
(2013) 09 MP CK 0181
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 820 of 2013

Secretary State of M.P. and Others

APPELLANT

Vs

Gulab Singh Barde

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Constitution of India, 1950 — Article 21
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2013) 09 MP CK 0181

Hon'ble Judges : Shantanu Kemkar, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Sudhanshu Vyas, for the Appellant; Kamal Airen, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard on I.A. No. 5145/2013, an application seeking condonation of delay in filing the appeal. On due consideration, we find that the delay has not been satisfactorily explained. However, we have also examined the matter on merits.
2. By filing this intra Court appeal u/s 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005, the appellant/State has challenged the order dated 13.04.2012 passed by learned Single Judge of this Court in Writ Petition No. 3521/2012 (s).
3. Briefly stated, the respondent was appointed on the post of Peon on 07.08.1989. On completion of five years service on contingency basis vide order dated 14.05.1996, he was granted pay scale of Rs. 750-945/- along with other employees.
4. The petitioner before the writ Court filed writ petition claiming regular pay scale i.e. pay scale of Rs. 750-945/- w.e.f. 14.05.1996. He challenged the order dated 08.10.2004 by which his claim for regular pay scale was turned down.

According to the writ petitioner, after completion of five years of service vide order dated 14.05.1996, he was granted pay scale Rs. 750-945/- on the basis of the Circular dated 17.03.1978 issued by the State Government. The said order was kept in abeyance on 29.06.1996 and thereafter it was cancelled by the State Government on 08.10.2004. It is worth mentioning that the said order of cancellation was challenged by one Baliram Bhagel by filing a Writ Petition No. 1512/2004. The writ petition of the said Baliram Bhagel was allowed vide order dated 14.09.2005 passed by the learned Single Judge. The writ appeal No. 128/2006 filed by the appellant/State suffered dismissal vide order dated 11.11.2006 passed by the Division Bench. The SLP filed by the State challenging the order of Division Bench was also dismissed by the Supreme Court.

5. When the matter stood thus, the writ petitioner herein filed Writ Petition No. 3521/2012 (s), which was disposed of vide order dated 13.04.2012 by quashing the order dated 08.10.2004 issued by the State Government with liberty to take appropriate decision after issuing show cause notice to the petitioner. On the basis of the said liberty, show cause notice was issued by the appellants. The writ petitioner (respondent herein) filed reply of the same. The appellants State Government after considering the reply vide order dated 17.12.2008 cancelled the order of grant of regular pay scale issued in favour of the writ petitioner. Aggrieved, the petitioner filed the writ petition.

6. The learned Single Judge, after examining the matter at length and taking into consideration that identically placed employee Baliram Bhagel is receiving regular pay scale, held that the denial of the same pay scale to the petitioner would be violative of Article 21 of the Constitution of India. He also took into consideration that the pay scale was granted by the State Government vide order dated 14.05.1996 to those employees who have completed five years of service in contingency establishment in the light of the Circular dated 17.03.1978 allowed the writ petition noticing the fact that the State Government never withdrew the Circular dated 17.03.1978 and the Circular dated 09.01.1990 imposing ban in respect of appointment will not come in the way for grant of regular pay scale made on the basis of the Circular dated 17.03.1978. It is also an admitted position that thereafter also, on identical issue number of writ appeals including Writ Appeal No. 212/2012 (State of MP v. Smt. Basantibai) and Writ Appeal No. 213/2011 (State of MP & others v. Kailash Chandra) decided on 13.05.2011 have been dismissed by the Division Bench of this Court.

7. Having considered the submissions made by the learned panel lawyer, we are of the view that learned Single Judge has rightly dealt with the matter and the impugned order needs no interference in this intra Court appeal. In the circumstances, notwithstanding the fact that the appeal is barred by limitation, the same is dismissed on the ground of merits also. No order as to the costs.