
(2020) 08 MP CK 0102

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10250 Of 2020

Suresh Kumar Tiwari

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 24-08-2020

Acts Referred:

Citation : (2020) 08 MP CK 0102

Hon'ble Judges : Sanjay Dwivedi, J

Bench : Single Bench

Advocate : D. K. Tripathi, R. B. Tiwari

Final Decision : Allowed

Judgement

The learned counsels for the petitioners submit that the issue involved in the present cases has already been set at rest by this Court in W.P. No.18030/2019 parties being Rajendra Prasad Tiwari Vs. State of M.P. and others vide order dated 03.12.2019, therefore, these petitions may also be disposed of in light of the aforesaid order.

I have gone through the order relied upon by the learned counsel for the petitioners and moreso this Court had also an occasion to deal with such an issue in W.P. No.24395/2018 (Ashok Kumar Mishra Vs. State of M.P. and others), therefore, the petitioners are also entitled to get the benefit of annual increment which fell due on the next day of the date of retirement. At the cost of the repetition, the operative portion of the said order is reproduced hereinbelow:-

"Learned counsel for the petitioner submits that the Indore Bench of this High Court has already dealt with this issue in W.P. No.17676/2019 (Abdul Waheed Khan and others Vs. Madhya Pradesh Power Management Company Limited and another) decided vide order dated 05.06.2020, in which, it is held that merely because the petitioners retired one day prior to the date of granting annual increment for the services rendered by the petitioners for the whole year, the same cannot be denied and the petitioners were found entitled to get the

benefit of annual increment which was due on 01.07.2017. Thereafter, in another petition i.e. W.P. No.18030/2019 (Rajendra Prasad Tiwari Vs. The State of Madhya Pradesh and others), the writ Court has also decided the said issue relying upon a decision of Division Bench of Madras High Court passed in W.P. No.15732/2017 (P. Ayyamperumal vs. The Registrar, Central Administrative Tribunal and others), which was further assailed before the Supreme Court and was affirmed by the Supreme Court by dismissing the SLP i.e SLP No.22283/2018 (Union of India & Ors. vs. P. Ayyamperumal).

The order of writ Court was further assailed by filing a writ appeal i.e. W.A. No.363/2020 (State of Madhya Pradesh and others vs. Rajendra Prasad Tiwari) and the Division Bench of this Court has dismissed the same upholding the view taken by the writ Court in W.P. No.18030/2019. The present petitioner, therefore, has claimed that this Court has no other option but to follow the view taken by the Division Bench of this Court.

However, learned counsel for the respondent has opposed the contentions made by the learned counsel for the petitioner and submits that the judgment passed by the Division Bench in Writ Appeal No.363/2020 is per incuriam as the Division Bench has not considered the earlier decision of Division Bench deciding the same issue and therefore, the judgment of Division Bench is not applicable.

However, I am not convinced with the contentions raised by learned counsel for the respondent because the Division Bench and also of writ Court have considered the decision of Division Bench of Madras High Court, which had been assailed by filing SLP before the Supreme Court, which was dismissed by the Supreme Court upholding the view of writ Court, therefore, this Court has no option, but to follow the view taken by the Division Bench of this Court.

Accordingly, as per the view taken by the Division Bench in Writ Appeal No.363/2020, this petition is allowed directing the respondents to grant the benefit of annual increment to the petitioner which fell due on 01.07.2017 and accordingly the retiral dues of the petitioner be revised and arrears whatever is calculated, be also paid to him within a period of three months from the date of submitting the certified copy of this order.

The petition filed by the petitioner stands allowed with the aforesaid directions."

Accordingly, in the light of the order quoted hereinabove, these petitions are also allowed.

Certified copy as per rules.