
(2010) 02 MP CK 0020
In the Madhya Pradesh High Court
Case No : W.A. No. 599 of 2008

State of M.P. and Another	Vs	APPELLANT
Dr. Smt. Sandhya Prasad and Others		RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

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

Citation : (2010) ILR (MP) 1259

Hon'ble Judges : S.C. Sinho, J;A.K. Mishra, J

Bench : Division Bench

Judgement

Arun Mishra, J.—In writ appeals and the writ petition which have been preferred the question arises for consideration is whether the period of service rendered as emergency appointee pursuant to the appointment having been made under Rule 12(5) of M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1967 (hereinafter referred to as "the Rules of 1967") could have been ordered to be counted for conferring the benefit of higher pay scale.

2. It is not in dispute that the concerned employees were appointed under Rule 12(5) of the Rules of 1967. Rule 12(5) of the Rules of 1967 provides that if Commission's panel of selected candidates is not available, the posts may be filled by Govt. by emergency appointments, by issuing advertisement inviting applications under the prescribed form, qualifications have also been prescribed. It is provided that as and when the candidates are available duly selected by PSC, such appointees will be removed without notice. Appointment order indicates that appointment was made in the pay scale of Rs. 2200-75-2800-100-4000. It is also not in dispute that the services of concerned employees were ultimately regularized. The State Government did not count the period spent by the employees as emergency appointee for the purpose of grant of higher pay scale, the benefit of which was extended by circular dated 11th of October, 1999 bearing No. F-1/233/99/38-1/99.

3. Earlier the cases were filed before the Tribunal. OA No. 1763/2000 filed by Dr. (Smt.) Seema Raizada which was decided vide Order dated 26.2.2001, it was allowed in terms of circulars dated 12.2.92 and 11.10.99. In the matter of Padma Shrivastava (OA No. 1764/2000) decided on 26.2.2001, similar decision was rendered by the Tribunal and benefit was ordered to be extended with effect from the date of initial appointment. Case of Seema Raizada travelled to the Division Bench of this Court in WP No. 4863/2001, same was dismissed vide Order dated 10.8.2005 by the Division Bench comprising of My Lord Hon"ble the Chief Justice R.V. Raveendran (as he then was) and Shantanu Kemkar, J. The decision in the case of Padma Shrivastava was assailed before this Court in WP No. 295/ 2002. Another Division Bench of this Court comprising of Hon"ble Mr. Justice Deepak Verma (as he then was) and Mr. A.K. Saxena, J. dismissed the writ petition vide Order dated 26.9.05. Another WP No. 1017/02 was also dismissed. These were preferred against the decision rendered by the State Administrative Tribunal, the decision of Tribunal was upheld. There are some other decisions rendered by Division Bench. Single Judge sitting at Gwalior in WP No. 6350/06(s) vide Order dated 28.3.08 has also allowed the writ petition filed by Dr. Brijesh Kumar Sharma giving him the similar benefit treating the period spent as emergency appointee for the purpose of grant of higher pay scale. As against which the writ appeal preferred by State bearing No. 528/08 was dismissed by Division Bench of this Court comprising of Shri S. Samvatsar and A.P. Shrivastava, JJ vide order dated 7.5.09. Reliance was placed on various decisions and it was held that there is difference between the conferral of seniority and in concept of 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 counting the service from the date of initial appointment as the appointment was as per rules and has been later on regularized. Yet another Division Bench at Gwalior has also dismissed the writ appeal 65/10 on 1.2.2010. The State of MP has preferred SLP before the Apex Court. The Apex Court dismissed the SLP on the ground of delay in filing the petitions, question of law was left open in the order passed on 12th March, 2008.

4. Though the matter is covered by large number of decisions of this Court, but Shri Deepak Awasthy, learned GA has urged this Court to re-examine the question as the question of law is left open by the Apex Court. He has submitted that once seniority cannot be granted, it follows that the employees were not born in the cadre of regular service, thus, the period spent by them as emergency appointee could not have been counted for the purpose of grant of higher pay scale as such employees could not be said to be members of regular services, it could not be said that they were born in the regular services, before their services were regularized and they came to the service of the State under the rules. He has relied upon decision of this Court in Saroj Goswami v. State of M.P. and Ors. 2006 (1) MPLJ 217. He has also submitted that on the basis of circulars relied upon by the Tribunal, the relief could not have been extended.

5. Shri Ajay Mishra, Sr. Advocate, Shri K.K. Trivedi, Shri Praveen Verma, Shri

Alok Pathak, Ku. Nirmala Raikwar, Shri Sheel Nagu, Shri M. Chansoriya, Shri S.S. Tripathi, Shri D.K. Mishra, Shri A. Rajeshwar, Shri Bhanu Pratap Yadav, Ms. Madhu Shukla, Shri S. Tripathi, Shri T.K. Khadka and Shri R.P. Mishra, and Shri Piyush Dharmadhikari, learned Counsel appearing for employees have submitted that the employees are entitled for the benefit of higher pay scale after counting their services with effect from their appointment under Rule 12(5) of the Rules of 1967, as per circular dated 12.2.92 such benefit is clearly available. Apart from that they have also relied upon MP Public Service Commission DO dated 25th December, 1998 filed in WP No. 14827/08 in which it has been ordered by the Commission that it has decided to include service rendered in adhoc capacity for counting of past service for placement in Senior Scale/Selection Grade, provided that three conditions are fulfilled. The adhoc service was of more than one year duration; the incumbent was appointed on the recommendation of duly constituted Selection Committee, and the incumbent was selected to the permanent post in continuation to the adhoc service, without any break.

They have also relied upon various aforesaid decision rendered by this Court time to time.

6. No doubt about it that this Court has consistently taken the view that such appointees are entitled for the benefit of higher pay scale by counting the services spent as emergency appointee. Emergency appointments are made under Rule 12(5) of the Rules of 1967 which reads thus:

12(5): Emergency Appointments: If Commission's panel of selected candidates is not available, the posts may be filled by emergency appointments in the following manners:

- (a) an advertisement shall be issued by Government;
- (b) Applications for emergency appointments shall be submitted in the form prescribed in Schedule V.
- (c) Applications received shall be registered and tabulated according to the following criteria -

Category Qualifications

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The names will be arranged in each sub-category according to the marks secured by the candidates at the MA/M.Sc./M.Com. Examination:

Provided if and when Public Service Commission panel for these subjects is available, these teachers will be liable to be removed without notice.

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 regularization and they were holding the similar pay scale in which they were

regularized. 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 adhoc 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 12.2.92 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 counted 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 the 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 adhoc 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 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) 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 adhoc basis, it was not against any leave vacancy. For the purpose of appointment, prescribed procedure under Rule 12(5) was followed, appointment was made under the rules. Rules provide for emergency appointment and prescribed the procedure for that which was followed and ultimately the services were regularized. 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 the 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 decided to include service rendered in adhoc capacity for counting of past service for placement in Senior Scale/Selection Grade, provided that the following three conditions are fulfilled:

- (a) The adhoc 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 adhoc 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 stands on better footing as the service rendered was not purely adhoc, but it was under the rules as an emergency appointee, even adhoc appointee in case has 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 adhoc service without any break, his services have 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.

9. Shri Deepak Awasthy, learned GA has relied upon Division Bench decision of this Court in *Saroj Goswami v. State of M.P. and Ors.* (supra) in which Petitioner was appointed on adhoc basis on a fixed pay of Rs. 700/-. Division Bench of this Court held that fixed pay happened to be equivalent to the initial pay in a time scale, i.e. Rs. 700/- Rs. 1600/- does not mean that adhoc service was on a time scale. It was laid down by Division Bench of this Court that an incumbent is neither entitled for benefit of seniority nor pay scale. In the instant case ratio of the aforesaid decision is not at all attracted as seniority has not been given in any of the order passed by the single Bench the benefit given is that of counting of the past services for the purpose of placement in the Senior Scale/Selection Grade and the said benefit is available as per Government circular dt. 12.2.1992.

In the aforesaid decision of *Saroj Goswami v. State of M.P. and Ors.* (supra) the appointment was made on adhoc basis which was not under the rules whereas the appointment in the instant cases was under the Rules of 1967 and ultimately incumbents have been regularized. The appointment in the instant case was also on the pay scale, in the aforesaid decision appointment was on fixed pay, thus, decision is distinguishable. Even after following the aforesaid decision in its pith and substance, no dent is caused to the employees of the instant case as the relief is totally different, thus, ratio of said decision is not attracted.

10. Resultantly, we find no merits in the writ appeals preferred by the State Government. The same are dismissed. They are bound to count the services rendered by the employees as emergency appointee for placement of Senior Scale/Selection Grade. WP No. 24503/03 stands allowed. No costs.