(2003) 07 MP CK 0066

In the Madhya Pradesh High Court

Case No : Writ Petition No. 660/99

State of Madhya Pradesh and Another APPELLANT

Vs

Kailash Chandra Agrawal RESPONDENT

Date of Decision : 31-07-2003

Acts Referred:

Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 30

Citation : (2003) 4 MPHT 120 : (2003) 4 MPLJ 395

Hon'ble Judges : S.S. Jha, J;Chandresh Bhushan, J

Bench : Division Bench

Advocate : K.B. Chaturvedi, for the Appellant; D.K. Katare, for the Respondent

Judgement

S.S. Jha, J.

This petition is filed challenging the order passed by the M.P. State Administrative Tribunal whereby the Tribunal has held that special pay paid to the employee shall be counted for calculating the average pay to determine the pension.

Counsel for the petitioners submitted that while delivering the judgment, Tribunal has lost sight of the explanation appended to Rule 30 of the Madhya Pradesh Civil Service (Pension) Rules, 1976 (hereinafter, referred to as the "Pension Rules"). He submitted that this amendment dated 6-11-1995 has been brought into force with retrospective effect from 1-1-1986. Counsel for the petitioners submitted that the word "emoluments" occurring in Rule 30 of the Pension Rules is defined in Rule 9 (21) (a) (i) of the Fundamental Rules. He submitted that after the amendment under the provisions of F.R. 9 (21) (a) (i), special pay is not included in the definition of "Pay" for the purpose of calculating the pension. In support of his contention, Counsel for the petitioners has referred to the judgment in the case of Government of Andhra Pradesh and others Vs. Syed Yousuddin Ahmed, , where similar explanation under Rule 31 of Andhra Pradesh Pension Rules and F.R. 9 (21) (a) (i) has been considered by the Apex Court.

Counsel for the respondent submitted that it is not open for the petitioners to challenge the judgment of the Tribunal. Application filed by the respondent before the M.P. State Administrative Tribunal was not opposed by the State. State has not filed any return before the Administrative Tribunal. By their conduct, petitioners have impliedly admitted the claim of the respondent. They have not denied the claim of the respondent. In the said facts of the case, this petition is not maintainable and is liable to be dismissed. Counsel for the respondent further contended that since similar benefit has been extended to other employees, respondent can not be discriminated. Counsel for the respondent prayed that the petition be dismissed.

Rule 30 of the Pension Rules with explanation is reproduced below :--

"Rule 30. Emolument.--The expression "emolument" means pay as defined in Rule 9 (21) of the Fundamental Rules (including dearness pay, if any, as determined by the order of the Government issued from time to time) which a Government servant was receiving immediately before his retirement or on the date of his death as the case may be.

Explanation :-- For those Government servants who are drawing pay in the revised pay scales under Madhya Pradesh Revision of Pay Rules, 1990 or Madhya Pradesh Revision of Pay Rules, 1998, or pay scales of U.G.C. or All India Council of Technical Education or All India Service the expression "emolument" nears basic pay as defined in Rule 9 (21) (a) (i) of Fundamental Rules which a Government servant was receiving immediately before his retirement and will also include dearness pay and personal pay, if any, as determined by the order of State Government from time to time.

(2) Bilingual Allowance of the Stenographers shall be treated as "Emolument" for calculation of retirement benefits.

(3) Special pay, if any, received in lieu of higher pay scale on promotion shall also be treated as "emoluments" for calculation of retirement benefits."

The explanation relates to those Government servants who are drawing pay in the revised pay-scales under Madhya Pradesh Revision of Pay Rules, 1990 or Madhya Pradesh Revision of Pay Rules, 1998 or pay-scales of U.G.C or All India Council of Technical Education or All India Services. Therefore, basic pay is defined in F.R. 9 (21) (a) (i) is to be looked into. It-may be mentioned here that in the explanation, entire definition of F.R. 9 (21) is not included, but for the word "emolument" limited definition occurring in Rule 9 (21) (a) (i) of the Fundamental Rules is included.

It is not disputed that the respondent was drawing his pay in the revised pay-scales under M.P. Revision of Pay Rules, 1990. The question is considered by the Apex Court in the case of Government of Andhra Pradesh (supra). In the aforesaid judgment, the Apex Court was considering Rule 9 (21) (a) (i) of the Fundamental Rules. In the aforesaid rule, the expression "emolument" would mean "Pay" as defined in Rule 9 (21) (a) (i) of the Fundamental Rules which the

Government servant was receiving immediately before his retirement. Considering the scope of F.R. 9 (21) (a) (i), it is held that "pay" would mean pay other than special pay. Apex Court further considered the expression "special pay" occurring in F.R. 9 (25) which means an addition of the pay to the emoluments of a post or of a Government servant, granted in consideration of-

(a) the specially arduous nature of the duties; or

(b) a specific addition to the work or responsibility.

The expression "personal pay" means an additional pay granted to a Government servant in exceptional circumstances, on other personal considerations. Considering the scope of F.R. 9 (21) (a) (i), the Apex Court held that aforesaid Rule clearly excludes the "special pay" or "personal pay" granted to a Government servant in view of his personal qualifications or otherwise from the purview of the expression "pay" and therefore, whether "incentive award" is held either a "special pay" or "personal pay" the same would not form part of "pay" under Rule 9 (21) (a) (i) of the Fundamental Rules and consequently would not form part of emoluments under Rule 31 of the Rules for being taken into account for computation of the pension of the respondent.

Aforesaid judgment squarely applies to this case. Under the explanation of Rule 30 of the Pension Rules, it is specifically provided that emoluments shall be as defined under F.R. 9 (21) (a) (i). Special pay will not form part of emoluments for computing pension of a Government employee. Therefore, while computing the person, special pay will not be counted for calculating pension of the employees who are receiving their salary under M.P. Revision of Pay Rules, 1990 or 1998 or thereafter.

It is contended by the Counsel for the respondent that against the judgment in the case of State of M.P. and Anr. v. Ram Krishna Saraf, decided by the Tribunal, SLP by the State before the Apex Court has been dismissed, vide Annexure "A", therefore, the judgment of the Tribunal has attained finality. We are unable to accept the contention of the Counsel for the respondent. Apex Court has refused to grant permission to file appeal and has not decided the question of law involved in the case. As such order refusing to grant permission to file appeal will not be final adjudication on the matter. On the other hand, this question has already been adjudicated by the Apex Court in the case of Government of Andhra Pradesh (supra).

Contention of the Counsel for the respondent is that some other employee has been given benefit of the earlier judgment after dismissal of the special leave petition, therefore, respondent should not be deprived of the benefit. It appears that after the judgment of the Tribunal benefit of counting special pay in the total emolument has been made applicable to the retired Principals who were getting special pay by virtue of holding the post of Principal. But it is not clear from the judgment that this benefit is extended to those employees who were getting pay under the Revision of Pay Rules, 1999 or afterwards. Moreso, respondent is not a retired Principal but is a retired Deputy Superintendent of Police.

As discussed above, we are unable to uphold the order passed by the Administrative Tribunal. Order (Annexure P-2) passed by the M.P. Administrative Tribunal in O.A. No. 1337/98, decided on 2-2-1999 is quashed and it is held that special pay can not be included for calculating the emoluments of a Government employee.

Petition succeeds and is allowed without any order as to costs.

