
(2012) 09 MP CK 0006

In the Madhya Pradesh High Court

Case No : Writ Petition No. 750 of 2011

Smt. Sushma Pandey

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Citation : (2013) ILR (MP) 58

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

Bench : Single Bench

Advocate : A.P. Singh, for the Appellant; Yogesh Dhande, Dy. G.A. for the Respondent No. 1 and Sanjay Singh for the Respondents No. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—This order will also govern the disposal of Writ Petition No. 956/2011. The facts for the purposes of this order are taken from Writ Petition No. 750/2011. The only grievance of the petitioner is that on account of absorption of the petitioner, in terms of the policy dated 27/11/2009 her seniority has been tempered with and instead of giving seniority of the period of her initial appointment she has been given the seniority from the date of joining in Janpad Panchayat, Sidhi. It is contended that the petitioner was initially appointed as Siksha Karmi, Grade III vide order dated 06/07/1998 by Janpad Panchayat, Chitrangi District Sidhi. Thereafter, a policy was made by the State Government with respect to the transfer of lady teachers appointed under the Siksha Karmi Schemes from one District/Tehsil/Block to another in case of vacancies in certain circumstances. In this policy dated 19/03/2002 it was provided that in case lady Siksha Karmi is married and her husband is appointed in a separate local body, on the application of the lady concerned, she could be transferred to the place where her husband is posted. However, this policy nowhere prescribes that in case of such a choice transfer, the concerned employee will loss the seniority and will get the benefit of seniority from the date

of joining in the transferred place. It is contended that thereafter a decision was taken by the State Government to absorb all such Siksha Karmies as Adhyapak. Accordingly the case of the petitioner was considered and she was absorbed on the post of Sahayak Adhyapak on 14/08/2008. Thereafter, a gradation seniority list was issued on 05/06/2010 in which the seniority of the petitioner was fixed at serial no. 306 only on account of her joining in the Janpad Panchayat school at Sidhi and the past services rendered by her was not taken into account. Since this was done in violation of the right of seniority of the petitioner, a representation was made. Since the representation was not considered this petition is required to be filed. It is claimed that the petitioner be granted benefit of past services rendered by her as Siksha Karmi for the purposes of fixation of her seniority.

2. On service of the notice of the writ petition the respondents have filed their return. The respondent no. 1 has contended that policy was made by the State Government and according to the said policy, on absorption the persons if were transferred from one local body to another local body they were granted the benefit of seniority from the date of joining on the transferred place. It is contended that since the petitioner was transferred from one Janpad Panchayat to another, rightly her seniority was fixed from the date of her joining on the transferred place. It is contended that no wrong has been committed by the respondents. Similar stand is taken by respondent no. 2 and 3 who have also filed the return and have contended that they have taken action only because of the policy made by the state Government.

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

4. Undisputedly the petitioner was appointed as Siksha Karmi in Janpad Panchayat, Chitrangi District Sidhi on 06/07/1998 where she joined the services on 11/07/1998. She worked on the said post till as per the policy made by the State Government, the petitioner was transferred from the said Janpad Panchayat to Janpad Panchayat, Sidhi vide order dated 19th August 2003 (Annexure-P-2). This order was issued pursuance to the policy dated 19/03/2002. In the policy it was nowhere provided that in case such a married women Siksha Karmi is transferred from one Janpad Panchayat to another she will loss seniority and will get the benefit of seniority only from the date of joining in the transferred place. It is also seen that the petitioner was absorbed on the post of Sahayak Adhyapak and when the rules were made, it was specifically prescribed that after merging the Siksha karmies in Adhyapak Samvarg services rendered by them as Siksha Karmi shall be calculated for the purposes of promotion/kramonnati seniority only. This makes it clear that the period of appointment as Siksha Karmi was to be calculated for the purposes of fixation of seniority. However, when subsequently the policy was made on 27/11/2009, the clause was added that in case of transfer of Siksha Karmi from one local body to another, he/she will get the benefit of seniority from the date of joining on the post at transferred place. Such policy has been formulated after

coming into force of the rules, which have been placed on record as Annexure-P-4. Said rules were notified on 11th September 2008. How such a condition could have been added in a policy, which was subsequently made, which runs de hors the specific provisions made in the rules. Specially this clause of policy was not to be read in the case of petitioner because she was transferred under a policy where there was no such condition prescribed for loss of seniority. In view of this, only because such a condition was mentioned in the policy dated 27/11/2009 since the seniority of the petitioner is tempered, seniority list cannot be affirmed.

5. It is contended by learned Deputy Government Advocate that the policy was further circulated on 08/11/2005 (Annexure-P-11) wherein it was specifically provided that in case a Siksha Karmis services are absorbed in the cadre of Adhyapak samvarg, who is transferred from one institution to another, his seniority will be put at the bottom of the employees working in the transferred institution. Thus, it is contended that if the seniority of the petitioner was fixed according to this guideline also, the same cannot be said to be bad. Such contention cannot be accepted as again by making the rules in 2008, it is deemed that such an instruction of the State Government is watered down in as much as the prescription of counting of seniority is already made in the rules. The rules have force of law and always supersede the administrative instructions. The administrative instruction cannot at any rate supersede the provisions of the rules. Thus, such contentions of the respondents cannot be accepted at all.

6. Consequently it has to be held that the petitioner was entitled to grant of seniority from the date of initial appointment. Now an objection is raised by the respondents that those who are going to be affected by fixation of seniority of the petitioner over and above them, have not been impleaded as party in the present petition. This objection is also to be turned down only because the mistake was committed by the respondents themselves. They have not fixed the seniority of the petitioner in terms of the provisions of the rules and have acted on such instructions or the guidelines or circulars which are not attracted at all in the case of the petitioner.

7. Accordingly this petition is allowed. The respondents are directed to count the period of services rendered by the petitioner as Siksha Karmi grade III in Janpad Panchayat, Chitrangi also for the purposes of fixation of her seniority on the post of Sahayak Adhyapak. A modified seniority list be issued within a month from the date of receipt of certified copy of the order passed today. After making of the seniority list afresh as directed hereinabove in case it is found that any junior to the petitioner is promoted on the next cadre post, the review DPC be convened and the case of the petitioner be considered for such promotion. In case she is found fit for such promotion, the benefit of promotion be granted to her from the date the same was extended to her juniors with all consequential benefits. Let this exercise be also completed within a month from the date of preparation of

fresh seniority list. The petition is allowed to the extent indicated hereinabove. There shall be no order as to costs.