
(2009) 07 MP CK 0096
In the Madhya Pradesh High Court
Case No : W.A. No. 724 of 2008

State of M.P.

APPELLANT

Vs

K.M. Mishra and others

RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Citation : (2009) 3 MPLJ 642

Hon'ble Judges : S. Samvatsar, J;A.P. Shrivastava, J

Bench : Division Bench

Advocate : Vivek Khedkar, Government for State, for the Appellant; T.C. Singhal, for the Respondent

Final Decision : Allowed

Judgement

S. Samvatsar, J.

Appellant-State of M.P. has preferred this writ appeal assailing the order dated 1-11-2007 passed by the Single Bench of this Court in Writ Petition No. 189/2003 whereby the learned writ Court has allowed the writ petition filed by the present respondents giving them benefit of past service rendered by the writ petitioners in Panchayat and Social Welfare Department from the date of their initial appointment and directing the present appellant to assign them proper seniority accordingly.

Facts of the case are that the respondents writ petitioners were appointed as supervisors in Panchayat and Social Welfare Department in the year 1982. In the year 1994 a notification dated 16-6-1994 was issued by the General Administration Department transferring the entire staff working in the Adult Education Mission, Panchayat and Social Welfare Department to the School Education Department. Consequently, services of the writ petitioners along with other persons who were working in Adult Education Mission of the Panchayat and Social Welfare Department stood transferred to the School Education Department. Subsequently, order dated 18-9-2002 was issued whereby services

of the writ petitioners were absorbed on the post of upper division teacher. In the said order it was mentioned that the seniority of these absorbed employees shall be counted from the date of absorption. Hence, the writ petitioners filed writ petition before this Court. Present appellants (respondents before the writ Court) filed their return opposing the prayer. The writ Court after hearing both the parties allowed the writ petition by the impugned order and directed to count seniority of the writ petitioners from the date of their initial appointment. Hence, this writ appeal.

The contention raised by Shri Vivek Khedkar, learned Government Advocate appearing for the appellants State is that view of Rule 12(3)(c) of the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 since the writ petitioners were surplus employees, their seniority can be assigned only from the date of their absorption and not from the date of their initial appointment. Rule 12(3)(c) of the aforesaid Rules reads as under:

The surplus employees shall not be entitled for the benefit of the past service rendered in the previous office for the purpose of their seniority in the new office and such employees shall be treated as fresh entrants in the matter of their seniority.

Shri Khedkar, learned Government Advocate relied upon the dictum of the Apex Court in the case of Union of India and Another Vs. G.R.K. Sharma, wherein the Apex Court has held that redeployed staff is not entitled for counting of their past service. In that case, the respondents were declared surplus in the department in which they were working and on absorption, they were placed at the bottom of the seniority list in the department in which their services were absorbed.

Another judgment relied upon by the learned Government Advocate is in the case of Indu Shekhar Singh and Others Vs. State of U.P. and Others, wherein the Apex Court has again held that there is no fundamental right in regard to the counting of the services rendered in an autonomous body. The past services can be taken into consideration only when the Rules permit the same or where a special situation exists entitling the employee to obtain such benefit of past service. It is further held that the State has power to impose such conditions and the employees who have accepted the aforesaid condition without any demur and exercised their right of option, they could not be allowed to turn around and contend that the said condition is illegal.

On the other hand, Learned Counsel for the respondents writ petitioners have relied upon Single Bench decision of this Court in the case of Vijay Kumar Jain and others vs. State of M.P. and others, Writ Petition No. 22321 of 2003 decided on 12-2-2009 at the Main Seat and another Single Bench decision in the case of Vinod Kumar Parashar vs. The Secretary, School Education, Writ Petition No. 522/08 (S) decided on 17-4-2008 at Gwalior. From reading of both these judgments, we find that both the aforesaid judgments are delivered only relying on the impugned judgment passed in Writ Petition No. 189/03 and there is no

independent consideration.

In the case in hand, we find that the supervisors working in the Adult Education Mission in the Department of Panchayat and Social Welfare were transferred to the School Education Department vide order dated 16-6-1994. They were appointed as upper division teachers and were placed in the same pay scale vide order dated 7-2-1998 which was applicable to the upper division teachers at that time. Their services were absorbed in the School Education Department in the year 1999 because some matter was pending before the M.P. State Administrative Tribunal in OA No. 492/97 and it was directed that these employees will get seniority in accordance with the rules. Seniority list was prepared on 1-4-2001 (Annexure P/4 with the record of writ petition) in which the writ petitioners were granted seniority from the date of their initial appointment. Subsequently, order dated 23-3-2000 (Annexure P/5 with the record of writ petition) was passed stating that these employees should be placed in the seniority at a proper place. Thereafter on 18-9-2002 order Annexure P/6 was passed stating that these employees are surplus employees and therefore, their seniority should be fixed not from the date of their initial appointment but their seniority should be fixed from the date on which they were absorbed in the Department of School Education.

Thus, from these orders, it appears that initially after absorption, the writ petitioners were assigned seniority from the date of their initial appointment. However, since the writ petitioners were declared surplus vide order dated 28th May, 1997 (Annexure P/10 with the record of the writ petition), therefore, in view of Rule 12(3)(c) of the Rules, referred to above, their services cannot be counted from the date of their initial appointment for the purpose of their seniority, though their services can be counted for other benefits like pensionary benefits and other purpose.

In view of this, we allow this writ appeal, set aside the impugned order passed by the learned single Judge and resultantly dismiss the writ petition filed by the present respondents. Consequently, order passed by the single Benches of this Court in the cases of Vijay Kumar Jain and others vs. State of M.P. and others, Writ Petition No. 22321 of 2003 decided on 12-2-2009 at the Main Seat and Vinod Kumar Parashar vs. The Secretary, School Education, Writ Petition No. 522/08 (S) decided on 17-4-2008 at Gwalior stand overruled.