be entitled to payment of arrears of salary and pension. Since after demand, this has not been done even after filing of the petition before this Court and even after a direction given by this Court, a contempt petition was filed by the petitioner but a frivolous stand was taken by the respondents in said petition. However, since the lawful claims of the petitioner have not yet been settled and the recovery has been illegally ordered, the petition is required to be filed.

2. Upon issuance of notices of the writ petition, respondents have filed their return and have contended that the relief claimed by the petitioner cannot be granted to him in view of the fact that the provisions of the Rules as contained in Annexure P/3 are not applicable to the Members of the Labour Judiciary Services and, therefore, the petitioner would not be entitled to such benefit. It is contended by the respondents that the services of the petitioner were governed under the M.P. Labour Judiciary Service (Gazetted) Recruitment Rules, 1965 (hereinafter referred to as Rules, 1965 for brevity), according to which Rules, the petitioner would not be entitled to the benefit as is claimed by him. The Provisions were made in the Rules subsequently framed known as "M.P. Labour Judicial (Recruitment and Conditions of Service) Rules, 2006", which were framed after the retirement of the petitioner from service and, therefore, the said Rule would not be applicable to the petitioner. That being so, it is contended that the writ petition is wholly misconceived and is thus liable to be dismissed.

3. A rejoinder has been filed by the petitioner but the facts as have been mentioned in the petition are reiterated. It is contended that in terms of the policies made by the State Government, pursuant to the decisions rendered by the Apex Court and this Court, the petitioner would be entitled to claim the parity with the Judicial Officers appointed by the State Government. The Rules made for the Judicial Officers would squarely be applicable to him also and, therefore, still the petitioner is entitled to the relief claimed in the petition. No additional return whatsoever has been filed by the respondents after filing of the rejoinder.

4. Heard learned counsel for the parties at length and perused the record.

5. It is seen from the record, as has rightly been pointed out by the learned senior counsel for the petitioner the first issue raised by the respondents in their return that the Rules framed for the Judicial Officers would not be applicable to the Members of Labour Judiciary, has been put at rest by this Court in earlier writ petition of the petitioner being W.P. No. 5446/2005 (s) which was decided by the Gwalior Bench of this Court on 12-8-2008. Comparing and referring to the provisions of Rules 1965, this Court has categorically held that in so far as the pay scales are concerned, the Presiding Officers of Labour Judiciary have been put at par with the Judicial Officers of the State by making the Rules. This Court in the aforesaid writ petition as held in paragraph 5, which reads thus:--

(abstracted by the Court)

The provisions of the recruitment rules clearly provides that the Presiding Officer of Labour Court shall be entitled for the similar pay scale to which a Civil Judge is entitled to and therefore, there appears to no justification in not granting the pay scale of the post i.e. to the Presiding Officer specifically keeping in view the provisions of recruitment rules, 1965 and also under the amended provisions as amended in the year 2003. Similarly the post of Member Judge Industrial Court as per the provisions of the recruitment rules, 1965 (schedule I) also carries a pay scale equivalent to the post of District Judge and the amendment made in the year 2003 has also clarifies the same position and schedule appended to the amendment of the year 2003 also reflects that the Member Judge, Industrial Court shall be entitled to the same pay scale which has been granted to the post of District Judge and therefore, there appears to be no justification in not granting the same pay scale to the petitioner or to other Presiding Officers or Member Judge, Industrial Court. In the present case the petitioner was promoted to the post of Member Judge Industrial Court however, while issuing the promotion order he has been granted pre-revised pay scale of District Judge and also not granted the benefit of revised pay scale w.e.f. 1-1-1996 and therefore, once the revision of pay scale has been granted to the District Judges, the member of labour judiciary are also entitled for the same. The recruitment rules provides that the Member to the Labour Judiciary Service will be entitled for the same pay scale at par with the State Judiciary Services and the same benefit has to be extended to the Members of Labour Judiciary. Similarly the petitioner is entitled for revise pay scale form the date of his promotion as Member Judge Industrial Court. Further grievance of the petitioner is that he was already enjoining the pay scale of Rs. 3700-5000/- and this pay scale was granted to him w.e.f. 16-5-1990 and corresponding revised pay scale and as the petitioner was having requisite number of years of service, he was entitled for the pay scale of Rs. 16750-20500/-, which is the higher pay scale given to the post of Civil Judge. Once the petitioner was receiving the same pre-revised pay scale, there appears to be no justification in not granting him the revised pay scale from the date he was placed in the pay scale of Rs. 3700-5000/-. Resultantly keeping in view the recruitment rules and also keeping in view the revision of pay rules, the petitioner is entitled for the pay scale of Rs. 16750-20500/- w.e.f. 1-1-1996 i.e. from the date the benefit of revised pay scale has been extended to the Judges of State Judiciary subject to fulfillment of all other conditions.

6. This Court has further taken note of the decision rendered by the Apex Court in the case of State of Kerala Vs. B. Renjith Kumar and Others, , and has further categorically held that in view of the law laid down by the Apex Court, the Officers Presiding over the Industrial Tribunal cannot be differently treated from the District Judges in the matter of pay scale as the same would be violative of Article 14 of the Constitution of India. Now as far as other part with respect to the application of the Rules is concerned, this Court has already examined the validity of the Rules and there applicability and scope. While allowing the writ

petition of petitioner, this Court has categorically held that such a benefit would be applicable to the petitioner as well. The order passed by the Writ Court was challenged in Writ Appeal unsuccessfully. The petitioner herein also challenged the said order. The appeal of the petitioner was allowed partly and he was granted the benefit of revised pay scale w.e.f. 1-1-1996. The Division Bench order of this Court was challenged in SLP before the Apex Court by the State Government, but the same has been dismissed. Pursuant to which consequential orders were required to be issued.

7. It appears that the respondents have not taken note of the fact that how revision of pay was to be done and how the benefit was to be extended to the petitioner for grant of D. A.. Rule 4 of M.P. Judicial Services Revision of Pay Rules, 2003 (hereinafter referred to as Rules, 2003 for brevity) specifically prescribed that the notional pay fixation is to be done w.e.f. 1-1-1996, and it is further categorically said that the actual benefit as accrued w.e.f. 1st July, 1996 is to be paid. In Rule 7 of Rules, 2003, it is again reiterated that fixation of salary is to be done w.e.f. 1st January, 1996. The D.A. is also to be allowed w.e.f. 1st July, 1996. The revised pay scales have been shown in the schedule appended to the Rules. As per the law laid down by this Court in the case of petitioner as also in other cases, the revision of pay of the petitioner was to be done in the like manner. If it is done in that way, the petitioner would not be liable to refund any amount as is directed. Further when the Rules were made in the year 2006, Known as M.P. Labour Judicial (Recruitment and Conditions of Service) Rules, 2006, (hereinafter referred to as Rules 2006 for brevity), it was reiterated by the State in Rule 3(2)(c) that the pay scale mentioned above are as per M.P. Judicial (Pension and other recruitments benefits) Rules, 2003. Rule 14 of these Rules further prescribed that Rules and orders relating to pay allowances and other conditions of service applicable to the Government servant of the corresponding grade in general and not inconsistent with these Rules, were made applicable to the Members of the service. This leave no doubt that the petitioner was to be extended the benefit of Rules, 2003, in appropriate manner. Had it been done in appropriate manner, the petitioner would not have been subjected to any recovery whatsoever. That being so, the order of recovery directed against the petitioner cannot be sustained. The said order is thus bad in law and is quashed.

8. Now the question would be whether the petitioner is entitled to 50% D.A. or not as was given to the Central Government employees. If the Rules are seen, everywhere it is said that the D.A. would be applicable as is applicable to the Central Government employees. Rule 9 of Rules, 2003, categorically deals with such extension of benefit to the Judicial Officers in unequivocal words. The Judicial Officers shall be allowed D.A. from 1st July, 1996 at the rate as applicable to the Central Government employees. It has already been held by this Court that the said Rules are applicable to the Members of the Labour Judiciary and since this would be applicable to the Members of the Labour Judiciary, the benefit is to be extended to the petitioner as well. In the W.A. No. 784/2009, the Division Bench of this Court has held on 21-10-2009 that the

Members of the Labour Judiciary are entitled to the same pay scale as is made applicable to the District Judges of the State Judiciary. The Division Bench has categorically held in paragraphs 6 and 7, which reads thus:--

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 case of Satish Shrivastava (*supra*). In view of the aforesaid, we are inclined to allow the present writ appeal and direct the State Govt. to fix the revised pension of the present appellant with effect from 1-7-1996 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 equivalent 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.

9. It is further pointed out that since certain orders issued by this Court were not being complied with, the benefit was not being extended, the contempt case has been filed before the Division Bench of this Court by some of the similarly placed employees in which a very detailed order is passed by the Division Bench of this Court, again reiterating the similar provisions as has been referred to hereinabove and it has been held that the Presiding Officer and Member of the Industrial Court are entitled to the same pay scale as that of the District Judges of the State Judiciary and this has to be conferred on them by the State Government. It will not be out of place to mention here that even after a judicial pronouncement of such claim by this Court, which has been upheld up to such final stage of filing SLP in the Apex Court, the respondents are insisting on the same stand which has been negated by all the Courts. It is really unfortunate, if such a conduct of the respondents is seriously viewed.

10. In view of the discussion hereinabove, the writ petition is allowed. The order of recovery as directed against the petitioner vide PPO dated 28th June, 2011 (Annexure P/17) amounting to Rs. 77,321/- (Rs. Seventy Seven Thousand Three Hundred Twenty One) is hereby quashed. The respondents are directed to fix the salary of the petitioner in accordance to the provisions of fundamental Rule 22-D in appropriate manner w.e.f. 28-8-2003 and to restore the payment of D.A. as per notification and D.A. applicable to the Central Government employees in terms of the Rules 9 and 12 of Rules, 2003. After revising the salary in the appropriate manner, the arrears be paid to the petitioner w.e.f. 1-4-2004 and

pension of the petitioner be calculated accordingly and fresh PPO be issued to the petitioner within a period of two months from the date of receipt of certified copy of the order passed today. If any amount is due to be paid as arrears to the petitioner, the same be paid within the aforesaid period. The writ petition is allowed to the extent indicated hereinabove. However, in the facts and circumstances of the case, there shall be no order as to costs.