
(2007) 10 MP CK 0055
In the Madhya Pradesh High Court

Smt. Rahisha Begum

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2008) 116 FLR 290 : (2007) 4 MPHT 595 : (2008) 1 MPLJ 528

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Gangele, J.

Petitioner has filed this petition challenging the order, Annexure P-1, dated 6-8-2003. By the aforesaid order the petitioner has been denied the benefit of family pension and gratuity.

The husband of the petitioner was appointed as Driver in May, 1980 on daily wage basis. His services were regularised vide order dated 31-12-1998 on the post of Driver in the workcharged and contingency paid establishment. He died, on 5-3-2003. After the death of husband the petitioner submitted an application for grant of family pension and gratuity. Vide impugned order the respondents rejected the claim of the petitioner with regard to grant of family pension and also gratuity on the ground that her husband had not completed 5/10 years" of service for the purpose of pension and gratuity.

In the return the respondents stated that the husband of the petitioner was initially engaged as daily rated employee in the year 1980. Vide order dated 31-12-1998 he was regularised in work charged establishment as driver and posted at Datia Sub Division. He died on 5-3-2003. The husband of the petitioner completed regular service in the department only for three years and two months, hence the petitioner is not entitled family pension or gratuity.

Learned Counsel for the petitioner has submitted that the husband of the petitioner was engaged in 1980 and he was paid from the contingency fund hence the petitioner is entitled for family pension and gratuity because the service rendered by the husband of the petitioner prior to his regularisation as contingency paid employee has to be counted for the purpose of pension as per the provisions of Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979. In support of his contention the learned Counsel relied upon the judgments of this Court in Samim Begum v. State of M.P. and Ors. reported in 2006 (4) MPLJ 112 and Shrikrishna Shrivastava v. State of M.P. and Ors. reported in 2003(4) MPLJ 376.

Contrary to this learned Dy. Government Advocate has submitted that the husband of the petitioner was engaged on daily wage basis in the year 1980 and he was regularised on the post of driver in work charged and contingency paid established vide order dated 31-12-1998, hence the petitioner is not entitled for gratuity and family pension because the husband of the petitioner had not completed qualifying service as per the rules.

The petitioner in the petition pleaded that the husband of the petitioner was employed in May, 1980 for full time in the office as daily wager and he was paid salary from contingency fund. Thereafter, in Para 5.5 in the petition the petitioner further pleaded that husband of the petitioner joined services in May, 1980 as daily wager driver.

The respondents in the return stated that the husband of the petitioner, later Mr. Ashraf Khan, was engaged as daily rated employee and worked as driver in the department from May, 1980 and worked in the aforesaid status upto 11-1-1999. As per the policy of the Government the husband of the petitioner was regularised vide order dated 31-12-1998 from the date of the order as driver in work charged establishment. He died on 5-3-2003, hence he completed three years and two months service.

The State has framed rules under Article 309 of the Constitution, namely, M.P. irrigation Department Work Charged and Contingency Paid Employees Recruitment and Conditions Service Rules, 1977 hereinafter referred to as Rules of 1977. Rule 2 (b) of the aforesaid Rules defines the words "Contingency-paid employee" which is as under:

"(b) "Contingency Paid employee" means a person employed for full time in an office or establishment and who is paid on monthly basis and whose pay is charged to "Office Contingencies". Excluding the employees who are employed for certain period only in the year."

Rule 7 prescribes the procedure for appointment and promotion. As per the aforesaid rules the procedure for appointment is by direct appointment, by promotion and on officiating basis and for the purpose of direct appointment it has been mentioned that at district level a committee be constituted constituting one member of Gazetted Officer as Chairman nominated by the Chief Engineer

and other members shall be Employment Officer of the district and one officer of District Welfare Officer and on the recommendations of the aforesaid Committee appointments shall be made and names of the persons shall be called from the Employment Exchange or through advertisement. It is clear from the aforesaid provision of the Rules that a person can be said to be appointed in workcharged establishment if he has been appointed in accordance with the provisions of Rules of 1977. Nowhere the petitioner has pleaded that the husband of the petitioner was appointed initially in accordance with the provisions of Rules of 1977. Contrary to this it has been stated by the petitioner herself in the petition that her husband was appointed on daily wage basis. When a person was not appointed in accordance with the Rules, he cannot be said to be a member of service of the aforesaid Rules.

Hon"ble the Supreme Court in State of Rajasthan Vs. Kunji Raman, , has held as under with regard to work charged establishment:

A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the works. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. A work-charged establishment thus differs from a regular establishment which is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a "work" and availability of funds for executing it. So far as employees engaged on work-charged establishments are concerned, not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of establishments and the persons employed on those establishments thus form two separate and distinct classes. For that reason", if a separate set of rules are framed for the persons engaged on the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government. Clauses (g), (h) and (i) of Rule 2 excluding work-charged employees from application of the Rules of 1951 are, therefore, not violative of Articles 14 and 16 of the Constitution.

The Government has further framed Rules under Article 309 of the Constitution with regard to pension for work-charged employees, namely, Madhya Pradesh (Workcharged and Contingency Paid Employees) Pension Rules, 1979, hereinafter referred to as the "Rules of 1979". In these Rules the "contingency paid

employees" and "workcharged employees" have been defined, which are as under:

(a) "Contingency paid employee" means a person employed for full time in an office or establishment and who is paid on monthly basis and whose pay is charged to office contingencies excluding the employees who are employed for certain period only in a year."

(b) "Work-charged employee: means a person employed upon the actual execution, as distinct from general supervision of a specified work or upon subordinate supervision of the departmental labour, store, running and repairs of electrical equipment and machinery in connection with such work, excluding the daily paid labour and muster-roll employee employed on the work.

It is clear from the aforesaid Rules that the husband of the petitioner, who was engaged on daily wage basis cannot be said to be a contingency paid employee or work charged employee. Rule 4 of the aforesaid Rules prescribes that the provisions of Madhya Pradesh Civil Services (Pension) Rules, 1976 will be applicable with regard to all the permanent employees who have retired on or before 1st of June, 1976. The commencement of the qualifying service has also been prescribed in the aforesaid Rules, which is as under:

6. Commencement of qualifying service:

(1) Subject to the provisions of Chapter III of the Madhya Pradesh Civil Services (Pension) Rules, 1976 or Section IV of the Madhya Pradesh New Pension Rules, 1951 as the case may be, for calculating qualifying service of a permanent; employee who retires as such, the service rendered with effect from the 1st January, 1959 onwards shall be counted.

(2) On absorption of a permanent employee without interruption against any regular pensionable post, the service rendered with effect from 1st January, 1959 onwards shall be counted for pension as if such service was render in a regular post.

A Division Bench of this Court in Shrikrishna Shrivastava (supra), has held that a daily wager who was drawing the monthly salary from funds of contingency was entitled to count his past services for the purpose of pension. Further, another Division Bench of this Court in unreported decision in State of Madhya Pradesh v. Ramsingh and Anr. W.P. No. 1273/2000, decided on 18-7-2005, has held that the daily wager is not entitled to count his past services for the purpose of pension, which is as under:

5. Controversy is very short. It is to be examined whether employee is entitled for pension. Rule 2 (h) of M.P. P.W.D. Department Workcharged and Contingency Paid Employees Recruitment and Conditions of Service Rules, 1976 are reproduced below:

Rule 2(h) "Work charged employee" means a person employed upon the actual

execution, as distinct from general supervision of a specified work or upon subordinate supervision of department labour, store, running and repairs of electrical equipment and machinery in connection with such work, excluding the daily-paid labour and muster-roll employed on the work.

Rule 2(h) is clear and specific that the definition of work-charged employees included a person employed upon the actual execution, as distinct from general supervision of a specified work or upon subordinate supervision of departmental labour, store, running and repairs of electrical equipment and machinery in connection with such work, excluding the daily paid labour and muster-roll employed on the work. Admittedly, employee was a daily paid labour and he continued in service as daily paid labour. Therefore, he will not fall in the definition of a work-charged or contingency paid employee and his case will not be covered by M.P. Work-charged and Contingency Paid Employees (Pension) Rules. As such he is not entitled for pension, gratuity as per Rules has been paid to him. The order passed by the Tribunal is against the Rules. Therefore, the order passed by the Tribunal is quashed and petition filed by respondent No. 1 before the Tribunal is dismissed.

In the light of afore-stated principle of law laid down by the Division Bench of this Court and the Hon"ble Supreme Court and as per the provisions of Madhya Pradesh Irrigation Department Work Charged and Contingency Paid Employees Recruitment and Conditions Service Rules, 1977 and M.P. Civil Services (Pension) Rules, 1976 certainly the husband of the petitioner who was engaged as daily wager was not entitled to count his past services prior to regularisation order, i.e., 31-12-1998 for the purpose of pension and gratuity. Admittedly, the husband of the petitioner did not complete five years or ten years qualifying service as per Rule 43 of Madhya Pradesh Civil Services (Pension) Rules, 1976, hence the petitioner is not entitled for pension and gratuity after the death of her husband.

Consequently, I do not find any merit in this petition. It is hereby dismissed. No order as to costs.