
(2018) 03 MP CK 0080
In the Madhya Pradesh High Court
Case No : W.P. NO.6255 OF 2018

Shivpuri Goswami & Ors

APPELLANT

Vs

State Of Madhya Pradesh & Ors

RESPONDENT

Date of Decision : 19-03-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(ra), 2(4)
Constitution of India, 1950 — Article 136

Citation : (2018) 03 MP CK 0080

Hon'ble Judges : S.C. SHARMA, J

Bench : Single Bench

Advocate : Manish Yadav

Final Decision : Disposed Of

Judgement

Learned counsel for the petitioner Shri Manish Yadav has drawn the attention of this Court towards the judgment delivered in the case of Sunil Kumar

Daya Vs. State of M.P. and others in W.P.No.3415/2014 dated 10.04.2015 which reads as under :-

The petitioner before this court has filed this present petition for issuance of an appropriate writ, order or direction directing the respondents to pay

the minimum of pay scale, as per the recommendation of the 6th Pay Commission.

In the present case, the petitioner's contention is that he was appointed as dailywager on 11.01.1990 under the Narmada Valley Development

Authority, which is an instrumentality of the State of Madhya Pradesh and since then they are continuously working with the respondents.

Petitioners have further stated that in case of rest of the employees respondents have granted them minimum of the pay scale as per recommendation

of the 5th and 6th Pay Commission and the petitioner has enclosed Annexure P-3, which is on record dated 28.10.2010. The same reflects that as

many as fourteen Writ Petitions were preferred before this court and they have been allowed and thereafter contempt petitions were preferred and

because of the contempt petitions, respondents have granted the pay scale as prayed by the petitioners, therein. Petitioner's contention is that he is an

identically placed person like the petitioners, whose names have been mentioned in Annexure-P-3 dated 28-10-2010 and he is also entitled for the same

relief. On the other hand, learned counsel for the Respondent State has argued before this court that the petitioner is not entitled for the regular pay

scale and, therefore, he has drawn the attention of this court towards the judgment delivered in the case of State of Madhya Pradesh and others Vs.

Yogesh Chandra Dubey and others reported in Judgment Today 2006(8) SC 595. He has also placed reliance upon a judgment delivered by the apex

court in the case of State of Punjab and others Vs. Surinder Singh and another in Civil Appeal No. 5607-5608 of 2001. Respondents have also placed

reliance upon a judgment delivered by the apex court in the case of S.C. Chandra and others vs. State of Jharkhand and others reported in AIR SC

3021 (Annexure-R-5). Respondents have also placed reliance upon a judgment delivered by the Principal seat of this court in the case of WP No.

1773/2006 (Girwar Singh Morya Vs. State of M.P. and others) and in the case of WP No. 21928/2011 (Saiyad Naeem Ulhussain and others Vs. State

of MP. and others) and his contention is that the petitioners are not entitled for minimum of the pay scale, as prayed by them. It has been further

stated that the judgment delivered in the case of Girwar Singh Morya is the case of Forest Department and the judgment delivered in the case of

Saiyad Naeem Ulhussain is the case of N.V.D.A. In the case of Girwar Singh Morya (supra), the relief has not been granted. However in the case of

Saiyad Naeem Ulhussain (supra) respondents therein have been directed to decide the claim of the petitioner, in accordance with law.

The contention of the learned counsel for the respondent is that the petitioner is not entitled for the minimum of the pay scale as claimed by him.

Heard learned counsel for the parties and perused the record. The matter is being disposed of with the consent of the parties at the admission stage

itself. This court after hearing the parties at length has carefully gone through various judgments delivered from time to time. In the case of Kishori

Lal Prajapati and others Vs. State of M. P. and others in WP No.5332/2010(s) in paragraphs 5 to 9, this court has held as under :-

5. Now the only controversy which is to be examined whether the refusal to grant the minimum of the pay scale after revision of the pay of the

post on which the petitioners are continuing for a long period is justified or not, and whether in view of the law laid down by the Apex Court in the

case of Secretary, State of Karnataka and others Vs. Uma Devi (3) and others [(2006) 4 SCC 1], it would be possible for this Court to grant such a

relief to the petitioners, as has been considered by the Division Bench of this Court in the case of M.P. Urja Vikas Nigam Ltd.(supra). In the case in

hand, the situation is totally different. At no point of time, it is contended or proved by the respondents that the petitioners were working as illegal

appointees. The distinction between the two appointment, illegal appointment or irregular appointment has been drawn by the Apex Court in the case

of Uma Devi (Supra). In case, in hand the work was available and obviously the same was available, the posts were created by the NVDA for

appointment of drivers and others, but regular recruitment was not done, on the other hand, certain daily wages or fixed wages appointments were

made by the NVDA. The respondents have not demonstrated that the appointment of petitioners were illegal in any manner. That being so, it cannot

be said that the petitioners had no right to claim minimum of the pay scale of the post against which they were appointed. Secondly, when the matter

went before the Tribunal, no plea was raised by the respondents that the persons like petitioners would not be entitled to benefit of minimum of the pay

scale of the post against which they were working for a long time. On the other hand, when the order was passed by the Tribunal to this effect, the

respondent-State has accepted the same happily and has carried out and complied with the said order by extending the benefit of the minimum of the

pay scale of the post as was prevalent at that time, with the allowances. This being so, it is not open to the State now to say that the petitioners would

not be entitled to any benefit of revised payment of wages in the minimum of the pay scale of the post on which they are working for a long time.

6. The principle of classification of an employee on a post, as is envisaged in the Industrial Law is very simple. If an employee is said to have remained

working in one calendar year for 240 days or more on one post, he is said to be entitled for classification on the said post. If the persons like petitioners

are continuing, it is very clear that the work is available. If the work is available and the posts are already sanctioned, the petitioners are said to be classified on the said post on account of their continuous long working for 20 or more years. Thus, the stand taken by the respondents that the petitioners would not be entitled to minimum of the pay scale of the post against which they are working, cannot be accepted. The factual aspect is distinguishable than that of the facts in the case of M.P. Urja Vikas Nigam Ltd. (supra). The very same principle would not be attracted in the present case.

7. If the persons like petitioners were granted the benefit of minimum of the pay scale with the allowances, applicable on the post on which they are working, how could it be said that they will not be entitled to the revision of the pay scale if the pay of the said post is revised by the State Government accepting the recommendation of the Sixth Pay Commission. The order of the Tribunal is clear. It nowhere says that the persons like petitioners would be entitled to only minimum of the pay scale as is prevalent on the date and they will never get benefit of revision of the pay scale. The only rider put by the Tribunal is that the petitioners would not get the increments of pay. This being so, the respondents are bound to extend the benefit of revision of the pay, applicable to the post on which the petitioners are working. Consequently, the petitioners will get the benefit of minimum of the revised pay scale and allowances of the posts against which they are working, as has been accepted by the State Government on the basis of recommendation of the Sixth Pay Commission. The same would be applicable to the persons like petitioners from the date the revision of pay scale has been done. The admissible amount is to be calculated and is to be paid to the petitioners.

8. Resultantly, the writ petitions are allowed. The respondents are directed to grant benefit of revision of the pay scale on the recommendation of Sixth Pay Commission to the petitioners. The minimum of the pay scale as revised from time to time be paid to the petitioners along with the admissible allowances, from the date the said revision has been accepted by the State Government. The arrears of salary be calculated and be paid to the petitioners, within three months from the date of receipt of certified copy of the order passed today.

9. With the aforesaid directions, the writpetitions stand disposed of finally. There shall be no order as to costs.â??

Meaning thereby, in the case of Kishorilal, the benefit of revision of pay scale on the basis of the recommendation of the 6th Pay Commission has

been granted to the petitioner, therein. Both the judgments delivered by the learned Single Judge in the case of Kishorilal were subjected to judicial

scrutiny and the Division Bench vide order dated 09-07-2013 passed in Writ Appeal No. 1301/2012 held as under:-

â??Heard on I.A. No. 14448/2012, which is an application for condonation of delay.

There is a delay of 72 days in filling the appeal.

Prayer made in the application is not opposed by learned counsel for the respondents, hence it is allowed. Delay in filing the appeal is condoned.

It is submitted by the appellant that in identical matters, learned Single Bench of this Court had dismissed the writ petition but the writ Court has not

considered this aspect. In support of his contention, he has placed reliance on the judgments passed in the cases of Girwar Singh Mourya Vs. State of

M.P and others, (W.P. No. 1773/2006 (S)]. Sayed Naeem Ul Hasan and others Vs. state of M.P. And another decided on 4.1.2012 (W.P. No.

17928/2011) and Dinesh Shukla Vs. State of Madhya Pradesh and others (W.P. No. 18802 of 2003).

Shri Yadav learned counsel for the respondents submitted that identical matter has been considered by the Division Bench of this Court in W.A. No.

53/2013 (State of M.P and others Vs. Bhagchand Patel decided on 23.1.2013), dismissed the writ appeal on merit. The aforesaid judgment is also

applicable in the present case.

The aforesaid position and facts have not been disputed by Shri Ganguly. The Division Bench of this Court has considered the controversy and held as

under:-

â??This appeal is directed against the order dated 10.10.2012 passed in W.P. No. 16930/2012 by which learned Single Judge of this Court directed

the appellants herein to make payment of minimum revised pay scale as has been granted to others and to make payment of arrears also to the

respondent.

Learned counsel appearing for the appellant would submit that respondent being

a daily wage was not entitled for the revised pay scale and the learned Single Judge erred in directing so.

From perusal of the record, it is not in dispute that respondent was getting minimum of the pay scale since the year 2000. Thereafter the pay scale was revised from time to time. He was continued to be paid on the basis of minimum pay scale but no benefit was extended to the respondent in respect of revised pay scale from time to time. The question has been considered by the Division Bench of this Court in M.P. Urja Vikas Nigam Ltd., and others Vs. Rudra Prasad Mishra, 2008 (II) MPJR SN15 (W.A. NO.419/2007 decided in 2.5.2007). The Division Bench held thus:

“Once the pay scale has been revised the respondent has to get the benefit of the said pay scale in the lowest time scale of pay as directed by the Division Bench. We are inclined to think so as the earlier pay scale has become extinct. In the ultimate conclusion, the appellants are bound to compute at the said revised scale pay for the purpose of conferral of benefit of lowest time scale pay to the respondent and the same should be computed and paid within a period of one month.”

As the question has been well settled by the Division Bench of this Court, and we do not find any reason to differ with the aforesaid order, we find that the Single Bench has rightly considered the aforesaid question which appears to be in consonance with the judgment passed by the Division Bench.

In view of the aforesaid we do not find any merit in this appeal and accordingly is dismissed at admission stage with no order as to costs.

As the controversy has already been decided in the case of Bhagchand (Supra), we find that this appeal is without merit and dismissed at admission stage with no order as to costs.

C.C as per rules.

The aforesaid case of Kishorilal is arising out of the same Organization ie N.V.D.A. The State Government being aggrieved by the judgment delivered in the case of Kishiorilal has finally approached the apex court and the apex court in the case of State of M.P. and others Vs. Kishorilal Prajapati and others passed in SLP No. 28227/2013 dated 16-10-2013 has passed the following order :-

â??The petitioners, who appear to have violated the provisions of Section 2 (ra) and (4) read with Fifth Schedule of the Industrial Disputes Act, 1947

by continuing the respondents as daily wage employees for more than two decades have filed this petition under Article 136 of the Constitution for

setting aside the order passed by the Division bench of the high Court which, in our considered view, is not innocuous.

The respondents had filed an application before the State Administrative Tribunal for regularisation of their services and for payment of salary and

allowances at par with regular employees.

At the hearing of the application, learned counsel appearing for the respondents gave up their claim for regularisation and pleaded that they will feel

satisfied, a phenomena usually witnessed in the Court proceedings involving poor and down trodden, if they are paid minimum of the regular time

scale. The Tribunal accepted the submission of the learned counsel and passed order dated 15.12.2000, the relevant portion of which reads as under:

â??So far as the claim of the applicants for the grant of minimum pay in the pay scale of the post on which they are working are concerned such

claims are fully covered by the earlier division bench decision of this tribunal rendered in the case of Bharat Darshan Shrivastava and others vs. State

of M.P. And others 1998 M.P.S.I.R. 278. Hence by allowing the petition the respondents are directed to pay the wages to the applicants on the basis

of minimum of the pay scale of the post against which the applicants are working along with all applicable allowances but without benefit of

increments. This payment be made with effects from the date of filing of this petition. Payment of arrears shall be made within three months from the

date of this order with the aforesaid order and direction this case is disposed off finally.

When the State Government accepted the recommendations of the 6th Pay Commission and framed Madhya Pradesh Salary Revision Rules, 2009,

the respondents claimed revision of the minimum of the pay scale.

The Division Bench of the High Court adverted to the order passed by the Tribunal and held that the respondents are entitled to the benefits under the

revised pay scale.

We have heard Shri S.K. Dubey, learned senior counsel for the petitioners and carefully scanned the record.

We are in complete agreement with the High Court that the respondents are entitled to the benefits of the 6th Pay Commission and the petitioners are bound to enhance their pay by fixing their salary at the minimum of the revised pay scale.

With the above observations, the special leave petition is dismissed.

The petitioners are directed to implement the order of the High Court within a period of three months failing which they shall have to pay interest to

the respondents at the rate of twelve per cent pay annum from the date of enforcement of the revised pay rules till the date of actual payment.

The Registry is directed to send copies of this order to the respondents at the addresses mentioned in the memo of the special leave petition. If the

petitioners fail to pay their dues in terms of the order of the High Court, then the respondents shall be free to initiate proceedings under the Contempt

of Courts Act, 1971.â??

In light of the aforesaid order passed by the apex court, which has been passed in a case of an identically placed person, this court is of the considered

opinion that respondents does not have any choice expect to obey the order passed by the Hon'ble Supreme Court. They cannot be permitted to

discriminate between the identically placed persons. Not only this, this court has allowed as many as fourteen writ petitions and thereafter contempt

petitions were preferred and because of the contempt petitions, respondents have granted the pay scale as prayed by the petitioners, therein.

Resultantly, the writ petition stands allowed. The order Annexures-P-1 and P-2 are hereby set aside. The respondents are directed to grant the benefit

of pay scale as well as arrears of pay scale to the petitioner, keeping in view the 5th Pay Commission as well as 6th Pay Commission as the same has

been extended to the other identically placed employees serving the N.V.D.A.

The exercise of passing the necessary orders and granting the aforesaid benefit be concluded, within a period of ninety days, from the date of receipt

of certified copy of this order. It is needless to mention that in case the judgment passed by this court is not been complied within a period of ninety

days, from the date of receipt of certified copy of this order, the petitioner shall be entitled for interest @ 12% per annum from the date of entitlement

till the amount is actually paid to the petitioner.

No order as to costs.

Certified copy as per rules.â??

Resultantly, no further orders are required to be passed in the present writ petition in view of the order passed in W.P. No.3415/2014, which shall be applicable mutatis mutandis in the present case also.

With the aforesaid, the present petition stands disposed of

No order as to costs.

Certified copy as per rules.