
(2006) 04 MP CK 0003

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2047 of 2000

State of M.P. and Others

APPELLANT

Vs

R.K. Chaturvedi and Another

RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) 1 MPJR 139

Hon'ble Judges : A.K. Patnaik, C.J.;Shravan Shanker Jha, J;S.M. Samvatsar, J

Bench : Full Bench

Advocate : S.B. Mishra, A.A.G. with Mr. Brajesh Sharma, Govt, for the Appellant; S.P. Jain, Advocate, for the Respondent

Judgement

A.K. Patnaik, C.J.

This is a reference made to the Bench by a Division Bench of this Court on a question of law on which there appears to be conflicting opinions of two Division Benches of this Court.

The facts briefly are that the respondent No. 1 was initially appointed as Sub-Engineer in the Water Resources Department of the Government of Madhya Pradesh w.e.f. 24.9.1980. His wife had two children and she went through a Family Planning Operation on 9.6.1984. Under a circular dated 29.1.1979 of the Government of Madhya Pradesh, General Administration Department, a Government servant who went through Family Planning Operation was to be given two advance increments. Accordingly, by order dated 16.7.1984 of the Executive Engineer, Benganga Project of the Water Resources Department, respondent No. 1 was granted two additional increments w.e.f. 9.6.1984. Thereafter, the pay-scales of Government servants were revised w.e.f. 1.1.1986 and the pay of the respondents was fixed in the revised scale of Rs. 2000-2900/-. The respondents No. 1 entertained a grievance that while fixing his pay in the revised scale of Rs. 2000-2900, the petitioners have not given him the benefit of two additional increments. He therefore filed OA No. 482/1999 before

the M.P. State Administrative Tribunal (for short "the Tribunal"), Gwalior Bench for appropriate relief. The petitioner filed a Return in the said OA No. 482/1999 contending that at the time of pay fixation in the revised pay-scale of Rs. 2000-2900, the pay of the respondent has been fixed at proper stage on the basis of his basic pay which includes merger of two increments of Family Planning Operation and there is no cause for grievance of the respondent No. 1.

By order dated 31.8.1989, the Tribunal disposed of the said OA following its decision in OA No. 415/92 and directed that the respondent No. 1 be extended the same benefit as has been extended to the applicant of OA No. 415/92, meaning thereby that the petitioners shall refix the pay of the respondent No. 1 in the revised scale of pay of Rs. 2000-2900/- adding one additional increment on account of Family Planning operation and calculate the arrears and make the payment to the same within a period of three months from the date of communication of the order. Thereafter, the respondent No. 1 filed a Misc. Application No.399/99 before the Tribunal for correction of the said order dated 31.8.1999 and by order dated 21.9.1999, the Tribunal corrected its earlier order dated 31.8.1999 so as to substitute the words "one additional increment" by the words "two additional increments". Hence, by the two orders dated 31.8.1999 and 21.9.1999, the Tribunal directed the State of refix the pay of the respondents in the revised pay-scale of Rs. 2000-2900 adding two additional increments on account of Family Planning Operation and calculate the arrears and make the payment of the same. Aggrieved, the petitioners have filed this petition under Article 227 of the Constitution for quashing the said order dated 31.8.1999 in OA No. 482/99 as corrected by the order dated 21.9.1999 in M. A. No. 399/99.

Before the Division Bench which was hearing the writ petition, a judgment of Division Bench of this Court in Vijaya Kothalkar Vs. State of M.P. and others [2003(3) MPLJ 469] was cited on behalf of the respondent No. 1 in which it was held that at the time of fixing pay in the revised scale due weightage has to be given to the increments already acquired by incumbent and if that is not done, it would tantamount to denying the benefit which has been acquired by the incumbent to his prejudice. Before the Division Bench hearing the writ petition, another Division Bench judgment in State of M.P. Vs. D.D. Dekhne and others in W.P. No. 2036/02 was cited on behalf of the petitioners in which it was held that two advance increments were given as benefit qua particular pay-scale and it cannot be said that a person who has been given a benefit qua particular pay-scale would avail the said benefit whenever there would be revision of pay-scale. In view of these conflicting opinions of two Division Benches of this Court, the Division Bench has referred the following question of law to the Full Bench:

Whether in the event of promotion or payment of higher pay-scale, employee is entitled for benefit of advance increments paid in previous scale of pay or cadre?

At the hearing before us, Mr. S.B. Mishra, the learned Additional Advocate General and Mr. Brijesh Sharma, the learned Government Advocate, relied on the

decision of the Division Bench in State of M.P. Vs. D.D. Dekhne and another in W.P. No.2036 and submitted that the benefit of advance increments is conferred on a government servant under F.R. 27 and that there is no provision in the rules for repeating such additional increments each time when a government servant is given a revised scale of pay. On the other hand, Mr. S.P. Jain, learned counsel for the respondent No. 1, relied upon the decision of the Division Bench of this Court in Vijaya Kothalkar Vs. State of M.P. (Supra) and submitted that at the time of fixing pay in the revised scale due weightage has to be given to the increments already acquired by the incumbent and if that is not done, it would tantamount to denying the benefit which has been acquired by the incumbent. Since the petitioners and the respondents No. 1 have placed reliance on the aforesaid two Division Bench judgments by this Court, we would like to first deal the said two judgments.

In Vijaya Kothalkar Vs. State of M.P. and others (Supra), the facts were that Dr. (Smt.) Vijaya Kothalkar was working as an Assistant Professor in a College. Pursuant to the recommendations of the Pande Pay Commission and a Memorandum dated 8.5.1973 of the General Administration Department of the Government of Madhya Pradesh, she was granted two advance increments of Rs. 50/- from 1.1.1986 for having acquired P. Hd. The pay-scale of Assistant Professor was revised w.e.f. 1.1.1986 to Rs.3000-5000 and her pay was fixed in the minimum of the revised pay-scale of Rs. 3,000/-. She filed an O.A. No. 335/99 before the State Administrative Tribunal contending that she was entitled to get her pay fixed in the revised scale keeping in view the two increments which she had already acquired, but such due weightage has not been given to two increments while fixing her pay in the revised scale of pay. When she did not succeed before the Tribunal, she approached this Court and a Division Bench of this Court held:

An employee, who has been given advanced increments and has been put to higher ladder of the stair-case cannot be put to his prejudice because they would be causing all serious hardship to him because what he had acquired would be withdrawn without there being any fault on his part. Secondly, that would also be creating a chaotic situation in the cadre because by such an action he would be brought to par with his juniors or may be keeping up else than his juniors. Therefore, the fact that the employee has acquired the increments and was getting the pay at higher rate cannot be either withdrawn, reduced or cannot be denied to him. It cannot be ignored also. The pay-scale has to be fixed in view of the revision of the pay-scale properly and by giving due weightage to the standing of the person in the cadre.

In State of M.P. Vs. D.D. Dekhne and another (Supra), the facts were that Shri D.D. Dekhne was a Sub-Engineer in Water Resources Department and he was sanctioned two advance increments w.e.f. 30.12.1983 on account of his wife having undergone Family Planning operation. When the pay-scale of Sub-Engineer was revised to Rs.2000-2900, he entertained a grievance that the said

two advance increments have not been included in his revised pay-scale. He filed O.A. No.3380/97 before the Tribunal and by order dated 31.10.2001, the Tribunal relying on its decision in O.A. No. 415/ 1992 came to hold that Shri Dekhne was entitled to the benefit of increments in the subsequent pay-scale of Rs. 2000-2900 and also such pay-scales that have been sanctioned for the post in question from time to time. The said order dated 31.10.2001 of the Tribunal was challenged in the aforesaid W.P. No. 2036/02 before this Court under Article 226/227 of the Constitution and the Division Bench of this Court while quashing the said order dated 31.10.2001 of the Tribunal held:

Appreciating the rival submissions which have been putforth before us, we are of the considered opinion that the petitioner had been conferred the benefit of two increments from the year 1983 and he availed the same till 1989. A benefit qua particular pay-scale was given. It cannot be said that the petitioner shall obtain, avail the said benefit whenever there would be revision of pay-scale. It is also submitted by Mr. Yadav that when a new pay-scale is introduced an employee has been treated in the minimum and accordingly all the employees were allowed to draw the minimum. The aforesaid submission has substantial force. It cannot be said that, the petitioner had not earned the benefit of the two increments in the earlier pay-scale. The grievance that the juniors were treated on par, in our considered view, is devoid of any substance. We may hasten to add here that if on two occasions grant of two increments is extended to the petitioner that would tantamount to conferment of dual benefit and such conferral of benefit would cause prejudice to other employees and in any case that was not the envisagement of the instructions in vogue. The Tribunal has erred in holding that the benefit of two increments would be carried and added to subsequent pay-scales is indicative of an absolutely erroneous approach and accordingly we are not inclined to confer the stamp of approval of the order passed by the tribunal.

In the aforesaid two judgments in Vijaya Kothalkar Vs. State of M.P. and others (Supra) and State of M.P. Vs. D.D. Dekhne and another (Supra), the provisions of M.P. Fundamental Rules and the M.P. Revision of Pay Rules, 1990, have not been considered. In our considered opinion, the question referred to us has to be decided on the basis of the said Rules particularly when the said Rules have not been challenged by the Respondent No. 1 before the Tribunal.

Rule 27 of the M.P. Fundamental Rules provides that an appointing authority may grant a pre-mature increment to a government servant on time scale of pay, subject to general or special order issued by the Government. It is under this Rule 27 of the M.P. Fundamental Rules that the Government of Madhya Pradesh issued the circular dated 29.1.1979 granting two advance increments to a government servant on time scale of pay for Family Planning operations. Such advance increments granted under the said circular dated 29.1.1979 are additional pay granted to a government servant and the consideration for granting such additional pay is personal to him i.e. the Family Planning operation

undergone by him or his wife. These advance increments therefore constitute "personal pay" as defined in Rule 9(23) of the M.P. Fundamental Rules quoted herein below:

(23) "Personal pay" means an additional pay granted to a Government servant-
(a) save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to a revision of pay or to any reduction of such substantive pay otherwise than as a disciplinary measure; or

(b) in exceptional circumstances, on other personal considerations. The aforesaid definition of "Personal Pay" also makes it clear that it is an additional pay granted to a government servant to save him from a loss of substantive pay due to revision of pay. Hence, at the time of revision of pay he cannot suffer loss of such advance increments granted to him.

In fact, the M.P. Revision of Pay Rules, 1990, which are deemed to be in force with effect from 1st of January, 1986, contain built-in provisions to protect the personal pay of a government servant at the time of revision of his pay in the revised scale of pay with effect from 1st January, 1986. Rule 7(1) of the M.P. Revision of Pay Rules, 1990 is quoted hereinbelow:

7. Fixation of initial pay in the revised scale. - (1) The initial pay of a Government servant who elects or is deemed to have elected, the revised scale under rule 6 shall, except where the State Government by special order directs otherwise, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner namely:

(i) The pay shall be fixed in the revised scale at the stage next above the pre-fixation emoluments:

Provided that-

(a) if the minimum of the revised scale is more than the pre-fixation emoluments, the pay shall be fixed at the minimum of the revised scale;

(b) if the amount of pre-fixation emoluments is equal to any stage in the revised scale, the pay shall be fixed at that equal stage;

(c) if the amount of pre-fixation emoluments is more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scale and the difference shall be allowed as personal pay to be absorbed in future increases in pay.

It will be clear from sub-rule (1) of Rule 7 of the M.P. Revision of Pay Rules, 1990 that the pay of a government servant is fixed in the revised scale at the stage next above the pre-fixation emoluments. The proviso to sub-rule (1) of Rule 7 further states that if the minimum of the revised scale is more than the pre-fixation emoluments, the pay shall be fixed at the minimum of the revised scale,

if the amount of pre-fixation emoluments is equal to any stage in the revised scale, the pay shall be fixed at that equal stage and if the amount of pre-fixation emoluments is more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scale and the difference shall be allowed as personal pay to be absorbed in future increases in pay. Hence, in any case, the pay of a government servant in the revised scale of pay has to be fixed above the pre-fixation emoluments and not below the pre-fixation emoluments.

Rule 3(d) of the M.P. Revision of Pay Rules, 1990 states what, "pre-fixation emoluments" include and is quoted hereinbelow: 3(d) "pre-fixation emoluments" shall include-

- (i) the basic pay in the existing scale;
- (ii) 6% of basic pay in existing scale subject to a minimum of Rs. 50;
- (iii) special pay (only, where the existing scale with special pay has been replaced by a revised scale without special pay); and
- (iv) personal pay.

Explanation (1) if the sum total so computed includes a part of a rupee, it shall be rounded off to the nearest rupee i.e. less than 50 paise shall be ignored, while 50 paise or more shall be rounded off to the next higher rupee.

Explanation.-(2) Where increment in the existing scale is payable on 1st January, 1986 it will be treated as part of basic pay. It will be clear that pre-fixation emoluments include not only the basic pay in the existing scale but also 6% of basic pay in the existing scale subject to a minimum of Rs. 50, special pay and "personal pay". As we have held, the two advance increments granted under Rule 27 of the M.P. Fundamental Rules for a government servants for Family Planning operation under the circular dated 29.1.1979 constitute "personal pay" of the government servant. Therefore the said two advance increments are included in the pre-fixation emoluments. Since under sub-rule (1) of Rule 7, the pay of a government servant is fixed in the revised scale at the stage above the pre-fixation emoluments, the government servant gets the benefit of the two advance increments at the time of fixation of his pay in the revised scale under sub-rule (1) of Rule 7 of the M.P. Revision of Pay Rules, 1990. Hence, once the pay of government servant in the revised scale of pay is fixed in accordance with sub-rule (1) of Rule 7 of the M.P. Revision of Pay Rules, 1990, he cannot have a grievance that the two advance increments given to him for Family Planning operations have not been included in his pay at the time of revision of his pay-scale w.e.f. 1.1.1986.

In the result, our answer to the question referred to us by the Division Bench is that an employee whose pay is revised w.e.f. 1.1.1986 in accordance with sub-rule (1) of Rule 7 of the M.P. Revision of Pay Rules, 1990 automatically gets the benefit of the advance increments given to him for Family Planning operations under the circular dated 29.1.1979 and once his revised scale of pay is fixed in

accordance with the said provisions of sub-rule (1) of Rule 7 of the M.P. Revision of Pay Rules, 1990, he cannot claim any further benefit of advance increments in the event of his promotion or in the event of payment of higher pay-scale.

For the purposes of finding out as to whether the pay of the respondent No. 1 has been fixed in the revised scale of pay effective from 1.1.1986 in accordance with the provisions of sub-rule (1) of Rule 7 of the M.P. Revision of Pay Rules, 1990, by our order dated 3.3.2006 we had called upon the petitioners to file an affidavit alongwith the relevant documents on how exactly the pay of the respondent No. 1 was fixed in the revised pay-scale of Rs.2000-2900 and pursuant to the said order passed on 3.3.2006, an affidavit has been filed on behalf of the petitioners on 20.3.2006 but we have-not been able to hear the learned counsel for the petitioners and the learned counsel for the respondent No. 1 on the said affidavit. This Writ Petition will now be placed before the Division Bench to hear the learned counsel for the parties on the said affidavit filed on behalf of the petitioners and on the reply of the respondent No. 1, if any, filed to the said affidavit and decide the writ petition in accordance with the opinion expressed by us in this order.