

(2015) 01 MP CK 0068
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 81/2007

State of Madhya Pradesh and Others	Vs	APPELLANT
Satyabrat Upadhyay		RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2015) 01 MP CK 0068

Hon'ble Judges : Sujoy Paul, J.; U.C. Maheshwari, J.

Bench : Division Bench

Advocate : M.P.S. Raghuvanshi, Additional Advocate General and Raghavendra Dixit, Govt. Advocate, for the Appellant; Abhishek Parashar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—This Writ Appeal filed under Section 2(1) of the Madhya Pradesh Uchch Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 is directed against the order of writ court dated 1.2.2005 passed in W.P. No. 5901/2003. The writ court by said order directed the present appellant/department to release the increments to the employee/petitioner.

2. The singular point needs consideration in this matter is whether the petitioner was entitled to get yearly increments without passing the Hindi Typing Examination? It is not in dispute that the petitioner was appointed by order dated 26.5.1990 (Annexure P-3). In the appointment order, condition No. 2 was inserted which makes it clear that unless the petitioner clears the Hindi Typing Examination, he shall continue to get minimum of the fixed scale and the services rendered on minimum of the scale shall not be counted for the purpose of seniority and promotion.

3. Shri MPS Raghuvanshi, learned Additional Advocate General has advanced two fold contentions to assail the order of the writ court. Firstly, it is contended that

in view of clear condition in the appointment order dated 26.5.1990, the learned Single Judge has erred in directing the release of increments. Secondly, it is contended that as per statutory recruitment rules, (hereinafter referred to as the "Recruitment Rules"), the passing of Hindi Typing Examination is a statutory requirement/minimum eligibility condition. Hence, unless the petitioner acquires the said minimum qualification and eligibility, in terms of appointment order and recruitment rules, he is not entitled to get increments. Reliance is placed on a Division Bench judgment of this Court passed in WA No. 568/2010 (State of M.P. and Others Vs. Ku. Ramani Bai Bhagat) decided on 10.7.2012.

4. Per contra, Shri Abhishek Parashar, learned counsel for the employee/petitioner supported the order of the learned Single Judge. He has placed reliance on FR-24 which prescribes that increment shall ordinarily be drawn as a matter of course unless it is withheld. He submits that in view of mandate of FR-24, the employee was entitled to get increments in due course because there is no order by any authority for withholding the increments. Interestingly, Shri Parashar also relied on the same judgment i.e., Ku. Ramani Bai Bhagat (supra). Shri Parashar also relied on a judgment of Single Judge passed in W.P. No. 3096/2011 dated 27th September, 2013 delivered in Dulare Prasad Raikwar Vs. State of M.P. and Others.

5. No other point is pressed by learned counsel for the parties.

6. We have bestowed our anxious consideration on the rival contentions advanced by the parties and perused the record.

The appointment order reads as under:-

(Emphasis supplied)

7. The employee was admittedly appointed as Lower Division Clerk (LDC). As per Schedule III-A of the Recruitment Rules, the condition of passing the Hindi Typing Examination is an essential qualification. In this backdrop, it needs determination whether the employee is entitled to get increments without passing the essential qualification? It is apt to mention that a Division Bench of this Court in State of M.P. and another Vs. Manoj Kumar Sharma and another, opined that when recruitment rules prescribe essential qualification, there is no question of grant of advance increments to the employees not having qualification and appointed after such amendment in the recruitment rules. In the said case, the relevant recruitment rules were amended in 1993 prescribing minimum qualification of B.Ed. degree. The question arose whether the employees appointed after the aforesaid amendment are entitled for increments. The Division Bench of this Court in Manoj Kumar (supra) answered the question in negative and opined that such employees are not entitled to get advance increments.

8. As per para 14 of the judgment of Ku. Ramani Bai Bhagat (supra), it appears that the condition in the appointment order regarding grant of increment was

contrary to the rules. Based on said fact, this Court opined that the condition of appointment order cannot prevail over the rules and, therefore, it cannot be held that if a person is appointed after following the due process of law and possessing the eligibility prescribed in the rules, he will be entitled to get regular increments unless the same are withheld by the authority. It is noteworthy that as per the relevant recruitment rules which was considered in Ramani Bai (supra), possessing certificate in Hindi typing was a preferential condition and not an essential condition, whereas in the present case, it is an essential minimum qualification for the post of LDC. The factual scenario in the present case is different. In the present case, as noticed above, the appointment order and recruitment rules make it clear that passing of Hindi Typing Examination is an essential eligibility condition for appointment as L.D.C. Thus, the facts of present case are different and, therefore, the judgment of Ku. Ramani Bai Bhagat (supra) is of no assistance to the employee in the present case. In Ramani Bai (supra) the Division Bench has already considered FR-24. Hence, argument based on FR-24 is of no assistance to the petitioner.

9. This is settled in law that decision of the Court should be understood in the facts and circumstances of the particular case.[see Union of India (UOI) and Another Vs. Major Bahadur Singh, . This is also settled in law that precedent is what is actually decided by the Court and not what is logically flowing from it. A single different fact may change the precedential value of the judgment [see Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, .

10. So far the judgment of Dulare Prasad (supra) is concerned, a plain reading of this judgment shows that it was with regard to grant of increment of pay for ad hoc period. To deal with this aspect, the writ court has considered an executive instruction governing the said field. In other words, there was an executive instruction which deals with grant of increments during ad hoc services. On the basis of aforesaid factual matrix, the judgment of Dulare Prasad (supra) was delivered. In the present case, the said question of grant of increment during ad hoc period is not subject matter of adjudication. For this reason, Dulare Prasad (supra) is of no assistance to the petitioner/employee. We are bound by the decision of Division Bench in Manoj Kumar (supra). In view of said judgment, the conclusion is inescapable that without passing the Hindi Typing Examination the employee was not entitled to get regular increments. In this view of the matter, the order of writ court needs to be interfered with.

11. Resultantly, the order dated 1.2.2005 is set aside. The writ appeal is allowed. No cost.