
(2020) 08 MP CK 0166
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 652 Of 2020

State Of M.P. And Others

APPELLANT

Vs

Madhavlal And Others

RESPONDENT

Date of Decision : 28-08-2020

Acts Referred:

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

Citation : (2020) 08 MP CK 0166

Hon'ble Judges : Prakash Shrivastava, J; Vivek Rusia, J

Bench : Division Bench

Advocate : Amol Shrivastava

Final Decision : Dismissed

Judgement

By this appeal under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 the appellants have challenged the order of the learned Single Judge dated 6.12.2019, whereby the Writ Petition No.1101/2014(s) along with other connected writ petitions has been allowed and the learned Single Judge has directed the appellants to take into account the past services of the respondents for the purpose of pensionary benefit.

The respondents had filed the Writ Petition No.1101/2014 with the plea that they were appointed as Panchayat Secretary in District Ujjain on 5.2.1952, 17.2.1962 and 30.6.1973 respectively. Thereafter their services were absorbed as Gram Sahayak vide order dated 1.2.1982 and they had retired on reaching the age of superannuation. The respondents had raised the plea in the writ petition that they were entitled to counting of service from the date of appointment as Panchayat Secretary till their absorption as Gram Sahayak for the purpose of the pensionary benefit.

Learned single judge after taking note of the order dated 30.7.2007 passed in WA No.328/2006 has reached to the conclusion that the respondents are entitled

to the benefit flowing from the order passed by the Division Bench in WA No.328/2006 and accordingly has issued a direction to the appellants to take into account the past services of the respondents.

Learned counsel for the appellants submits that the Division Bench of this Court in the matter of Vichitra Singh Hoda Vs. State of M.P. and others reported in 2013(2) MPLJ 170 has taken a different view, therefore, the respondents are not entitled to counting of their service prior to absorption as Gram Sahayak.

Having heard the learned counsel for the appellant and on perusal of the record, it is noticed that identical issue had come up before the Division Bench at Gwalior in WA No.577/2019 in the case of State of M.P. and others Vs.Mehmood Khan and others, wherein the Division Bench by order dated 16.4.2019 after considering the earlier judgment in the case of Vichitra Singh Hoda (supra) has held as under:-

"Shri Pratip Visoriya, learned Govt. Advocate for the appellants/State.

Shri Shivendra Singh Raghuvanshi, learned counsel for the respondents.

This Writ Appeal has been filed by the State being aggrieved by order dated 29.07.2016 passed by the learned Single Judge, in W.P. No.4413/2011 (Mehmood Khan & Ors. Vs. State of M.P. & Ors.), whereby Writ Petition has been allowed directing the respondents (appellants herein) to revise the pension and pensionary benefits payable to the petitioners taking into consideration the initial date of their appointment as Group Secretaries in the Panchayat Department, who thereafter continued as Panchayat Secretaries and ultimately absorbed in the services of Panchayat Department as Village Assistants within six months from the date of submission of certified copy of the said order.

2. Learned Govt. Advocate for the State submits that the post of Group Secretary was sanctioned by the Collector (Panchayat Mandal), Gwalior and such post was not sanctioned by the State and such post was not included in the hierarchy of the Department of Panchayat and Social Services. It is submitted that post of Group Secretary was sanctioned within the setup of Gram Panchayat, which is local self institution and respondents were not given any appointment by the State. It is submitted that consequent to decision taken by the State Government to appoint Panchayat Secretaries by creating 2100 new posts of Gram Sahayak in 1982, persons, who were belonging to erstwhile regions of Madhya Bharat and Bhopal and who were earlier appointed as Group Secretaries were given appointment on the post of Gram Sahayak vide order dated 05.02.1982. Therefore, such respondents are not entitled to count their past services as Group Secretaries for the purpose of computation of qualifying service for pension.

3. Reliance has been placed on the judgment of Division Bench of this Court in the case of Vichitra Singh Hoda Vs. State of M.P. and others as reported in (2013) 2 MPLJ 170 and placing reliance on such judgment of this High Court, it is

submitted that under similar facts Division Bench of this High Court had declined interference holding that the benefit of qualifying services was rightly extended to said petitioners w.e.f. 01.02.1982 and such employees are not entitled to get the services rendered by them in Panchayat, counted for the purpose of qualifying service for pension.

4. Shri Shivendra Singh Raghuvanshi, learned counsel for the respondents on the other submits that prior to decision rendered by Division Bench of this Court in case of Vichitra Singh Hoda (Supra), another Division Bench of this Court in the case of State of M.P. Vs. Ramkumar Shrivastava, [W.A. No.524/2006] had an occasion to deal with similar issue and placing reliance on the judgment in the case of C.A. Bhakre Vs. State of M.P. and others as reported in 1987 MPLJ 509, wherein services of Municipal teachers was absorbed in the Government Service and this High Court had held that Municipal teachers, who were absorbed in the Government service are entitled to pensionary benefits by counting their previous service. Similarly, reliance was placed on the Division Bench decision of this Court in the case of State of M.P. Vs. Champa Soni and another as reported in 2001(2) MPLJ 333, wherein persons, who were initially appointed in Integrated Women and Child Development Project, established by the State and were absorbed in the Department of Panchayat and Social Welfare of the State of Madhya Pradesh, on abolition of the Project were held to be entitled for counting of their past service on the ground that they were absorbed in the State Government services, and therefore, they are entitled for counting their past services. On the basis of such decisions, Writ Appeal filed by the state was dismissed and the order of learned Single Judge passed, relying upon Division Bench decision of this Court in case of Panchayat Karmachari Sangh Vs. State of M.P. as reported in 1985 JLJ 609 has been upheld. It is submitted that in case of Vichitra Singh Hoda (supra) judgment of Division Bench has not been taken into consideration and therefore, earlier judgment being a binding precedent, it will prevail over the judgment rendered in case of Vichitra Singh Hoda (Supra).

5. After going through the record and hearing arguments, this Court is of the opinion that earlier judgment passed in W.A. No.524/2006 (State of M.P. & Ors. Vs. Ramkumar Shrivastava & Ors.) has a binding effect on Coordinate Bench and since judgment was not considered by a later Coordinate Bench in case of Vichitra Singh Hoda (Supra) judgment rendered in the case of Ramkumar Shrivastava (Supra) being binding shall have precedential value over the judgment rendered in case of Vichitra Singh Hoda (Supra), and therefore in terms of the order dated 30.07.2007 when under similar facts and circumstances, Writ Petition of State was dismissed and such order of the Court was upheld even by the Hon'ble Supreme Court in Civil Appeal No. 4427/2008 and SLP (C) No. 7713/2005 vide order dated 12.01.2012, present appeal deserves to be dismissed and is hereby dismissed. No order as to cost."

The present case is undisputedly squarely covered by the above judgement and it stands on the same footing, therefore, in view of the above order of the

Division Bench of this Court in the case of Mehmood Khan (supra), we are of the opinion that the respondents are entitled to count their services as Panchayat Secretary rendered prior to their absorption as Gram Sahayak for the pensionary benefit. Therefore, no case for interference in the impugned order of the learned Single Judge is made out.

The appeal is accordingly dismissed.

C.C. as per rules.