
(2018) 06 MP CK 0062

In the Madhya Pradesh High Court

Case No : Writ Petition No.22338 of 2017

Smt. Mumtaz Zafar Siddiqui

APPELLANT

Vs

State Of M.P. And Others

RESPONDENT

Date of Decision : 19-06-2018

Acts Referred:

M.P. Civil Service (Pension) Rules, 1976 — Rule 3(p), 26

Citation : (2018) 06 MP CK 0062

Hon'ble Judges : PRAKASH SHRIVASTAVA, J

Bench : Single Bench

Advocate : L.C. Patne, H.Y. Mehta

Final Decision : Allowed

Judgement

Heard finally with consent.

The petitioner being aggrieved with the order dated 11.9.2017 rejecting representation for counting the services from 7.11.1989 to 26.6.1996 rendered in the School Education Department for the purpose of pensionary and other benefits, has filed the present petition.

The case of the petitioner is that she was initially appointed in the School Education Department as Dy. Teacher and had joined as such on 7.11.1988.

Thereafter the petitioner continued to work in the School Education Department till she was selected as Assistant Professor and after relieving from

the School Education Department, she had joined as Assistant Professor. The petitioner is still working as Assistant Professor and she had submitted

the representation for counting her services in the School Education Department for the purpose of pensionary and other benefits, which has been rejected by the impugned order.

Learned counsel appearing for the petitioner submits that the identical controversy in respect of the similarly situated employee has been decided by the coordinate bench by order dated 29.1.2018 passed in WP No.3967/2017. He further submits that the continuity in service was maintained because

the petitioner after being relieved from the School

Education Department, had joined as Assistant Professor and that the representation of other similarly situated employees has been allowed by the respondent/State and relief has been granted to them.

Learned counsel for the State has opposed the writ petition submitting that the petitioner has belatedly filed the representation for counting the service and in this regard he has placed reliance upon the order dated 4.7.2005 passed in WP No.997/2001 in the case of Dr. Ranjeet Singh Sikarwar and another Vs. State of M.P. and others.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that undisputedly the petitioner was appointed as Dy.

Teacher in the School Education Department and had joined on 7.11.1988. The record reflects that before appearing for selection for the post of

Assistant Professor, the petitioner was granted "No Objection" on 27.7.1992 vide Annexure P/2 by the School Education Department and

thereafter the petitioner had participated in the selection process and was issued the appointment order as Assistant Professor on 25.5.1996. The

petitioner was relieved from the School Education Department on being appointed as Assistant Professor vide order dated 26.6.1996 (Annexure P/4)

and the petitioner had joined as Assistant Professor on 1.7.1996.

The similar controversy in respect of somewhat identical fact situation has already been considered by the coordinate bench in WP No.3967/2017,

whereby after taking note of Rule 26 of the M.P. Civil Service (Pension) Rules, 1976 the coordinate bench has held the said petitioner to be entitled

for counting of service right from the date of initial appointment.

The coordinate bench in WP No.3967/2017 vide order dated 29.1.2018 while examining the similar controversy has held as under:-

"Mr. A. K. Sethi, learned senior counsel appearing with Mr. Arpit Oswal, Advocate for the petitioner.

Mr. Abhinav Melhotra, learned counsel for the respondent State.

The petitioner before this Court has filed this present writ petition being aggrieved by the order dated 15/11/2016 passed by the respondents by which the claim of the petitioner for counting her past services for the purpose of pension, has been turned down by the State Government.

Facts of the case reveal that the petitioner was initially appointed as Sub Inspector in the Home Department vide order dated 14/7/1990 which was subsequently amended on 3/8/1990 and the petitioner joined the services on 25/8/1990. While the petitioner was serving the Home Department, an advertisement was issued by the M. P. Public Service Commission inviting application for the post of Asstt. Professor and the petitioner did submit her application and being meritorious, she was selected on the post of Asstt. Professor. She was appointed as Asstt. Professor by order dated 31/11/1996 and she did appear in the examination with due permission of the Department and thereafter she submitted technical resignation on 5/3/1997 and her technical resignation was accepted by the Police Department and she was relieved on 10/5/1997 and on the same day she has submitted her joining in the Higher Education Department of the State of Madhya Pradesh, meaning thereby, there is not even a day's break in service. The petitioner did submit a representation requesting the respondents to take into account her services rendered with the Department right from 25/8/1990 till she has submitted her joining with the Education Department, however, her application has been rejected.

Reply filed by the respondents reveal that they have rejected her application for counting the service period w.e.f. 28/5/1990 to 10/5/1997 on the ground that it is barred by delay and laches. This is the only reasoning assigned in the return.

This Court is of the considered opinion that the respondents have erred in law and facts in rejecting the representation of the petitioner.

Rule 3(p) of the M. P. Civil Services (Pension)

Rules, 1976 defines the qualifying services as under :

(p) ""Qualifying service"" means the period between the date of joining pensionable service under the State Government and retirement therefrom which shall be taken into account for purpose of the pension and gratuity admissible under these rules and includes the period which qualifies under any other order or rule for the time being in force;

In the present case, the respondents are under a statutory obligation to include the period of service rendered by the petitioner in the Home

Department also for the purpose of qualifying service. She did appear in the examination with due approval of the State Government, her technical

resignation was accepted and there is not even a single day's break also and, therefore, by no stretch of imagination, her representation could have

been rejected on technical ground of delay and laches. Otherwise also, payment of salary and payment of pension is a recurring cause of action. The

respondents can in no way tell an employee that his representation has been rejected because it was not preferred while he was in service even

though less pension is being paid to him.

This Court is of the considered opinion that the representation could not have been rejected on such frivolous ground. No other ground for rejecting the

representation has been brought to the notice of this Court.

Not only this, Rule 26 of Rules of 1976 provides for forfeiture of services on resignation.

In the present case, the proviso provides that forfeiture of past service will not be done in case resignation has been given with due permission of the

employer to join another employment.

Rule 26 of the Rules of 1976 reads as under :

26. Forfeiture of service on resignation. - (1) Resignation from a service or post entails forfeiture of past service :

Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with prior permission, another appointment,

whether temporary or permanent, under the State Government, where service qualifies. [x x x]

(2) Interruption in service in a case falling under the proviso to sub-rule (1), due to the two appointments being at different stations, not exceeding the

joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief

or by formal condonation to the extent to which the period is not covered by leave due to the Government servant.

In the present case, the petitioner did submit her resignation with due prior permission of the Department, she was permitted by the Department to join

the Higher Education Department and, therefore, the impugned order is hereby

quashed. The Writ Petition is allowed. Respondents are directed to count the petitioner's total service by taking into account her initial date of appointment ie., 25/8/1990 for all purposes. The respondents while rejecting the representation of the petitioner have placed reliance upon the judgment delivered in the case of Dr. Ranjeet Singh Sikarwar and another Vs. The State of M.P. And others (W.P.No. 997/2001, decided on 4/7/2005). The aforesaid case was a case of grant of seniority in respect of services rendered by an ad- hoc employee, whereas, in the present case, there is no such contingency involved and, therefore, there appears to be total non application of mind on the part of the respondents in rejecting the petitioner's representation by taking shelter of the judgment which was not at all applicable to the case of the petitioner and, therefore, the impugned order deserves to be quashed and is accordingly hereby quashed.

The Writ Petition stands allowed and disposed of. No order as to costs.â??

That apart the record further reflects that the similarly situated Assistant Professor Dr. Aruna Dhale had filed the representation claiming counting of the earlier services in the School Education Department and the said representation was allowed vide order dated 13.2.2013 Annexure P/6. It is pointed out that the said representation was filed after retirement which has been allowed without raising any objection about the delay. Similar is the order dated 10.3.2010 (Annexure P/7) in respect of another such employee. Though counsel for the State has placed reliance upon the order of the Division Bench in the case of Dr. Ranjeet Singh Sikarwar (supra) but the said order was passed in different fact situation in a case where the dispute was about granting the seniority from the date of adhoc appointment and the same was rejected since the writ petition was filed belatedly, whereas the present case stands on the entirely different footing.

Having regard to the detailed reasons which have been assigned in the order passed in WP No.3967/2017 (supra) as also having regard to the provisions contained in Rule 26, I am of the opinion that the petitioner is also entitled for counting of the period from 7.11.1988 to 26.6.1996 rendered by her in the School Education Department. Hence the impugned order dated 11.9.2017 is set aside and the writ petition filed by the petitioner is allowed.

C.C. as per rules.