
(2012) 10 MP CK 0101
In the Madhya Pradesh High Court
Case No : W.A. No. 879 of 2012

Umesh Kumar Shrivastava

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Citation : (2012) 10 MP CK 0101

Hon'ble Judges : Vimla Jain, J; Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : Narendra Sharma, for the Appellant; Jaideep Singh, Dy. Govt. Advocate for State, for the Respondent

Judgement

1. This appeal is directed against an order dated 7.12.2009 in W.P. No. 11852/2009 by which the writ petition preferred by the appellants is finally disposed of in the light of the judgment in Madhukant Yadu Vs. State of M.P. in O.A. No. 2745/1989 decided on 24.8.1992 by the M.P. State Administrative Tribunal and the SLP preferred before the Apex Court was also dismissed. Learned Single Judge while allowing the petition and extending the benefits to the appellants directed that the aforesaid benefits shall be extended notionally for pay-fixation from the initial date of appointment till the date of passing of the consequential order. It is submitted by the appellant that denying of monetary benefit is contrary to law laid down by the Division Bench of this Court in various matters including Bhawarlal Badoniya & others Vs. State of M.P. & others, W.A. No. 946/2010 decided on 12.10.2011, in which the Division Bench modified the order passed by the Single Bench and directed for payment of consequential monetary benefits alongwith certain directions. It is submitted that this appeal may be allowed and similar directions as were issued in Bhawarlal Badoniya (supra) may be issued in the present case.

2. Aforesaid position on facts is not disputed by Shri Jaideep Singh, learned Dy. Govt. Advocate.

3. In Bhawarlal Badoniya (supra), the Division Bench of this Court considering similar controversy held thus:-

The learned Single Judge relying on the judgment dated 24.8.1992 of M.P. Administrative Tribunal, Jabalpur in O.A. No. 2745/1989 Madhukant Yadu Vs. State of Madhya Pradesh, decided the matter finally, on the ground that SLP preferred against Madhukant Yadu bearing SLP No. 6892/1993 was dismissed on 3.1.1999. Thereafter various matters were decided by the Single Bench and also by the Division Bench relying on the ratio of Madhukant Yadu.

Learned counsel for appellants submitted that though the benefit of Madhukant Yadu (supra) has been extended to the appellants, but no monetary benefit has been given, so the appellants be extended monetary benefit. They have placed reliance to a Division Bench judgment of this Court in Smt. Saroj Shah Vs. State of M.P. and others (W.A. No. 744/2010) decided on 27.8.2010 and submitted that similar directions may be issued in this matter.

Shri Kumaresh Pathak, learned Dy. A.G., submitted that though against the judgment of Madhukant Yadu, decided by the M.P. Administrative Tribunal, SLP was dismissed, but in another case of Pankaj Saxena Vs. State of M.P. & others, which was decided on the basis of Madhukant Yadu, the Apex Court has entertained the SLP (Civil) No. 5346/2005 (State of M.P. and others Vs. Pankaj Saxena) in which interim order has been passed, so this appeal may be dismissed or may be kept pending till the decision in Pankaj Saxena.

This contention is also opposed by the learned counsel appearing for appellants, who submitted that the case of Pankaj Saxena has been entertained by the Apex Court in respect of condonation of delay and Special Leave has not been granted, so the appellants be extended the benefit of Smt. Saroj Shah.

We have heard learned counsel for parties and perused the impugned order. By the impugned order, learned Single Judge while allowing the writ petition preferred by the appellants directed that though the appellants shall be entitled for the benefit of Madhukant Yadu but notionally, they shall not be entitled for monetary benefit because they have approached to the Court after long lapse of period and the State Exchequer should not be burdened with the arrears.

The Division Bench of this Court in Smt. Saroj Shah considering similar controversy held thus :-

This intra-Court appeal arises from the order dated 23.7.2010 passed by learned Single Judge in W.P. No. 9564/2010(s).

Facts giving rise to filing of the instant writ appeal briefly stated are that the appellant, who is an Upper Division Teacher, claimed benefit of regular pay-scale from the date of initial appointment as well as arrears of salary in view of order dated 18.12.2008 passed by Division Bench of this Court in W.A. No. 346/08 (Smt. Usha Ranawat Vs. State of M.P. and others). Learned Single Judge vide said order disposed of the writ petition preferred by the appellant and held that

order was passed by the Division Bench in the writ appeal referred to supra in the year 2008 and since the present appellant has approached this Court after a long period of time, therefore, the State exchequer cannot be burdened with payment of arrears of salary. Accordingly, the relief of grant of arrears and salary to the appellant was denied. However, it was held that appellant is entitled to notional pay fixation.

Learned counsel for the appellant vehemently contended that in a similar case namely W.P. No. 8565/2010 (s), learned Single Judge vide order dated 9.7.2010 took into account the order passed by the Division Bench in the case of Smt. Usha Ranawat supra and directed the respondents to examine the case of the petitioners of that writ petition in the light of the order passed by the Division Bench of this Court in Usha Ranawat's case. It was further submitted that writ petition No. 8565/10 (s) was also filed in the year 2010 and was disposed of on 9.7.2010. Therefore, there was no justification to deprive the appellant of the similar benefit.

Though, Shri Pathak, learned Dy. Advocate General opposed the submissions made on behalf of the appellant, however, he could not point out any justification or reason for not extending the similar benefit to the present appellant.

It is well settled in law that similar matters should receive similar treatment on the principle of parity. See: *Bir Bajrang Kumar Vs. State of Bihar and others*, AIR 1987 SC 1345. The benefit of the order passed by Division Bench in the case of Smt. Usha Ranawat supra has been extended to the petitioners of Writ Petition No. 8565/10 (s). We see no reason as to why the similar benefit should not be extended to the present appellant on the principle of parity. Therefore, the order passed by the learned Single Judge is set aside and respondents are directed to examine the case of the appellant in the light of the Division Bench decision of this Court in Smt. Usha Ranawat's case and if the appellant is found entitled, the respondents shall extend the same benefit as has been extended to other similarly situated employees by virtue of the order passed in the case of Smt. Usha Ranawat supra. The aforesaid exercise should be completed within a period of six months from the date of receipt of certified copy of the order.

Accordingly, the writ appeal is allowed.

As the controversy has been decided by another Division Bench and we do not find any reason to differ with the judgment of Division Bench in Smt. Saroj Shah, we allow these appeals in terms of the directions issued by another Division Bench in Smt. Saroj Shah. However it is made clear that in case the Apex Court allows the SLP in Pankaj Saxena and reverse the order passed by the Tribunal or by this Court, the same order shall be applicable in the cases of appellants, as far as it is applicable.

With the aforesaid directions, these appeals are allowed. All the arrears will be released by the State within a period of six months from the date of communication of this order. If the amount is not paid within a period of six

months, the appellants shall be entitled for interest @ 6% per annum on all the arrears from today, till payment of arrears.

4. As controversy involved in this case is identical, this appeal is also finally disposed of in the light of the order passed in Bhawarlal Badoniya (supra). Aforesaid order shall be applicable in the present case, as far as it is applicable.

No order as to costs. C.C. as per rules.