(2004) 03 MP CK 0081

In the Madhya Pradesh High Court

Case No : Writ Petition No. 17861 of 2003

Suresh Chandra Pandey APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 03-03-2004

Acts Referred:

Madhya Pradesh Revision of Pay Rules, 1998 — Rule 10(2), 11

Citation : (2005) 1 MPHT 117 : (2004) 3 MPLJ 316

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R.C. Tiwari and Shailesh Tiwari, for the Appellant; S.K. Yadav, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

The petitioner was appointed as a Lower Division Clerk on 22-8-1964 and was promoted to the post of Upper Division Clerk Grade-II on 27-7-79. He passed the Accountants Training Examination on 30-4-80 and was promoted as Accountant on 30-6-82 and retired as Accountant on 31-3-98 on attaining the age of superannuation.

According to the writ petitioner he was getting the pay scale of Accountant of Rs. 1320-2040/-. As setforth, the feeder post for cadre of Accountant as per Madhya Pradesh Class III (Ministerial) Forest Service Recruitment Rules, 1978 (hereinafter referred to as ''the Rules'') is Upper Division Clerk Grade-II the pay scale of which is Rs. 1200-2040/-. It is urged that the pay scale of State employees have been revised with effect from 1-1-1996 vide Notification No. 6-27-2-CR-98, dated 9- 3-98 issued by the competent authority. It is urged in the petition that certain clarifications were issued vide Annexure A- 1, dated 3-2-2001 wherein Rule 10 (2) of the Madhya Pradesh Revision of Pay Rules, 1998 (in short ''the 1998 Rules'') has been clarified by which the petitioner is affected and hence, he has challenged the same. The order contained in Annexure A-2 is a consequential order as the pay fixation was erroneously done under the 1998 Rules.

It is averred in the petition that the authorities have erred in entirety in understanding the Rules of 1998 and the clarification circular is not in consonance or in tune with the Rules in vogue and that is why the resulting factor is that the decision is taken to recover the amount already paid. It is putforth in the petition that Rule 10 protects the grant of special pay to the persons who were promoted on the post of Accountant on the date the Rule came into being and the circular (Annexure A-l) intends to curtail the benefit by creating an artificial discrimination and, therefore, it deserves to be lanceted. In this backdrop a prayer has been made for quashment of the circular and the order directing recovery of the amount and further to re-fix the pension and retiral benefits by adding the additional pay.

A counter affidavit has been filed by the respondents stating, inter alia, that the Rules of 1998 have been framed under Article 309 of the Constitution of India and if the Rules are interpreted in proper manner the petitioner would not get the benefit. Emphasis has been laid on the fact that the pay of the petitioner after the promotion has been fixed by conferring the benefit of Fundamental Rule 22-D on 1-3-96 as per Annexure R-3 and, therefore, he can not get the benefit of special pay. It is urged that reliance of Rule 8 by the petitioner has no impact or effect on the pay scale. It is the stand of the respondent that the special pay of Rs. 250/- was erroneously added to the pay of the petitioner and, therefore, necessary steps were taken for recovery of the same.

A rejoinder affidavit has been filed asseverating that on the basis of the recommendation of Vth Pay Commission there was clubbing of pay scales and the Rules were framed to cover the different fields taking a pragmatic view and hence, the petitioner''s claim for grant of the benefit of special pay of Rs. 250/- is tenable within the four corners of Rule 10 (2) of the Rules.

I have heard Mr. R.C. Tiwari and Mr. Shailesh Tiwari, learned Counsel for the petitioner and Mr. S.K. Yadav, learned Government Advocate for the respondents.

It is submitted by the learned Counsel for the petitioner that the Rules in question had protected the grant of special pay but the circular which has clarified the position runs counter to the tenor of the language contained under the Rules and, therefore, the Rules must be allowed to prevail.

Mr. S.K. Yadav, learned Government Advocate, has contended that the Rules have restricted application to the likes of the petitioner inasmuch as the persons who were promoted/recommended before 1-1-96 can not claim the benefit of special pay and as the petitioner got promotion to the post of Accountant in the year 1982 can not avail the benefit of special pay.

The factual score, as projected in the petition, is beyond any dispute. The feeder post of Accountant is Upper Division Clerk. The petitioner was admittedly promoted to the post of Accountant prior to 1 -1 -96. The solitary question, the seminal and the pivotal one is whether the Rules of 1998, if understood in its proper context and in essential spirit, do convey a meaning that the benefit of special pay to the Accountant would be available if they are promoted after 1-1-96 or such benefit would accrue in favour of the promotees who were promoted prior of the cut off date. To appreciate the aforesaid situation in proper perspective it is seemly to have a scanning of the anatomy of the Rules in question. The Rules are called Revision of Pay Rules and it came into force on 1-1-96. Rule 2 carves out certain explanations to whom the Rules do not apply. The Rule 3, the dictionary clause, defines "Schedule", "basic pay", "existing scale of pay", "pre-fixation emoluments" and "revised scale of pay". It is worthwhile to mention here that the Rules commence with the words "Save as otherwise provided by or under these rules". Rule 4 reads as under :-

"4. Revised scale of Pay.- From the date of Commencement of these rules, the scale of pay of every post carrying existing scale of pay shall be as specified in the corresponding entry in column (4) of the Schedule I or Schedule II, as the case maybe."

Rule 5 deals withdrawal of pay in the revised scale of pay. Rule 6 deals with exercise of option. Rule 7 provides for fixation of initial pay in the revised scale of pay and Rule 8 lays a postulate with regard to date of next increment in the revised scale of pay. Rule 9 deals with fixation of pay in the revised scale of pay subsequent to 1st day of January, 1996. It is appropriate to reproduce the Rule 9 which reads as under :-

"9. Fixation of pay in the revised scale of pay subsequent to 1st day of January, 1996.- (1) Where a Government servant continues to draw his pay in the existing scale of pay and is brought over to the revised scale of pay from a date later than the 1st January, 1996 his pay from the later date in the revised scale of pay shall be fixed under Fundamental Rules, with reference to his basis pay in the existing scale of pay.

(2) A Government servant who has officiated in a post prior to 1st January, 1996 but was not holding that post on 1st January, 1996 and who on subsequent appointment to that post draws pay in the revised scale of pay shall be allowed the benefit of the proviso F.R. 22 to the extent it would have been admissible to him had he been holding that post on the 1st day of January, 1996 and had elected the revised scale of pay on that date."

I have reproduced the Rule 9 only to indicate that the conception under Fundamental Rules in the revised scale of pay is applicable. Rule 10 which is extremely relevant for our present purpose reads as under :-

"10. Special Pay.- (1) Except in the case of Government servants who are in receipt of special pay in addition to pay in the existing scale of pay and where the existing scale of pay with special pay has been replaced by a scale of pay without any special pay, the special pay as attached to any other post will continue to be so attached with the revised scale of pay till the State Government otherwise directs.

(2) In such cases where the existing scale of pay of any posts before and after promotion were different and revised scales of pay of such two posts are merged into one scale of pay under these rules, then the Government servants who arc holding the existing posts after promotion shall be entitled to draw a special pay of Rs. 250.00 per month in the scale of pay revised under these rules."

Mr. R.C. Tiwari, learned Counsel for the petitioner, would like this Court to read both the limbs of the Rule independently covering different situations whereas Mr. Yadav, learned Government Advocate, would like this Court to be of an opinion that both the provisions are intrinsically connected and, therefore, applicability of the Rule can not be attracted to the promotees in the cadre of Accountant as such promotees did not get the benefit of special pay while holding the post of UDC which is the feeder cadre.

To appreciate the crucial aspect the rules arc to be read, in my opinion, in a purposeful and acceptable manner. The sub-rule (1) of Rule 10 lays down that the Government servants who are in receipt of special pay in addition to pay in the existing scale of pay and where the existing scale of pay with special pay has been replaced by a scale of pay without any special pay, the special pay as attached to any other post will continue to be so attached with the revised scale of pay till the Slate Government otherwise directs. To appreciate this rule the background is necessary to be noted. Prior to the revision of pay scale there are certain categories of employees who were availing the benefit of special pay. On such revision their special pay is protected subject to the orders to be passed by the State Government. Thus, the protection is temporary in nature. The sub- rule (2) projects and encapsules, in my humble view, a different type of scenario. It covers such cases where the scale of pay before and after promotion were different and there has been merger of pay scale into one pay scale under the rules and such employees who arc holding the existing post after promotion would be entitled to Rs. 250/- per month in the scale of pay revised under these rules. It is not disputed at the Bar that the pay scale of UDC and the Accountants merged into one pay scale. Under these Rules the pay scale is Rs. 4000-6000/'', as has been prescribed in Item No. 7 under Schedule I to Rules 2 and 4. In this context one is concerned with sub-rule (2). Mr. Yadav has laid emphasis on the language of sub-rule (2) to show that the person who is promoted after present set of Rule came into play would get Rs. 250/- per month as special pay. In fact, that is the clarificatory note contained in Annexure A-l. Mr. Tiwari, per contra, submitted that such an interpretation of the Rules would not only lead to absurdity but would also frustrate the purpose of the Rule. It is contended by him that the clarificatory letter- circular contained in Annexure A-l is not really clarificatory but creates more ambiguity and confusion. The real key words in sub-rule (2) are "the Government servants who arc holding the existing posts after promotion". There is no cavil over the factum that from the posts of UDC the persons have been promoted as Accountants. This arrangement has been continuing from inception of Promotion Rules, 1978. Thus, there can be no trace of doubt that the petitioner or the likes of the petitioner were promoted from the post of UDC to the post of Accountant. The hub of the matter is that the persons holding the existing post after promotion would only exclusively mean that the promotion that has taken place after 1-1-96. The letter circular contained in Annexure A-1 stipulates that the promotees who were promoted prior to 1-1-96 would not be entitled to get the special pay of Rs. 250/- as they availed the benefit of Rule 22 (D). The circular, if I am allowed to say so, has travelled beyond the rules. By no stretch of imagination, it can be said to be in consonance with the Rules. There is no earthly reason to interpret the sub-rule (2) to be in prospective manner. It does not say so. What it states is that the State Government servants who arc holding the existing post after promotion. The natural meaning to the words "are holding" and "existing" is to be given. There is no justification to give narrow meaning to the said terms to convey the meaning that the Government servants who are promoted only after 1-1-96 are covered. Such construction endowed on the Rules would only tantamount to artificial conferral of meaning inasmuch as words used are "arc holding the existing post after promotion" are plain and clear. There is no ambiguity in the language used. May be there has been some doubt by someone at some stage and a clarificatory letter has been issued but when a set of rules has been framed under Article 309 of the Constitution and it is quite clear, unambiguous and conveys appropriate meaning and there is no need to search for any other meaning as that would usher in a sense of artificiality and confusion. To elaborate : the language used in praesenti is manifest from "Government servants who arc holding the existing posts after promotion". It would singularly mean that the Government servants must be in the cadre of Accountant by the time the Rules came into force. If the Rule Making Authority desired to say that the entrants into the promotional sphere after 1-1-96 would only get the benefit, then there was no reason not to say so. In addition, there was no justification to say that ''are holding''. If the entire part of the rule is read in proper perspective it really does not convey what Mr. Yadav would like this Court to understand.

In view of the aforesaid analysis, I am of the considered view that the letter circular contained in Annexure A-1 can not be attracted and that does not really spell out the purpose of the rule clearly. The Accountants who are holding the existing post after the rules came into force on 1-1 -96 would mean if they are holding the promotional post in the cadre and all of them would draw the special pay of Rs. 250/- as per the provision envisaged under Rule 11 which deals with payment of arrears of pay. To restrict it to the promotees after 1-1-96 would cause violation of the Rules. I may hasten to add, though the learned Counsel for the State has endeavoured hard to submit before this Court that ''such a case'' should have nexus with the categories of cases covered under sub-rule (1) to my mind same docs not appear to be correct as such case would only mean the cases as have been described or dealt with in sub-rule (2). Both the rules deal with different categories of cases and there is no reason to club them together as by such clubbing no clear cut meaning results but a sense of confusion is created. When the Rule Making Authority has already couched the words in a language which is unambiguous and clear nothing should be read or added to it as such addition would only land up one in a state of confusion. And that is not the purpose of interpretation.

In view of the aforesaid, I am inclined to hold that the petitioner would be entitled to the special pay from the cut off date as provided under the rules and the benefit be worked out as per Rule 11 of the Rules.

The writ petition is accordingly allowed. There shall be no order as to costs.

C.C. as per rules.