
(2008) 02 MP CK 0084
In the Madhya Pradesh High Court

State of Madhya Pradesh and Others	Vs	APPELLANT
Vinod Mohan Shrivastava		RESPONDENT

Date of Decision : 20-02-2008

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2008) ILR (MP) 1869

Hon'ble Judges : Sanjay Yadav, J;A.K. Gohil, J

Bench : Division Bench

Judgement

1. This writ appeal is filed by the State, challenging the order dated 31.3.2004 passed by learned Writ Court in W.P. No. 5546/03.
2. There is no dispute that the respondent was appointed on compassionate basis. In the appointment letter, there was clear stipulation that he has to pass Hindi Typing Examination and only thereafter, his services will be regularised and after regularisation, he will get the regular increments.
3. The Divisional Bench of this Court in the case of State of Madhya Pradesh v. Smt. Sushma Surana 2005 (II) MPWN 116, has considered the entire controversy including terms and conditions mentioned in the appointment letter and has held that a employee shall be entitled for annual increment after his regularisation on passing Hindi Typing Examination or on completing the age of 40 years. In the case of Smt. Sushma Surana (Supra), this Court has considered the decision of the Indore Bench passed in writ petition No. 759/97 decided on 15th of July, 1998 in the case of Dilnaz Anklesaria and Anr. v. State of M.P. and three Ors.
4. At this juncture, Shri S.P. Jain Learned Counsel for the respondent has drawn our attention to the judgment rendered by a Single Judge of This Court in the case of Dongar Singh Pawar v. State of M.P. and Ors. reported in 2006 (3) MPHT 352 bearing W.P. (S) No. 2849/05 and a connected writ petition bearing W.P. (S) No. 4148/05 decided on 16.05.06 to bolster his submission that in the similar

circumstances, the learned Single Judge while distinguishing the case of Sushma Surana (supra) has granted a regular increment after completing one year of service from the initial date of appointment, irrespective the stipulations being there in the appointment letter that the same is permissible only after passing the Hindi typing examination or on completion of 40 years, whichever is early.

5. We gave our thoughtful consideration to the submission made by the Learned Counsel for the respondents and have perused the order passed in the case of Dongar Singh (supra). The learned Single judge in the case of Dongar Singh (supra) while placing reliance on the recruitment rules namely M.P. Irrigation Department (Non-Gazetted) Service Recruitment Rules, 1969 and the schedule thereunder has allowed the said increment holding that the stipulations for passing Hindi Typing examination since were not provided under the Recruitment Rules, the same cannot be sine-qua-non for denying the increment/regularisation to an employee who is appointed to the post. We respectfully disagree with the aforesaid reasoning of the learned Single Judge.

6. True it is that the service condition of a person appointed in the government service are governed by the Rules framed under Article 309 of the Constitution of India. But it is equally true that there is no specific bar for providing a specific stipulation in the appointment letter regarding minimum eligibility criteria and if such stipulations are made in the letter of appointment, it would be incumbent on the part of the employee concerned to fulfill the said criteria before he acquires eligibility to gain increment and becomes the member of service, in absence of which an employee, who accepts appointment on certain terms and conditions, cannot turn around and claim benefit of increment without fulfilling the said criteria, then the same has its own binding. It is not disputed that the petitioner in the case of Dongar Singh (supra) did not fulfill the criteria stipulated in the appointment letter and was not entitled for the increment. Therefore, in our considered opinion, the judgment rendered in the case of Dongar Singh (supra) does not lay down the correct proposition of law in respect of a person who is appointed on a specific stipulation that unless he passes the Hindi Typing Examination or have completed 40 years of age, whichever is early, will not be entitled for regularisation.

7. In the case of State of Rajasthan and Ors. v. Rajendra K. Verma (2004) 13 SCC 706, the Apex Court was pleased to hold the entitlement of respondent therein for regularisation of his services from the date when he passed the test as stipulated by the government order. The following facts were noted by the Apex Court in paragraph 2 and 3 of the judgment;

2. Having heard the Learned Counsel for the parties on either side and after perusing the judgment of the learned Single Judge as well as of the Division Bench of the High Court, we are of the view that the findings of fact recorded by the High Court in the light of the respective contentions raised do not need any interference by us in these matters, except to the extent that the regularisation of services of the respondent, as ordered by the High Court, from the date of his

initial appointment and payment of interest at the rate of 10% of arrears of salary need to be modified. As per government order dated 15-3-1978 (Annexure P-5), it appears to us that the respondent was entitled to regularisation from the date he passed the speed test for stenography and typing, which test he passed on 7-11-1978. Para 2 of the said government order reads;

All Stenographers Grade II appointed on an ad hoc basis prior to 1-1-1976 who are not covered by No. 1 above, may be treated as regularly appointed in service on their passing speed test to be held by an institution to be prescribed at the standards for Hindi and English stenography and typing prescribed for the Higher Secondary Board Education Examination.

3. Having regard to para 2 of the government order extracted above, we think that the respondent is entitled to regularisation only from 7-11-1978 and not from the date of his initial appointment.

8. Thus, we are of the considered opinion that the judgment passed in Dongar Singh (supra) does not lay down the correct proposition of law.

9. Therefore, this appeal is disposed of with the direction that the respondent shall be entitled for regularisation and for annual increment either on passing of Hindi Typing Examination or on completing the age of 40 years, therefore, the order of learned Writ Court is modified to that extent.

10. Accordingly, appeal is disposed of with the aforesaid direction.