

(2011) 12 SC CK 0004

In the Supreme Court Of India

Case No : Civil Appeal No. 10554 of 2011 (Arising out of S.L.P. (C) No. 16906 of 2010) , Civil Appeal No. 10555 of 2011 (Arising out of SLP (C) No. 16918 of 2010) , Civil Appeal No. 10556 of 2011 (Arising out of SLP (C) No. 16920 of 2010) , Civil Appeal No. 10557 o

State of Madhya Pradesh and Others

APPELLANT

Vs

Satyavrata Taran

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1967 — Rule 12(5), 13(5), 7(1), 7(4)

Citation : (2012) 1 JLJ 341 : (2011) 14 JT 330 : (2011) 13 SCALE 566 : (2012) 2 SCC 83 : (2013) 1 WBLR 415

Hon'ble Judges : H.L. Dattu, J; Chandramauli Kr. Prasad, J

Bench : Division Bench

Advocate : Vivek K. Tankha, ASG, P.S. Patwalia, B.S. Banthia, Anil Pandey, Vibha Dafla Makhija, K. Vijay Kumar, K.K. Tyagi, P. Narasimhan, Romy Chacko, Arpit Gupta, L.C. Patney, Anupam Lal Das, Bharat Sangal, Vernika Tomar, Srijana Lama, Amit Sharma, Shahid Anwar, Kailash Chand, Rajendra Mishra, Raza Syed Khadim, Rajesh Singh and Ravindra S. Garia, for the Appellant;

Judgement

H.L. Dattu, J.

Delay condoned. Leave granted.

1. The present batch of appeals, by way of special leave, arises out of a common Order dated 11.02.2010 passed by the Madhya Pradesh High Court and raises an identical question of law and facts for our consideration and decision. They are, therefore, being heard together and disposed of by this common judgment and Order.

2. The common issue before us, in these appeals, can be summarized thus: Whether the Assistant Professors appointed through different means, modes and sources including emergency appointees in terms of Rule 13(5) of the Madhya

Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1967 are entitled to claim the benefit of the services rendered by them prior to their regularization for grant of senior/selection grade pay scales.

3. All these appeals are directed against the common Order dated 11.02.2010 of the High Court of Madhya Pradesh in Writ Appeal No. 599 of 2008 and other connected matters, whereby the writ appeals, filed by the Appellants challenging the grant of senior scale/selection grade benefit to the Respondents, by counting their period of service rendered as emergency appointees, were dismissed.

4. All the matters pertain to grant of senior/selection grade pay scales and for the sake of convenience, we may note such facts as emerging from record of the SLP (C) No. 16906 of 2010.

The Respondent was appointed on the post of Assistant Professor on emergency basis vide Appointment Order dated 14.12.1987 under Rule 13(5) of Recruitment Rules, 1967 with an express condition of immediate termination of his emergency appointment, without notice, on the availability of Public Service Commission's panel of selected candidates. Subsequently, the Respondent had cleared Public Service Commission Examination and consequently, as per the condition of his appointment order, his services were regularized vide Order dated 02.09.1993 under M.P. Educational Service (Collegiate branch) Recruitment Rules, 1990 (hereinafter referred to as "Recruitment Rules, 1990"). In the meantime, the State Government had issued a Circular dated 12.02.1992 for addition of period of service rendered by teachers, prior to their service in the present College or University as Assistant Professor for conferring the benefit of senior/selection grade pay scale but subject to certain conditions. The Respondent had made several representations to the State Government for counting his period of service as emergency appointee for determination of benefit of the senior/ selection grade pay scale, but the same were not replied. Subsequently, the State Government issued another Circular dated 11.10.1999 for revision of the pay scale which provides for the grant of benefit of senior grade pay scale after rendering minimum 6 years of service period and further 5 years of service period in senior grade as essential requirement for placement in selection grade pay scale as per Clause 8 (a) of the said Circular. The Respondent, being aggrieved by not counting of his period of service rendered as an emergency appointee on the post of Assistant Professor by the State Government for the purpose of granting higher pay scale, had filed a Writ Petition before the High Court of Madhya Pradesh, inter-alia seeking an appropriate Writ and other consequential reliefs. The same came to be allowed vide judgment and Order dated 15.01.2009. Aggrieved by the same, the State Government preferred a Writ Appeal before the High Court. The High Court, vide its impugned common Order dated 11.02.2010, dismissed the Writ Appeal and directed the State Government to count the period of service rendered by the Respondent on emergency appointment for granting the benefit of the senior/selection grade pay scales. Being aggrieved, the State Government is before us in this appeal.

5. The learned single Judge of the High Court, vide its Order dated 15.01.2009, observed that in view of series of decisions of the High Court, the service rendered by the Assistant Professor, appointed on the emergency basis, requires to be counted for the purpose of granting benefit of higher pay scale. The High Court has specifically followed the Order dated 13.07.2007 of Single Judge in Smt. Sandhya Prasad v. State of M.P. in W.P. No. 807/2007 (S) which, in turn, has followed the Division Bench decision in State of M.P. and Anr. v. Dr. (Smt.) Seema Raizada and Anr. W.A. No. 4863/2001 decided on 10.08.2005. The learned Single Judge also clarified that the period of such service will only be counted for the purpose of granting the benefit of senior pay scale and selection grade and not for seniority in the cadre of Assistant Professor.

6. The Division Bench of the High Court in Writ Appeal No. 599/2008 and other connected matters, vide its impugned common Order, has discussed its earlier decision in State of M.P. and Anr. v. Dr. (Smt.) Seema Raizada and Anr. (Supra). That was the Writ Petition, filed by the State Government against the Order of the State Administrative Tribunal challenging the direction issued to take into consideration the period of service of the emergency appointee for determining the benefit of higher pay scale, which had been dismissed by the High Court. The High Court further observed that this decision was consistently followed by it in several other Division Bench and Single Bench decisions. The State Government, being aggrieved by these decisions in Dr. (Smt.) Seema Raizada (Supra) and other connected matters, preferred a SLP before this Court. This Court, vide its Order dated 03.12.2007, dismissed SLP on the ground of delay and hence, left the question of law open. The State Government also preferred a Review Petition, which was dismissed by this Court vide its Order dated 12.03.2008. Thereafter, the State Government, in identical matters, preferred a Writ Appeal before the Division Bench of the High Court in view of the dismissal of the SLP on the ground of delay but question of law was left open. The High Court, in its impugned judgment, has also discussed the judgment and order dated 07.05.2009 in Writ Appeal No. 528/2008 in State of M.P. v. Dr. Brijesh Kumar. That Writ Appeal was filed by the State Government against the Single Judge Order wherein the benefit of higher pay scale was conferred on account of period of service rendered as emergency appointee. In that Writ Appeal, the High Court, after placing reliance on various earlier decisions, observed that there is a conceptual difference between the conferral of seniority and counting of the services for the purpose of grant of senior pay scale and the selection grade. The benefit of higher pay scale has to be given by counting the service from the date of initial appointment as the appointment was, as per the rules and has been, later regularized. The High Court, in the impugned judgment, has also observed that the High Court has consistently taken a view that emergency appointees, under Rule 13(5) of the Recruitment Rules, 1967, are entitled for the benefit of higher pay scale by counting the services rendered as emergency appointees. The High Court has also observed that the State Government has failed to grant the benefit of higher pay scale to the emergency appointees vide its Circular

dated 11.12.1999. It further held that the emergency appointments were made after following due process of advertisement and selection in the pay scale and such appointees continued, till their regularization, without any break. Hence, such appointments were not on purely ad hoc basis. The High Court further observed that the emergency appointees satisfy all the five essential conditions envisaged in the Circular dated 12.02.1992 issued by the State Government in order to take into account the period of prior service rendered for determining the grant of higher pay scale and selection grade. The relevant portion of the impugned Order of the High Court is extracted below:

7. It is not in dispute that advertisement was issued, selection committee was formed which has considered the cases of the employees, they were duly qualified for being appointed, their appointments have continued till their regularisation and they were holding the similar pay scale in which they were regularised. Appointment was made in the pay scale not on fixed pay and there was no brake, they were not appointed as against any leave vacancy, the appointment was not on purely ad hoc basis without following the procedure, the appointment was made under the aforesaid Rule 12(5).

8. In the light of the aforesaid undisputed facts when we consider circular dated 12.2.93 issued by the State Government which has been relied upon by the Tribunal while rendering decision in case of Seema Raizada and Padma Shrivastava, a close reading of the circular dated 12.2.92 indicates that prior service rendered has to be countered for the purpose of grant of higher pay scale and selection grade pay scale on following conditions:

- (i) that the post held must be equivalent and carrying the same pay scale;
- (ii) the qualifications of the post held should not be less than then prescribed qualification by the UGC for the post of lecturer;
- (iii) at the time of appointment on the earlier post of which service is to be counted an incumbent must possess the minimum qualification prescribed by the UGC;
- (iv) appointment on the post must have been made by the prescribed selection procedure by the State Government; and
- (v) the appointment should not be purely ad hoc or as against leave vacancy for less than one year.

When we apply the aforesaid five conditions in the instant case, one by one, it is not disputed that appointment of the employees was on the same post and in the same pay scale. Thus, the first condition stands satisfied. When we come to the second condition as to the qualifications prescribed for the post, the post held was the same post and the qualifications possessed by incumbents were not less than that prescribed by the UGC, it is not the case of State that qualifications prescribed in advertisement were less. Thus, second condition also stands fulfilled. When we come to IIIrd condition, the incumbent was holding the

minimum qualification prescribed by UGC at the time of appointment on emergency basis, they were holding the qualifications has also not been disputed. When we come to fourth condition it is admitted that selection was made as prescribed under Rule 12(5) (sic.) of the Rules of 1967, since the appointment was made under Rule 12(5), the aforesaid IVth condition also stands satisfied. When we examine fifth and last condition it is apparent that appointment was made on emergency basis not on purely ad hoc basis, it was not against any leave vacancy. For the purpose of appointment, prescribed procedure under Rule 12(5) (sic.) was followed, appointment was made under the rule. Rules provide for emergency appointment and prescribed the procedure for that which was followed and ultimately the services were regularised. The State Government has taken the decision vide circular dated 12.2.92 for counting of such services for the purpose of higher pay scale and for selection pay scale, the benefit of which could not have been denied to the employees, thus relief has to be given on then basis of the aforesaid circular dated 12.2.92. Though it is not necessary to go into the DO of the MP PSC in view of circular dated 12.2.92, but MP PSC has clearly mentioned in its DO dated 25.12.98 thus:

The Commission after seeking legal opinion on Clause 1 (e) has declined to include service rendered in ad hoc capacity for counting of past service for placement in senior scale/selection grade, provided that the following three condition are fulfilled:

- (a) The ad hoc service was of more than one year duration;
- (b) the incumbent was appointed on the recommendation of duly constituted Selection Committee, and
- (c) The incumbent was selected to the permanent post in continuation to the ad hoc service, without any break.

The Commission has taken the above decision.

The aforesaid three requirements also stand satisfied in the instant case. The instant case stand on better footing as the service rendered was not purely ad hoc, but it was under the rules as an emergency appointee, even ad hoc appointee in case ahs continued for more than one year duration and was selected by duly constituted selection committee and was later on selected to the permanent post in continuation to the ad hoc service without any break, his services has to be counted for placement in Senior Scale/Selection Grade as per aforesaid decision of PSC. In the instant case, the case of employees is much better. Thus, they could not have been denied the benefits of counting of their services rendered as emergency appointee and their past services ought to have been counted for the placement in Senior Scale/ Selection Grade, we find that decision rendered by the Single Bench to be in accordance with law and we do not find any ground to differ from the view taken by different Division Benches of this Court in several matters dismissing the writ appeals assailing the order passed by the single Bench or the writ petition preferred against the order passed by

State Administrative Tribunal.

The High Court further observed the Respondents' stand on the better footing in terms of both the Circulars dated 12.02.1992 as well as Order dated 25.12.1998 of the M.P. Public Service Commission as their services are not purely ad hoc but, under the rules, as an emergency employee. The High Court, while dismissing the Writ Appeals, concluded that the Respondents are bound to count the services rendered by the Appellants as emergency appointees for their placement in senior scale/selection grade.

7. Shri. B.S. Banthia, Learned Counsel for the Appellant, submits that the Recruitment Rules, 1967 provides two modes of recruitment viz. by direct recruitment made by the PSC under Rule 7(1), and emergency appointments under Rule 13(5), when the PSC list is not available, on a temporary basis. The service of such emergency appointees, the Learned Counsel would contend, could be terminated as soon as PSC list, in accordance with Rule 7(1), was available. He would then state that only those appointees, who were appointed by the method of direct recruitment, as provided under Rule 7(1), were eligible to get the senior and selection grade pay scales and not those who were appointed in accordance with Rule 13(5). Though, not backdoor appointments, the Learned Counsel would contend that these were not conforming to the rigors of the selection procedure followed by the PSC and hence, could not be equated to those appointments made by the PSC. He would further submit that his argument is strengthened by the fact that the respondents could be terminated without notice in case of availability of the PSC list and that it was essential for the respondents to clear the requirements of PSC to get their appointments regularized. The Learned Counsel also relies upon voluminous other documents such as various schemes issued by UGC from time to time and adopted by the State of Madhya Pradesh either in toto or partially, and also the Government Orders and Circulars issued from time to time indicating the entitlement or otherwise of the emergency appointee for Senior Scale/Selection Grade and submits that these voluminous documents could not be produced before the High Court, since the appeals were disposed of at the stage of admission itself.

8. Shri. P.S. Patwalia, learned senior counsel, led the arguments for the Respondents in the batch of appeals. He submits that the Respondents are entitled for higher pay scale by counting their service rendered as emergency appointees in view of the Circular dated 11.10.1999 read with the Circular dated 12.02.1992 issued by the State Government. He would contend that the appointment of the Respondents were made after following a due selection procedure and hence, such appointments are not in the nature of temporary or ad hoc appointments but emergency appointments in accordance with the Rules. Therefore, the Respondents are entitled to receive higher pay scale from the date of their initial appointment as emergency employees. He would then argue that not only the appointments were made as per the mode prescribed under the Recruitment Rules of 1967, but also their characteristics were not akin to those

of ad hoc or fortuitous appointments as nation- wide advertisements were published and selections were made on the basis of merit. It is further submitted that the Respondents were qualified for appointment to the post and they are also getting annual increments for continuous service from the date of initial appointment. He would argue that it was an admitted position that the appointments were not ad hoc appointments in view of the affidavit filed by the Appellants before this Court. He further submits that the Govt. Order dated 25.08.1998, issued by Madhya Pradesh Public Service Commission, which has also been relied upon by the High Court in its impugned Judgment, contemplates the grant of higher pay scale on the basis of ad hoc service rendered for more than one year. He submits, by placing reliance on the said Govt. Order, that the case of Respondents stands on the better footing as their services are not purely ad hoc. Shri. Patwalia would defend the reasoning of the High Court in the impugned judgment and submit that the Respondents, as emergency appointees, fulfill all the five conditions envisaged in the Circular dated 12.02.1992. The learned senior counsel submits that the Respondents were regularly working without any artificial breaks and that they are paid UGC pay scale with regular annual increments and are also eligible for pensionary benefits. He would contend that there are three characteristics of an ad hoc appointment, viz., they are made de hors the rules, they are employed for a specified duration and they are in a fixed pay scale. He further submits that the grant of senior/selection grade pay scale, by taking into account the past period of service rendered, is a "stagnation removal device" and there is no reason for the denial of the same to the Respondents in the present cases. He argues that though the emergency appointments were made in view of non- availability of selected panel candidates of Public Service Commission, but it is a matter of fact that the Respondents continued in the service till their regularization. He further submits that Circular dated 11.10.1999, while conferring benefit of higher pay scale on the Assistant Professors, uses the word "service" instead of "regular service" for computing the past services rendered. He contends that the 1999 Circular confers benefit to all kinds of services without any distinction whether regular, ad hoc, temporary or emergency service. He submits that the Respondents have satisfied all the conditions referred to in Clause 8 (a) of the 1999 Circular to qualify for higher pay scale. He argues that Rule 7(4) also contemplates a method of appointment other than through Public Service Commission, which when read with Rule 13(5), would give the Respondents a status of being appointed to service under the Recruitment Rules, 1967. He would then submit that emergency appointments are prescribed under the rules and cannot be termed as ad hoc. He further argues that the ad hoc appointments are always de hors the service rules and in some cases, rules provided for the temporary appointment, for a limited period, cannot be considered as ad hoc. He submits that the State Government had granted the benefit of higher pay scale under the said Circulars only to the five emergency appointees but the same has been denied to those emergency appointees, who were appointed and regularized between the years 1987 and 2003 and thus, this amounts to discrimination and denial of equal treatment to

similarly placed emergency appointees. In support of his submissions, Shri. Patwalia has referred to several precedents of this Court in the case of *Union of India v. K.B. Rajoria*, (2000) 3 SCC 562 *Union of India v. Mathivanan*, (2006) 6 SCC 57 *Dwijen Chandra Sarkar and Another v. Union of India*, (1999) 2 SCC 119 and *S. Sumnyan and Ors. v. Limi Niri and Ors.*, (2010) 6 SCC 791 . The learned senior counsel does not dispute the fact that the appeals were disposed of at the stage of admission itself.

9. Shri. Romy Chacko, Learned Counsel appearing for some of the Respondents, adopted the submissions as made by Shri. Patwalia, and would state that there is a distinction drawn between ad hoc appointees and emergency appointees by the State itself.

10. All other learned Counsel, appearing for respondents in connected civil appeals, would adopt the submissions as made by learned senior counsel Shri. Patwalia.

11. We tried to wade through voluminous materials in the form of schemes, Govt. orders and circulars produced by both the learned Counsel appearing for the parties. More we tried to dwelve into the matter, more and more murkier facts, which we call normally "Pandoras Box", started emerging. Going through these documents could have been done by us, but since those documents were not even produced by way of affidavit and since the learned Counsel on the opposite side had no knowledge of those documents, we have thought it fit to remand these matters back to the High Court for fresh disposal in accordance with law, by granting liberty to both the parties to produce all these documents which they tried to rely upon before us.

12. We are also informed by both the learned Counsel that it would be in the interest of all the parties that these petitions be heard before one Bench so that possibility of divergent opinion/s from the High Court could be possibly avoided. The expression of desire appears to be reasonable and, therefore, we accept the same.

13. In that view of the matter, we allow the appeals, set aside the orders passed by the High Court in all these matters and remand the matter back to the High Court for its fresh consideration in accordance with law. We also give liberty to both the parties to place on record all the documents on which they intend to rely in support of their case including the manner, mode and the source of appointment of each of the Assistant Professors.

14. We also request the learned Chief Justice of the Madhya Pradesh High Court to assign all these matters to the Principal Bench itself so that the matters could be finally settled by one Bench, instead of two or three Benches taking different views on the same set of facts and on the questions of law.

15. Since the matters were pending for some time, we request the learned Chief Justice to either take up the matters by himself or assign it to an appropriate

Bench and request that Bench to dispose of the appeals at the earliest. We clarify that we have not expressed any opinion on the merits of the case. Ordered accordingly.