
(2014) 07 MP CK 0345
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 511 of 2014

State of M.P.

APPELLANT

Vs

Satish Shrivastava

RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 309, 311

Limitation Act, 1963 — Section 5

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

Citation : (2014) 3 JLJ 163 : (2014) 5 MPHT 133 : (2014) 4 MPLJ 355

Hon'ble Judges : Rajendra Menon, J;Alok Verma, J

Bench : Division Bench

Advocate : Rahul Jain, Deputy Advocate General, Advocate for the Appellant;
Shobha Menon, Rahul Choubey and C.A. Thomas, Advocate for the Respondent

Judgement

Rajendra Menon, J.

1. This appeal under section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 has been filed by the State Government calling in question tenability of an order dated 18-7-2013 passed by the Writ Court in Satish Shrivastava Vs. State of M.P. and Another, Facts in brief go to show that Respondent, Shri Satish Shrivastava is a retired Member Judge of the Industrial Court, M.P., he was initially appointed as a Labour Judge under the provisions of M.P. Industrial Relations Act, 1961 in the year 1965, he was promoted from time to time and at the time of superannuation on 30th of September, 2004, he was holding the post of Member Judge of the Industrial Court. He filed a writ petition before this Court being W.P. No. 5446/2005(s) and in the said writ petition, it was his case that after the M.P. Judicial Service Revision of Pay Rules, 2003 (hereinafter referred to as the Pay Revision Rules of 2003) came into force, he is entitled to grant of pay in the scale of Rs. 16750-20500/- w.e.f. 1-1-1996 as recommended by the National Judicial Pay Commission. It was said that as a Member Judge, he is entitled to be treated at

par with the District Judge in the matter of grant of pay scale and other benefits.

2. The dispute raised by him in the writ petition was to the effect that pay scale payable to a District Judge should be made available to him in view of the provisions of the statutory rules and the judgment rendered by the Supreme Court in the case of State of Kerala Vs. B. Renjith Kumar and Others, . This writ petition was allowed and a learned Single Bench of this Court on 12-8-2008 held that the petitioner is entitled to the pay scale, as is payable to the District Judge. In Paragraphs 7 and 8 of the judgment rendered on 12-8-2008, the following directions were issued :

"7. The State of Madhya Pradesh in exercise of powers under Article 309 of the Constitution of India has framed M.P. Labour Judicial (Recruitment and Conditions of Service) Rules, 2006. Rule 3 of the Rules, 2006 relates to Constitution of Service and pay scale has been provided for different category of Labour Judges/ Member Judges of the Industrial Courts. The State Government while framing the Rules, 2006 has removed all disparity and now the member of the Labour Judiciary have been granted the pay scale at par with the Member of State Judicial Service, and, therefore, the State has in its own wisdom has removed the anomaly if any once and for all.

8. Resultantly, the writ petition is allowed, the petitioner shall be entitled for revised pay scale of Rs. 16750-20500/- w.e.f. 1-1-1996 notionally. The petitioner shall be entitled for enhanced pension on account of notional fixation of salary. It is needless to mention that the State Government shall extend the similar benefit to all other identically placed persons instead of attracting them to approach this Court by filing writ petition."

(Emphasis Supplied)

3. The aforesaid judgment of the learned Single Bench was challenged before a Division Bench in W.A. No. 749/2008 and by a detailed order passed on 9-7-2009, the same was upheld and modified and SLP filed before the Supreme Court was also dismissed. The Division Bench held that the petitioner is entitled to the benefit of the pay scale notionally w.e.f. 1-1-1996 and actually w.e.f. 1-7-1996. In the meanwhile, as the respondent had retired from service on attaining the age of superannuation w.e.f. 30-9-2004, action was taken and his pay was fixed in the scale as per the Pay Revision Rules of 2003, dearness allowance was also granted and revision of pay and pension was ordered. However, thereafter, on the ground that the petitioner is only entitled to the appropriate pay scale, as is payable to the District Judge, the dearness allowance as payable to the District Judge in terms of the Revision of Pay Rules is not liable to be paid, recovery was directed and an order was passed on 28-6-2007, whereby the dearness allowance payable at par with a District Judge was denied and recovery was ordered. His pension was also re-fixed on withdrawal of the benefit of dearness allowance, as was initially paid at par with the District Judge. Challenging this action, the writ petition in question was filed and the Writ Court

having held that the dearness allowance at par with District Judge is liable to be paid to the respondent/ employee, this Writ Appeal is filed by the State.

4. The only question canvassed in this appeal is that in the judgment rendered by the Writ Court in the first writ petition and the writ appeal, the respondent was directed to be paid the pay scale applicable to a District Judge in accordance with the Pay Revision Rules of 2003 and not the dearness allowance. It is said that the dearness allowance does not form part of the pay scale and as only the pay scale is directed to be paid and as it is not held that the Pay Revision Rules of 2003 is applicable to the persons like the respondent/employee, no error has been committed by the Government in withdrawing the dearness allowance.

5. Shri Rahul Jain, learned Deputy Advocate General for the appellants/ State emphasized that the learned Single Judge committed a grave error in holding that the Revision of Pay Rules of 2003 will apply to persons like the petitioner. It is submitted by learned counsel that only the provisions of the M.P. Judicial Services Pay Revision, Pension and Other Retirement Benefits Rule of 2003 (hereinafter referred to as the Retirement Benefits Rules, 2003) has been made applicable to the Members of Labour Judiciary and the entire Rules of 2003 including the provision pertaining to payment of dearness allowance cannot be made applicable to the Members of the Labour Judiciary. Accordingly, it is the case of the State Government that the members of the Labour Judiciary like the respondent are only entitled to pay scale at par with District Judge and Civil Judges and not the dearness allowance and other benefits in accordance with the Pay Revision Rules of 2003.

6. On the contrary, Smt. Shobha Menon, learned Sr. Counsel refuted the aforesaid and placed reliance on a judgment rendered by another Division Bench of this Court in the case of one Shri Raghvendra Nath Shukla v. State of M.P., W.A. No. 784/2009 decided by a Division Bench of this Court 21-10-2009 and argued that in terms of Rule 11-A(2) of the M.P. Judicial Service Pay Revision, Pension and Other Retirement Benefits Rules 2003, similar benefit has been granted to Shri Shukla and, therefore, respondent is also entitled to the benefit. It was argued that in the case of Raghvendra Nath Shukla (supra), applying the law laid down by the Division Bench, in the case respondent/Shri Satish Shrivastava, benefit was granted but as the respondent is being denied the same benefit, this is unsustainable. Placing reliance on the law laid down by the Supreme Court in the case of B. Renjith (supra), learned Sr. Counsel argued that all the benefits available to a District Judge or a Civil Judge or a member of the subordinate Judiciary in the State of M.P., so far as it amounts to fixation of pay, dearness allowance, revision of pay are liable to be paid to the members of the Labour Judiciary and, therefore, in denying the benefit of dearness allowance, a discriminatory attitude has been followed, which is unsustainable.

7. Accordingly, learned Sr. counsel prays for dismissal of the writ appeal. That apart, there being delay of more than one year in filing of this appeal. Serious objection is raised on this count. The learned Sr. Counsel argued that the

judgment was rendered by the learned Single Judge on 18-7-2013, certified copy of this judgment was obtained on August, 2013 and, thereafter, this appeal has been filed after a period of about one year and as the delay is not properly explained, appeal is liable to be dismissed on this ground alone.

8. We have heard learned counsel for the parties at length and perused the record. As far as delay in filing of the writ appeal is concerned, the delay is explained in I.A. No. 7825/2014 an application under section 5 of the Limitation Act by contending that certain administrative process was required to be undertaken, this took sometime and, therefore, the delay be condoned. In view of this, we find reasonable justification in the application for condonation of delay and, therefore, taking a liberal view in the matter, the delay in filing of the appeal is condoned. We now propose to deal with the matter on merit.

9. The only question now, which warrants consideration is as to whether the petitioner is also entitled to dearness allowance as paid to the District Judge by virtue of the provisions of the Pay Revision Rules of 2003. For considering the aforesaid question, it is necessary to take note of the relevant Rules. The M.P. Judicial Service (Revision of Pay) Rules, 2003 and the M.P. Judicial Service Pay Revision, Pension and Other Retirement Benefits Rules, 2003 is made applicable to the members of the M.P. Higher Judicial Services and the Lower Judicial Services. Both these rules contemplate a provision in the matter of fixation of pay in the revised pay scale, as has been implemented w.e.f. 1st of January, 1996 after applying the National Judicial Commission (Shetty Commission) Recommendation. The method of fixation of pay in the revised scale is contemplated under Rule-7, the meaning of the revised pay scale is indicated in Rule-4 and under Rule-9, the provision for payment of dearness allowance w.e.f. 1st of July, 1996 at par with Central Government Employees is indicated. Rule-10 provides for payment of arrears and Rule 11-A of the Retirement Benefits Rules 2003 contemplates that a judicial officer, who has ceased to be in service due to resignation, death or retirement on or after 1st of July, 1996 shall be granted the retiral benefits on the norms, as are specified under Sub-section 1 to 4 of these Rules. Under Sub-rule (3) of this Rule i.e. 11A(4), it is clearly indicated that the last pay drawn by a Judicial Officer for the purpose of fixing pension and calculating retiral benefit shall be based on the formula 50% of basic pay and dearness allowance.

10. That apart, under Rule-7 of the Pay Revision Rules of 2003, in the mode of fixation of revised pay scale w.e.f. 1st of January, 1996 is stipulated, it is indicated that the pay fixation shall be done by adding the dearness allowance as admissible on 1-1-1996 on the existing basic pay i.e. the basic pay as was existing on 1-1-1996. It is, therefore, clear that in the matter of fixation of pay of a Judicial Officer, after the revision of Pay was enforced w.e.f. 1-1-1996, the provisions of the Pay Revision Rules of 2003 and the Retirement benefits Rules of 2003 are made applicable. There is no dispute with regard to the same and while fixing the pay of a Judicial Officer, under the Pay Revision Rules of 2003 or fixing

the pension and retiral benefit under the Retiral Benefits of 2003, dearness allowance as contemplated and provided for in the Rule i.e. Rule-9 of the Pay Revision Rules, 2003 has to be added.

11. Now we may consider the principles of law laid down by the Supreme Court in the case of B. Renjith (supra), wherein the Supreme Court has dealt with the question of granting parity and equality to members of the Labour Judiciary in the matter of grant of pay scale at par with members of the State Judicial Services. In the case of B. Renjith (supra), Presiding Officers of the Industrial Tribunals working in the State of Kerala, who are appointed under the Industrial Dispute Act, 1947 made a claim based on the principle of "Equal Pay for Equal Work" and the mandate of Article 39(d) i.e. directive principles of State Policy and claimed pay and allowances at par with the Judicial Officers. The Supreme Court dealt with the matter and after taking note of the manner of appointment of a Judicial Officers, requirement of law contemplated under the Industrial Dispute Act for appointment of the Presiding Officer of the Labour Court and the Industrial Court, in Paragraphs 14 and 15 recorded a positive finding that the Presiding Officer of the Industrial Court and the District Judges are at par with each other and in Paragraphs 18 and 19, it has been held that the Presiding Officers of the Industrial Tribunal are entitled to equal scale of pay at par with that of a District Judges. It was held that this is based on the fact that the Presiding Officers of the Industrial Court are discharging similar duties and functions in the administration of justice and, their scale of pay was equal to that of District Judges till revision of pay scale (As is in the case of Madhya Pradesh also).

12. It is held by the Supreme Court in the aforesaid case that Presiding Officers of the Labour Court and those who are appointed as Presiding Officer of Industrial Court decide cases under the Industrial and Labour law, there is no quantitative difference in the nature of functions and duties attached to these category of posts. It is held that merely because the Constitution refers to appointment of a District Judge that alone cannot be a ground for treating the presiding Officers of Industrial Tribunal and District Judges differently. The Presiding Officers of the Labour Judiciary are not outside the ambit of the Constitution and the Rules framed under Article 309 of the Constitution are applicable to them and they also enjoy the protection under Article 311. Finally, after analyzing each and every aspect of the matter, the Hon"ble Supreme Court has held that the action of the State Government in treating Presiding Officers of the Industrial Tribunal differently from District Judges in the matter of pay scale is violative of Article 14 of the Constitution of India and finally, it is held that based on doctrine of "Equal Pay for Equal Work", the directive principles of State Policy, as envisaged under Article 39 of the Constitution and the mandate of Articles 14 and 16, the Presiding Officers of Industrial Tribunal and the Labour Court are entitled to parity in the matter of grant of pay scale at par with District Judges.

13. This legal principle has been accepted and it is based on this judgment of the Supreme Court that in the earlier round of litigation, not only in the case of present respondent Shri Satish Shrivastava but also in the case of all other Labour Judges and Member Judges of the Industrial Court, this Court in various judgments has held that the Members of the Labour Court are entitled to parity in the matter of pay scale at par with the Civil Judges and the Members of the Industrial Tribunal at par with the District Judges. Based on these judgments, an appropriate pay scale has been granted and the scale of Pay as applicable to the Members of the State Judicial Services is also extended to the Members of the Labour Judicial Services in accordance with the Pay Revision of Rules, 2003 and the Retirement Benefits Rules of 2003.

14. However, now the State Government has come out with a case that even though they are entitled to parity in the pay scale but not in the matter of payment of dearness allowance, as envisaged under the Rules. This contention of the State is based on the ground that the High Court in the earlier round of litigation has only directed for parity in grant of pay scale and not in the matter of payment of dearness allowance and other benefits like petrol benefits etc., nor is it held by the High Court that the Pay Revision Rules of 2003 applies to the Members of the Labour Judiciary. This contention of the State Government is wholly misconceived and cannot be accepted. Once, it is held by the Supreme Court and this Court consistently that the Members of the Labour Judiciary are entitled to similar pay, as is given to the Members of the State Judicial Services, it means that they are entitled to payment of salary not only for pay fixation but also for grant of dearness allowance as may be revised from time to time in accordance with the Rules, it is only then that a complete parity on the Principle of "Equal Pay for Equal Work" be maintained.

15. If the contention of the State Government is accepted, then between the equals, two different scheme for payment of salary would be existing i.e. the District Judges of the State Judicial Services would be getting the pay with total emoluments based on a different formula for payment of the dearness allowance and the members of the Labour Judiciary would be getting the pay on the basis of the different formula for calculation of the dearness allowance, this would amount to discrimination and once the Supreme Court in the case of B. Renjith (supra) has held that the members of the Labour Judiciary are at par with that of District Judges in the State Judiciary, there is no reason for menting a different treatment to these set of officers in the matter of grant of dearness allowance. This discrimination in the matter of payment of dearness allowance is also violative of Articles 14 and 15 of the Constitution and Article 39 (d) of the Directive Principles of State Policy, these constitutional provision mandates the State Government to grant all equal benefits at par with members of the State Judicial Services to persons like the respondent.

16. That apart, it would be seen that if the contention of the State Government is accepted, it would create serious anomaly, which could never be an intention of

the Supreme Court and this Court when it decided the earlier cases holding that the members of Labour Judiciary are entitled to pay at par with that of the District Judges.

17. Once, it has been held that the Presiding Officer of the Labour Court and the Judges of the Industrial Court are entitled to the pay scale at par with that of Civil Judges and District Judges and when the Supreme Court also says that pay scale is to be granted on the ground of equality, then in the matter of pay fixation also, this equality has to be maintained. Admittedly, after the Pay Revision Rules, 2003 and the Retirement Benefits Rules, 2003 came into force, fixation of pay of the officers working in the Labour Judiciary including the petitioner will have to be done as provided under Rule 7 of Pay Revision Rules of 2003 and if the method for pay fixation under Rule 7 is taken note of, it mandates fixing of the pay by taking note of the basic pay as on 1-1-1996 in the existing scale, dearness allowance as on 1-1-1996 admissible in the existing basic pay and various other components as indicated in Sub-clauses (d), (e) and (f) of Rule-7.

18. Now in the case of the petitioner, the State Government is giving him basic pay as per pay scale contemplated under this rule but as far as the dearness allowance is concerned, dearness allowance admissible under Rule-9 is not being paid, instead something else is being added to the applicable pay scale as dearness allowance. If this is permitted, then in the fixation of pay of a member of Labour Judiciary, a different formula will be followed, entirely different from the one contemplated under Rule 7 of the Revision of Pay Rules, 2003 and this, if permitted, would amount to discrimination in the matter of pay fixation and revision of pension etc. This could never be the intention of the Supreme Court or this Court, when all the earlier judgments were rendered holding that the members of the Labour Judiciary are entitled to pay scale at par with those of the District Judges and Civil Judges.

19. Once it has been held that the Labour Judiciary are entitled to pay at par with the Members of the State Judicial Services, then for all purposes, including payment of dearness allowance, parity has to be maintained as dearness allowance is nothing but a component paid to the officers in pursuance to the stipulations contained under Rule 9 of the Revision of Pay Rules, 2003 and Pension Rules, 2003. We have no hesitation in holding that in the matter of grant of fixation of pay, Revision of Pay Rules, 2003 and Pension Benefits Rules, 2003 as are applicable to the Members of the Higher Judiciary in the State of M. P. would squarely apply to the Members of the Labour Judiciary and in the matter of revision of their pay scale, the said rules have to be applied.

20. Accordingly, we are of the considered view that the contention of the State Government in this regard, if accepted, would only create anomaly, disparity and would be discriminatory in nature, which cannot be permitted, once the parity is found to be established in the matter of the officers serving in the Labour Judiciary and in the State Judicial Service and the Supreme Court has clearly

spelt out the principle in the case of B. Renjith (supra). That apart, in the case of Raghvendra Shukla (supra), while deciding the Writ Appeal No. 784/2009, a Division Bench of this Court in its order dated 27-10-2009 has directed for fixing the revised pension of Shri Shukla w.e.f. 1-7-1996 in terms of Rule 11-A(2) of the M.P. Judicial Services Pay Revision Pension and Retirement Benefits Rules, 2003 and sub-rule (ii) of Rule 11-A(2) clearly contemplates that the dearness allowance payable shall be at the rate, as are admissible to serving Judicial Officers. Once the provisions of the Rule 11-A(2)(iii) contemplates that the dearness allowance payable to a retired Judicial Officer shall be at the same rate as are admissible to a serving Judicial Officer, then the impugned action taken by the appellants/State in the case of the respondent/employee is clearly unsustainable as it violates the mandate of Rule 11-A(2)(iii) of the Retirement Benefits Rules, 2003.

21. From the aforesaid, it is clear that in the matter of refusing the dearness allowance for the purpose of fixation of pay and calculation of pensionary benefits in the case of the respondent/Shri Satish Shrivastava, the State Government has acted in contravention to the rules and their decision is nothing but an arbitrary and unjust action, which cannot be upheld by this Court. It should be taken note of that dearness allowance is a benefit, which is given to a government employee due to rise in the cost of living and is co-related to the cost index issued by the competent authority of the Government from time to time. If for all other judicial officers, the cost of living is increased and thereby, dearness allowance increased in their case, there is no justification in denying similar benefits to the respondent/employee, when in his case also, there has to be a presumption that the cost of living has increased and consequently enhanced dearness allowance is required to be paid to him.

22. As far as the payment of petrol allowance and other benefits are concerned, these benefits are given to a judicial officer not on the basis of the statutory rules framed under Article 309 of the Constitution but based on executive instructions and as this was a decision based on the policies and executive discretion of the State Government, in the earlier round parity in this regard was not found to be made out. Accordingly, the State Government cannot say that the payment of dearness allowance and petrol allowance are identical in nature and, therefore, their action justified. The payment of dearness allowance is governed by sets of statutory rules and various other consideration co-related to the cost of living index and, therefore, when the cost of living index has increased and consequently, the benefit of dearness allowance is granted to a set of employees similarly situated there is no reason to refuse the same to persons like the respondent, who are identically situated and are to be similarly treated in the matter of parity. On these consideration, we find that the action of the State Government is unsustainable.

23. Accordingly, in the facts and circumstances of the case, we see no reason to interfere into the matter, as the learned Writ Court has taken a decision on due

consideration of various aspects of the matter, which we found to be in accordance with law. The Writ Appeal is accordingly dismissed. No order as to costs.