
(2013) 05 MP CK 0003

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 17884, 22089, 18152, 20409 and 20435 of 2012

S.P. Patel

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Citation : (2014) 3 MPHT 23 : (2013) 4 MPLJ 65

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

Bench : Single Bench

Advocate : Ajay Pratap Singh in W.P. Nos. 17884, 22089, 20409 and 20435 of 2012 and Shiv Kumar Dubey in W. P. No. 18152 of 2012, for the Appellant; S.P. Rai, Panel Lawyer for Respondent No. 1 and Praveen Dubey for Respondent Nos. 2 and 3, for the Respondent

Judgement

K.K. Trivedi, J.—This order will also govern disposal of W.P. No. 22089/2012, W.P. No. 18152/2012, W.P. No. 20409/2012 and W.P. No. 20435/2012. However, for convenience, facts are taken from W.P. No. 17884/2012. The petitioner, who is an employee working in the time scale pay and post, has approached this Court ventilating his grievance against the order dated 26-9-2012 issued by the Jawahar Lal Nehru Krishi Vishwavidyalaya (herein after-referred to as "University"), by which he is communicated that he is to retire on attaining the age of superannuation on 31-10-2012, as he is completing 60 years of age. It is contended that the age of superannuation of Class-IV employees working in work charged contingency and otherwise, has been enhanced from 60 to 62 years by the State Government. The said enhanced age is made applicable even for the Gangmen of the Public Works Department, has been adopted by the Veterinary University and, therefore, the petitioner could not be retired at the age of 60 years. It is contended that all the benefits of a Class-IV employee were made available to the petitioner after granting him time scale pay of Class-IV post and, therefore he has to be treated as a class-IV employee of the University and is entitled to continue on the post up to the age of 62 years. It is contended that since such sanctioned posts were created by the University, the petitioner was

granted the benefit of appointment on the said post, action of the respondents, retiring him at the age of 60 years is not justified.

2. The respondents by filing the return have contended that the petitioner was never appointed on any Class-IV post. It is their stand that Class-IV posts are specifically sanctioned in terms of the Statute. The petitioner has never been given any posting on such Class-IV post. He being merely a daily wager, is not entitled to any benefit of enhancement in age and as such the relief claimed by the petitioner cannot be granted in the present petition. The facts have been brought to the notice of the persons like petitioner that they cannot be treated at par with the Class-IV employees as when the age of superannuation of Class-IV employees was enhanced to 62 years, correspondence was done with the State Government asking guidance whether the said benefit of enhancement of the age up to 62 years was to be granted to the time scale pay labours or not. It was informed by the State Government that no amendment was made in the age of superannuation of the time scale pay labours and, therefore, the petitioner was not to be granted the said benefit. It is, thus, contended that entire petition is based on misconceived and misleading, facts and deserves to be dismissed.

3. By filing a rejoinder as also an application for taking additional documents on record, the petitioner has pointed out that in fact vide order dated 13-3-1990 the posts were already created by the University against which post the benefit was extended to the petitioner and, therefore, it cannot be said that the petitioner was not entitled to the similar age enhancement as was granted to Class-IV employees. An additional submission, is made by the respondents annexing with it relevant documents to show that no such post was ever created by the respondents. In fact such posts were not to be created by the respondents against the statutory provisions. It is contended that the definitions of posts have been given in the Regulations titled Jawahar Lal Nehru Krishi Vishwavidyalaya Services (General Conditions of Service) Regulations, 1969. The post of time scale labour is not classified as a post in the said Regulations and, therefore, the appointment of the petitioner cannot be said to be made on a Class-IV post entitling him to enhanced age of superannuation. It is, thus, contended that on this count also the petitioner is not entitled to any relief.

4. Heard learned Counsel for the parties at length and perused the record minutely.

5. First of all it has to be seen whether there was, any order issued on 13-3-1990 creating any post in time scale pay or not. The order is placed on record as Annexure P-8 which specifically says that in view of the letter of Government of Madhya Pradesh in Agriculture Department dated, 5th March, 1990, for the purposes of regularization of the daily wages employees working in the University, 625 posts in time scale of Rs. 725-900 are created. This order is said to be issued in terms of the order of the Vice Chancellor of the University. This order nowhere indicates that the pay as sanctioned for the said post was to be drawn from the contingency funds". Nothing was indicated in this respect. If this

was the order issued by the University, the same was issued for the purposes of giving benefit of Class-IV employees or not was again not clarified anywhere. The extract of the Regulations, which has been placed on record as Annexure R-5, nowhere indicates that particular post sanctioned in the time scale was not to be treated as a post sanctioned in the establishment of the University. In absence of any such provision, if no posts were to be created, the order dated 13-3-1990 was required to be recalled. Again there is nothing placed on record to show that such an order was ever recalled by the respondents. Though after 10 years of issuance of said order, some correspondence was started on 20th June, 2000 by the University but again whether the Chancellor of the University had accepted such a proposal made by the University or not and whether such order was ever recalled or not, has not been stated by the respondents in their return.

6. As against the aforesaid, initially the petitioner was appointed as a daily wager labour and he worked for a considerable time. In the year 1990, i.e. after issuance of the order dated 13-3-1990, an order was issued on 12-4-1990 appointing the petitioner on the time scale post and giving direction to make payment of salary to the petitioner in that scale. The said order was again issued in terms of the order of the Vice Chancellor by the Registrar of the University. Even after making correspondence with the State Government as is indicated in the additional return of the respondents, an order was issued on 28-7-2000 extending the benefit of earned leave of 20 days in place of 15 days to the persons like petitioner. Therefore, the circular dated 20-1-2000 was to be made applicable in case of the petitioner. Similar is the situation available in respect of the employees serving in the Veterinary University, which was earlier a part of the respondent University. If the said University has accepted the circular of the State Government, there was no good reason available to the respondent University to deny such a benefit to the persons like petitioner.

7. After going through the entire Statute and the Regulations, nothing is found entitling the respondents to say that the petitioner would not be entitled to enhancement of age of superannuation as was made available to the work charged employees of the Government departments. The time scale posts were sanctioned only for the purposes of keeping the persons like petitioner in the employment. Other benefits were extended to them by the respondent University and, therefore, at this stage to say that enhancement in the age of superannuation as was made available to Class-IV employees, would not be applicable in the case of petitioner, that too without any justified reason, is not acceptable.

8. Consequently, the writ petition is allowed. The notice of superannuation of the petitioner so issued, is hereby quashed. The petitioner would be entitled to continue in the employment up to the age of 62 years with all the consequential benefits. The petitioner in this case was granted an interim stay, therefore, he will get all the benefits of service. Those, who were not granted, benefit of interim stay by this Court, would be reinstated in service and would also be

entitled to benefits of service for the period they were not working. The writ petitions are allowed to the extent indicated hereinabove. However, there shall be no order as to costs.