
(2014) 10 MP CK 0071
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 620/14

State of M.P.

APPELLANT

Vs

Arvind Gautam

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

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

Citation : (2014) 10 MP CK 0071

Hon'ble Judges : Rajendra Menon, J;C.V. Sirpurkar, J

Bench : Division Bench

Advocate : Rahul Jain, Learned Dy. Advocate General, Advocate for the Appellant; K.C. Ghildiyal, Learned Counsel and Deepak Raghuwanshi, Learned Counsel, Advocate for the Respondent

Judgement

1. Learned counsel for the parties are heard on the question of condonation of delay and admission of this writ appeal.
2. Even though, there is a delay of more than two years in filing of the writ appeal but considering the fact that the delay is attributed to some administrative lapses, the delay is condoned.
3. Challenge in this appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khandpith Ko Appeal) Adhiniyam, 2005 is made to an order dated 1st May, 2012 passed by the learned Writ Court in W. P. No. 8363/08 (s).
4. Respondent Shri Arvind Gautam was appointed as a Lower Division Clerk at Vidya Niketan Girls Higher Secondary School, Jamuna Colliery, Distt. Anuppur. He was appointed on 6.07.94 and at that point of time, the school was a private institute and was not admitted to the benefit of grant-in-aid in accordance with the statutory rules applicable. After his appointment in the institute, respondent employee was granted pay in the scale of Rs. 515- 840/- w.e.f. 3.08.95 and the payments were made to him in accordance with the said provisions.

Subsequently, the school was admitted to the benefit of grant-in-aid by the State Govt. sometimes in the year 1995 and the pay of respondent no. 1 was fixed on 3.08.95 in the pay scale of Rs. 515-840/-. This was approved by the State Govt. and the employee was getting the benefit of pay scale. Subsequently, by an order dated 4.11.95, pay was revised under the Revision of Pay Rules and the pay was fixed as per the revised pay rules.

5. Suddenly, the competent authority on 1.04.08 passed an order withdrawing the benefit of grant-in-aid being made to the respondent employee on the ground that his appointment was not approved by the Collector and as his appointment was not approved by the Collector, it is held that the post on which he is working is not entitled for grant- in-aid, a writ petition filed by respondent no. 1 having been allowed, this writ appeal has been filed by the State Govt.

6. A perusal of the order passed by the learned Writ Court indicates that the employee was appointed when the institution was not receiving grant-in-aid and at the time of his appointment, there was no statutory rule or regulation which contemplates approval of such an appointment by the Collector. The learned Writ Court observed that when the respondent employee was appointed, the rules pertaining to grant-in-aid was not applicable and once, he is admitted to the benefit of salary and other allowances under the grant- in-aid rules after the institute was admitted to this benefit in the year 1995 that is much after the appointment of respondent no. 1 in the year 1994, the learned Writ Court found that the same cannot be withdrawn on the ground that his appointment is not approved by the Collector. The learned Writ Court found that no statutory rule or regulation is brought to the notice of the Court which contemplates approval of the Collector in the matter of appointment of an employee in the private institute when it was not receiving any grant-in-aid.

7. Even though, in the writ petition, it is stated that under Rule 12 (1) of the Madhya Pradesh Non-Governmental Education Institution (Recruitment of Teacher) Rules 1985, the selection committee has to be constituted after due approval by the Collector and the recruitment of teachers have to be done on the recommendations of the said committee, but this rule will apply only after the institute is admitted to be benefit of grant-in-aid and not before that. Admittedly, in the present case, the respondent employee was appointed at a time when the institute was not receiving grant-in-aid and for his appointment, the procedure contemplated in the grant-in-aid rule would not be applicable.

8. Taking note of all these factors, the learned Writ Court having allowed the writ petition, we see no reason to interfere into the matter. It is also seen from the material available on record that after directing for grant of all consequential benefits, the learned Writ Court has restricted the payment of arrears of salary to the extent of 25 % of back wages. Accordingly, taking note of all these circumstances, we see no reason to interfere into the discretion exercised by the learned Writ Court.

9. The learned Writ Court has taken note of the requirement of law in its right perspective, we see no reason to interfere into the matter.
10. The appeal is therefore dismissed.