
(2013) 11 MP CK 0082

In the Madhya Pradesh High Court

Case No : Writ Petition No. 738 of 2009 (S)

Smt. Vimla Devi Rawat and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2013) 11 MP CK 0082

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Arvind Dudawat, WP No. 738/2009 and Mr. Neeraj Shrivastava, in WP No. 440/2007, for the Appellant; Nidhi Patankar, Govt. Advocate for Respondents No. 1 and 2/State in WP No. 738/2009 and WP No. 440/2007, Shri S.P.S. Jadon, Advocate for Respondent No. 3 in WP No. 738/2009 and WP No. 440/2007, Shri Atul Khamtan, Advocate for Respondent No. 4 in WP No. 738/2009, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—Since similar questions of facts and law are involve in these matters, on the joint request of parties, matters are analogously heard and decided by this common order.

Facts are taken from WP No. 738/2009.

The singular grievance of the petitioner is that benefit of recommendations of 5th Pay Commission were granted to the petitioners in the shape of arrears of pay. However, on their retirement, the said benefit of revised pay flowing from 5th Pay Commission were not counted for grant of pension and retiral dues. Putting it differently, it is contended that respondents have erred in not calculating pension and retiral dues of the petitioners on the basis of 5th Pay Commission recommendations where as same was implemented for grant of pay and arrears arising thereto is paid to the petitioners from the date of entitlement.

2. Prayer is opposed on the ground that petitions are belatedly filed and

therefore, liable to be dismissed on the ground of delay. In addition, reliance is placed on the document dated 11.04.2000 (Annexure R/3-2) and 03.08.2007 (Annexure R/3-1). On the basis of these documents it is contended that the petitioners are not entitled for 5th Pay Commission recommendations in the matter of grant of pensionary benefits.

3. I have heard learned counsel for the parties and perused the record.

4. This is trite in law that pension and gratuity are "property" as per article 300(A) of the Constitution. This view is recently taken by the Court Bhaskar Ramchandra Joshi Vs. State of M.P. and Others, . The said benefits are recurring in nature. Every month when a pensioner gets less pay than his entitlement, his cause of action revives. Thus, I am unable to hold that petition can be dismissed on the ground of delay and laches.

5. It is jointly submitted by counsel for the parties that service conditions of petitioners for the purpose of pension are governed by M.P. Municipal Service Pension Rules, 1980. Rule 4 of the said Rules makes it clear that the MP Civil Services (Pension) Rules, 1976 were adopted for the purpose of regulating pension and gratuity of the employees of the Municipality. Rule 5 makes it obligatory on the part of employer/Head of the office to prepare the pension case of the retiring employee well in advance, at least 6 months before the date of which employee concerned is due to retirement. In turn, he needs to submit it before that officer. Thereafter exercise of the scrutiny of pension papers takes place. Sanctioning authority/controller of pension needs to grant/sanction pension, gratuity and family pension, as the case may be.

6. In the present case, the Municipality/employer has taken a stand that the pension papers were not prepared according to 5th Pay Commission Scale because of Annexure R/3-2 and 03.08.2007 Annexure R/3-1. In the considered opinion of this court, the stand of the respondents cannot be permitted to stand, no executive instruction of the State Government can supersede the statutory provisions of 1980 Rules aforesaid in which the pension Rules applicable to the State Government employees were adopted. Resultantly, the respondents are required to undertake the exercise of recalculating pension and gratuity as per rules for the petitioners on the basis of pay scale of 5th Pay Commission already granted to them. The aforesaid exercise be initiated by the Head of the Department forthwith and the competent authority is directed to calculate and grant pension and gratuity of the petitioners as per the provisions of 1980 Rules read with MP Civil Services (Pension) Rules. The aforesaid exercise be initiated and completed within 90 days. The action of the respondents in not calculating pension and gratuity as per 5th Pay Commission was contrary to Rules and therefore, the petitioners shall get 12% interest on the amount of arrears arising out of recalculation of pension and gratuity. Respondents shall recalculate and pay the pension and gratuity within three months along with 12 % interest as aforesaid. Petitions are allowed. No Costs.