

(2013) 08 MP CK 0177

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 179 of 2010

State of Madhya Pradesh, The Executive Engineer, The Sub
Divisional Officer and The Joint Director, Treasury, Accounts
and Pension

APPELLANT

Vs

Ramchandra Singh

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2013) 08 MP CK 0177

Hon'ble Judges : S.R. Waghmare, J;P.K. Jaiswal, J

Bench : Division Bench

**Advocate : Mini Ravindran, Dy. Govt, for the Appellant; Pushpa Joshi, learned
Counsel, for the Respondent**

Final Decision : Dismissed

Judgement

S.R. Waghmare, J.—By this Writ Appeal under 2(1) of Madhya Pradesh Uchha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 the appellants/State have challenged the eligibility of the respondent/petitioner Ramchandra Singh to claim the pension and other ancillary benefits. We find that in the dispute raised before us the main bone of contention is that, the respondent/petitioner was working on daily wages since 1957 in the Public Works Department. His services were regularized vide order dated 14/7/1998 and the regularization was to take effect from 1/1/1996 and he attained the age of superannuation on 30/6/2000 and had thereby only completed 4 years and six months of regular services. And it is the contention of the learned Counsel for the appellants/State that in these circumstances the respondent/petitioner has not completed 06 years of service and therefore, he is not entitled to claim the benefit of pension under M.P. Works Charged and Contingency Paid Employees Pension Rules 1979. Counsel relied on the Full Bench decision of this High Court in the case of Mamta Shukla (Smt.) Vs. State of M.P. and Others, whereby the Court has held as follows:

Entitlement - Pension is a payment for the past services rendered by an

employee and for rendering service an employee has to be appointed in accordance with the provisions of Recruitment Rules. An employee who was not appointed accordingly would not be eligible to count his past service as qualifying service for the purpose of grant of pension. An employee is eligible to count his past service as qualifying service in accordance with Rule 6 of the Pension Rules, 1979, if he was appointed in accordance with the provisions of Recruitment Rules of 1977.

2. Counsel for the appellants/State further contended that the Full Bench had exhaustively considered the matter and directed that the Pension Rules of 1979 be read in consonance with the Recruitment Rules of 1977, because the object of Pension Rules, 1979 is to provide benefit of pension to certain class of employees and that has to be construed to employees who have been recruited in accordance with the provisions of Recruitment Rules of 1977, because if the Pension Rules 1979 be read in isolation or independently then the Recruitment Rules of 1977 would become redundant. Pension Rules of 1979, apply to a permanent employee of contingency and work charged establishment, who is appointed in accordance with the provisions of Recruitment Rules. An employee who was appointed or engaged without following the procedure as enumerated in relevant Recruitment Rules and on ad hoc basis and not against any sanctioned post, could not get the status of a regular employee. Hence, it has to be held that Rule 3 of the Pension Rules of 1979, which prescribes scope and application of the Pension Rules of 1979, would be applicable to the "work charged and contingency paid employee", who comes within the definition of "service" of Recruitment Rules, 1977 Secretary, State of Karnataka and Others Vs. Umadevi and Others,

3. Counsel urged that the initial recruitment of the respondent/petitioner was only on daily wages and he was not appointed against any post and the regularization was to take effect from 1/1/1996 and even if the amended Rules 5 & 6 of M.P. Work charged and Contingency Paid Employees) Pension Rules is considered, it prescribes that eligibility for entitlement of pension is minimum 06 years of qualifying service on regular post, but the present respondent/petitioner has only completed 4 years and six months of service as Gangman in the Public Works Department. The learned Single Judge of this Court had not taken this fact into consideration at the time of directing the appellants/State to pay the pension to the respondent. Regarding the considerable length of the service of the respondent/petitioner, Counsel for the appellants/State urged that the initial appointment of the respondent/petitioner being on daily wages, he did not have any right to be absorbed in service and the Pension Rules have to be strictly adhered to especially regarding regularization of services as held in the Apex Court in the matter of Secretary, State of Karnataka and Others Vs. Umadevi and Others,

4. Learned Counsel for the respondent/petitioner, on the other hand, has relied on Ram Kumar Agrawal Vs. State of M.P and others, 1995 Supp (3) SCC 67 to

state that M.P. Pension Rules 1976 have to be read in consonance with M.P. Workcharged and Contingency Paid Employees" Pension Rules, 1979 Rule 4(2) read as the two sets of rules have to be read together to calculate qualifying service. And in the said case the service of the appellant on the post of Junior Engineer in the work charged establishment was considered from the initial date of appointment. Moreover, Counsel relied on State of M.P. Vs. Dhanna (Writ Appeal No. 279/2009) and State of M.P. vs. Nanuram (Writ Appeal No. 253/2011) whereby this Court had held that since sub rule (3) of Rule 6 of M.P. (Workcharged and Contingency Paid Employees) Pension Rules 1979 was introduced vide notification dated 30/1/1996 and it is provided that if a temporary employee who has served uninterruptedly and is regularized on a regular pensionable post, his services after 1st January, 1974, the period shall be counted for the purposes of pension the service rendered w.e.f. 1st January, 1959 onwards and it shall be counted for pension as if such service was rendered in a regular post. And this Court has in these cases granted relief to the similarly situated Gangmen. Counsel submitted that even in the case Mamta Shukla (supra) the Full Bench has observed thus: in para 11 it held that M.P. (Workcharged and Contingency Paid Employees) Pension Rules 1979 came into force in the year 1974 and in respect of Rule 6(3) of the Rule the work-charged employees or contingency paid employees who have attained the age of superannuation on or after 1/7/1981 their service has to be counted in terms of a permanent employee who has completed ten years of uninterrupted service on or after 1/1/1974. Besides under the head of regulation of the amount of pension it was stated that the M.P. Civil Services (Pension) Rules 1976 except sub Rule 47 & 48 as amended from time to time shall apply to all permanent employees who have retired on or before 1/6/1976 and the amended Rule 6A(3) defines as follows:-

(3) On absorption of temporary employee without interruption against any regular pensionable post, the service rendered with effect from 1st January, 1974 onwards, if such service is not of less than six years shall be counted for pension as if such service was rendered in a regular post.

5. Then Counsel for the respondent/petitioner has vehemently urged the fact that the present respondent/petitioner was a Gangman and worked for the State for more than 43 years and under the circumstances refusal for pension by the State Government is nothing but adamancy. This Court has also ordered cost of Rs. 40,000/- to be paid to the respondent/petitioner by the appellant/State due to delay of two years occasioned in filing this appeal. This clearly indicated the mulish attitude of the State Government in refusing to pay pension to the respondent/petitioner to which he is legally entitled. Hence, Counsel prayed that the appeal is without merit and it be dismissed.

6. Considering the entire controversy, we find that the stand of the appellants/ State is severely lopsided and misguided. Considering the case of the petitioner that he was a Gangman and for his services rendered pension to be paid, would

be regulated by the M.P. Pension Rules of 1979. The appellants/State have not denied the fact that the petitioner was working as a daily wager in the respondent/Public Works Department from 1/6/1957 to 31/12/1995 and after more than 25 years of service he was regularized on the post w.e.f. 1/1/1996. Then undoubtedly the case of the respondent/petitioner would fall under Rule 6(3) of the M.P. (Workcharged and Contingency Paid Employees) Pension Rules 1979.

7. Dealing with the matter in detail we find that the petitioner was a Gangman working on a daily wage basis and not working against any permanent post as alleged and the dispute that he cannot be extended the benefit of the M.P. Pension Rules 1979 is however, finally set at rest in the matter of Vishnu and Others Vs. State of Madhya Pradesh and Others, whereby a Full Bench of this Court has held thus:

While deciding the Gulabsingh's case the 1977 Rules and Pension Rules of 1979 were not brought to the notice of the Court. Under Rule 6 of 1976 Rules the employees who were in service for at least fifteen years on 1.1.1974 were eligible for the status of permanent work charged or contingency paid employees. This has been made more liberal by the 1979 Rules. Rule 2(c) of the 1979 Rules lays down that a contingency paid employee or a work-charged employee becomes permanent employee wherever he completes fifteen years of his service though it may be after 1.1.1974.

And further

in such circumstances we hold that the services of gangmen are governed by the Rules applicable to work charged and contingency paid employees even though the gangman is not included in the schedule of 1976 Rules and the age of superannuation is 62 years as other Class IV employees of the Statement Government because they are in comparable category.

8. Thus, we find that the entire controversy hinges on the period that the employee has served prior to regularization as a work charged employee and whether such services should be counted for pension as already stated above. We find that the ratio laid down in the case of Mamta Shukla (supra) would not be applicable in the present case simply for the reason that the case of the respondent/petitioner is fully covered by the sub-rule (3) of Rule 6 as amended vide notification dated 30th January, 1996 in the M.P. (Workcharged and Contingency Paid Employees) Pension Rules 1979 vide FD No. B-25/17/95/PWC/IV which provides for counting of six years service rendered in the Work-Charged Establishment without interruption prior to regularization in the regular department.

9. We also find that the point of discrimination has been raised by the learned Counsel for the respondent/petitioner stating that similar relief was granted to other gangmen in Writ Appeal No. 279/2009 (State of M.P. Vs. Dhanna), W.A. No. 253/2011 (State of M.P. vs. Nanuram) and W.A. No. 400/2011 (State of M.P.

vs. Ratanbai). We find that the petitioner has rendered blemish-less service of almost 43 years in the Public Works Department of the State and therefore, in a welfare State where retiral benefit is the obligation of the State, such bureaucracy and mulish behaviour is not to be accepted. This Court had already imposed cost of Rs. 40,000/- on the State. Moreover the case of the applicant does not come within the purview of Mamta Shukla (supra) since his case is completely covered by sub rule (3) of Rule 6 of the M.P. (Workcharged and Contingency Paid Employees) Pension Rules 1979 is already stated above.

10. In the present case although the respondent was appointed as a gangman on muster role on 01/06/1957 he was regularized w.e.f. 01/01/1996 and he retired on 30/06/2000 and six years uninterrupted services prior to the regularization shall be taken into consideration by the appellant/department while calculating the pension of the respondent/petitioner. We have no hesitation in holding that the State is misguided in its appeal and it deserves to be dismissed as such.

11. Consequently, it is hereby declared that the services of the respondent/petitioner would be governed by sub rule (3) of Rule 6 of the M.P. (Workcharged and Contingency Paid Employees) Pension Rules, 1979 and the case is squarely covered by several judgments of the earlier Division Bench and no error has been committed by the learned Single Judge in allowing the writ petition. If the petitioner/respondent has not been paid the pension and other consequential benefits the appellant/State shall do so within two months from the date of this order and it is directed in the interest of justice the amount shall be paid with interest at the rate of 6% per annum. The appeal however, stands dismissed as observed above.