
(2005) 03 MP CK 0029

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 3078 of 2004

Subodh Gadkari and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-03-2005

Acts Referred:

Citation : (2005) 1 MPJR 498

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : V. Dalal, for the Appellant; L.R. Bhatnagar, Govt. Advocate and Mr. Anil Lala, Advocate, for the Respondent

Judgement

N.K. Mody, J.

Prayer in the petition is for quashing the order Annexure-P-9, P-10 and P-12, whereby, it was directed to reduce the pay scale of the petitioners from Rs. 2200-4000.

Facts of the case are that petitioners were appointed on various dates with Respondent No.4 on various posts. Right from 13.12.1990, petitioners were kept in the pay scale of Rs. 2200-4000 of which the corresponding pay scale was Rs. 1820-3300. Further case of the petitioners are that State Government issued Circular dated 19.12.2001 to the effect that, if without taking sanction from the State Govt, any orders has been passed for payment of salary in the pay scale of Rs. 2200-4000 to the Managers of Class-II working in the Corporation, instead of 2200-3500, the necessary instructions be given to Managing Directors to the concerned Corporations for cancelling the same with immediate effect and the amount be paid in excess be recovered. Thereafter again Respondent No. I issued the Circular on 12.12.2003, whereby further direction was issued that the compliance be made immediately because there is no stay by the High Court. In compliance of the earlier Circular. Respondent No.4 issued the order on 14.10.2004, wherein it was mentioned that in the meeting of Board of Directors

held on 14.09.2004, it was resolved to roll back the pay scale of Managers from 2200-4000 to 2000-3500 of which revised pay scale is 6500-10500. It was further directed that the salary be paid, as per the aforesaid pay scale with effect from October, 2004. Learned counsel for the petitioners submit that the orders Annexure-P-9, P-10 and P-12 are illegal and deserves to be quashed. It was further submitted that the Respondents have no authority to roll back the pay scale of petitioners without giving any opportunity of hearing. It was further submitted that the petitioners are in the pay scale of Rs. 2200-4000 since 01.01.1986 and after lapse of 19 years these orders have been issued without following the principles of natural justice. It was further submitted by Shri Dalai that an order was issued in the year 1998 by the Agricultural department of the State Govt, accepting the pay scale of Rs. 2200-4000 for the similarly placed Managers in M.P. State Agriculture Industries Development Corporation.

State Govt. has submitted the reply, wherein the order of State Govt, for refusing pay scale has been tried to be justified. It is submitted that as per clause 7 of schedule II of M.P. Pay Revision Rules, 1990, pay scale of Rs.2000-4000 of which existing pay scale was Rs. 1820-3300 is applicable for those gazetted posts which are filled up fully or partly by direct recruitments through P.S.C. It was submitted that since the posts of petitioners are not filled up through P.S.C., therefore petitioners are not entitled for pay scale of Rs.2200-4000.

It was also alleged that petitioners are entitled for 2200-4000, which is evident from the Circular dated 27.08.1990 issued by the Finance Department of the State Govt.

Learned counsel for the petitioner placed reliance on decision reported in Divisional Superintendent, Eastern Railway, Dinapur and Others Vs. Shri L.N. Keshri and Others, , wherein basic pay of the employees were reviewed and the Hon"ble Supreme Court has observed that the employees have obviously been visited with civil consequences, but employees have been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind their back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving them a hearing in the matter. Learned counsel for the petitioner further placed reliance on a decision reported in Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, , wherein the Hon"ble Supreme Court has held that, "the benefit of Higher Pay Scale given to an employee due to no fault of him, it shall only be just and proper not to recover any excess amount which has already been paid to him.

Learned counsel for the petitioner submits that the similar view has been

followed by this Court vide order dated 29.04.1997 passed in W.P. No. 5304/96. Shri Vivek Dalai, learned counsel for petitioner further placed reliance on an order dated 17.01.2003 passed by Division Bench of this Court headed by Hon"ble Chief Justice in W.P. (S) No. 2800/2004. State of M.P. Vs. S.R. Sharma wherein the pay scale was fixed in the scale of Rs. 2200-4000 and the excess paid was ordered to be recovered. Division Bench of this Court held that in the circumstances, the employees, who have been given the benefit of pay scale of Rs. 2200-4000 applicable to assistant engineers to which cadre he belonged is entitled for the same and State cannot subsequently apply a lesser pay scale, merely on the ground that he was a promotee and not a direct recruit. In view of aforesaid position of law laid down by Hon"ble Supreme Court and followed by this Court, order Annexure-P-2 is hereby quashed with a direction that if any amount has been deducted from the salary of the petitioners, the same shall be returned to them.

With the aforesaid observation, petition is disposed of c.c. as per rules.