

(2012) 10 MP CK 0040

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5028 of 2011 and 8939 of 2010

Umesh Tiwari and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-10-2012

Acts Referred:

Citation : (2013) 136 FLR 297

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Prabhakar Singh, for the Appellant; Lalit Joglekar, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—Since the common question is raised in both the writ petitions, common relief is claimed, this order will also govern disposal of W.P. No. 5028/2011. However, facts are taken from W.P. No. 8939/2010. By this petition, the petitioners have called in question the validity of order dated 17.5.2010 by which it is said that petitioners would not be entitled to minimum of the pay scale as the petitioners were appointed illegally on daily wages. It is stated in the order that since the Committee has categorically held that the petitioners are not entitled to grant of the minimum pay scale, such order could not have been issued in their respect. It is contended that such direction issued by the respondents is contrary to the order passed by this Court in W.A. No. 778/2009 on 5.11.2009. It is contended that since the order passed in the writ appeal aforesaid has attained finality, it was not open to the respondents to pass any order rejecting the claim of the petitioners. It is contended that no opportunity of hearing was given to the petitioners in appropriate manner as only a show-cause notice was given to them, of which a reasonable reply was filed by them but such facts have not been taken into consideration, as such the order impugned is bad in law.

2. The return has been filed by the respondents and it is contended by them that

erroneously the petitioners were granted the minimum of the regular pay scale, though they were not entitled to the same. Earlier an order was passed by the respondents cancelling the said order of giving minimum of the pay scale to the petitioners. Said order was called in question in a writ petition, which was dismissed in limine. A writ appeal was filed by the persons like petitioners and since in the said writ appeal it was held that the petitioners were not granted any opportunity of hearing, the order passed by the respondents was quashed with liberty to the respondents to take action against the petitioners after affording them an opportunity of hearing. It is contended that in view of the law laid-down by the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . the persons like petitioners, who are nothing but the backdoor entry, will not be entitled to the benefit of minimum of the pay scale. It is contended that the writ petition is, thus, liable to be dismissed.

3. After hearing learned Counsel for the parties at length and perusing the record, it appears that a folly was committed by the respondents by issuing such an order. Undisputedly, persons like petitioners were engaged on daily wages for some work available with the respondents. There was some litigation on account of which respondents were required to pass the order. One such order was issued in respect of petitioner No. 1 in the present case on 3.8.2004 categorically saying that in terms of the order passed by this Court in W.P. No. 11358/2003, decided on 24.2.2004, the claim of petitioner No. 1 was to be considered for regularization but since there was no post available at the relevant time in terms of certain directions issued by the Engineer-in-Chief, the petitioner No. 1 was to continue in the establishment of Work Charged Contingency and was to be paid minimum of the regular pay scale. Similar order was passed in respect of petitioner No. 2. Such rights were created in favour of the petitioners only because as per the scheme of regularization of daily wagers made by the State Government prior to the decision given in the case of Uma Devi (supra) by the Apex Court, the petitioners were already found fit to be regularized. This being so, it was not proper on the part of the respondents to dispense with the services of the petitioners in respect of which the order was passed on 24.7.2009. This was the order, which was called in question in earlier round of litigation being W.P. No. 7625/2009 (S), which was dismissed in limine. Against the order of learned Single Judge, the writ appeal was filed being W.A. No. 778/2009. The Division Bench of this Court has considered the aforesaid facts in the order passed in the aforesaid writ appeal and has held categorically that the order dated 14.5.2004 was passed by the respondents extending the benefit to the persons like petitioners in terms of the direction given by this Court in some of the writ petitions. It was categorically held that the order impugned in the writ petition earlier filed could not have been issued without affording an opportunity of hearing. In view of this, the Division Bench of this Court has quashed the order dated 24.7.2009 and has further granted relief to the petitioners in the following manner:

Undisputedly, under the directions of this Court the order dated 14.5.2004 was

passed; the order was recalled without any notice to the appellants. It would be trite to say that when an order leads to serious consequences and would have civil and evil effect then a person against whom such order is proposed has to be noticed and has to be provided an opportunity of hearing.

Taking into consideration the totality of the circumstances and the history leading to the present matter, we are of the opinion that the order dated 24.7.2009 removing the appellants from service cannot be upheld. The said order is accordingly quashed. The orders passed by the learned Single Judge are also set aside. The appellants would be reinstated but they would not be entitled to minimum of the pay scale for the period between recall of minimum of pay scale and this order, however since after their joining, they would be entitled to minimum of the pay scale which they were getting before 24.7.2009. If the appellants join and if the Department feels that the appellants are not entitled to minimum of the pay scale then appropriate notices would be given to them that for a particular or the other reason, the State or the concerned Officer want to withdraw the benefits earlier conferred upon them. After such notices are issued and replies are received only then the Department shall pass appropriate speaking orders.

The appeals are allowed to the extent indicated above.

4. From the order passed by the Division Bench of this Court, it is clear that the petitioners were already held to be entitled to get the minimum of the pay scale. They were denied the benefit of arrears of salary for the period of termination but it was said that they would be entitled to the salary in the minimum of the pay scale from the date of their joining. The opportunity was granted to the respondents to explain as to why such an order of giving benefit of regular pay scale was not applicable in the case of the present petitioners. The show-cause notice was issued to the petitioners by the respondents but what was contended in the said show cause was only this much that some Committee was constituted subsequently in view of the subsequent policy and the said Committee has not found the petitioners fit to be given the benefit of regular pay scale. However, there was no mention of the fact that the petitioners were already found fit to be regularized by a Committee as is reflected from the order dated 3.8.2004 (Annexure P-5) but they were not regularized only because for them the posts were not available. This being so, the show cause issued was defective. The petitioners have moved the application for grant of the documents on the basis of which such finding was recorded by the Committee but nothing was made available to them. They simply said that once they have been considered, how have they not been found fit for regularization is not clear, they cannot be denied the benefit of regularization or at least the minimum of the pay scale of the post on which they were working. There is nothing on record to indicate that any such documents were made available to the petitioners and they were granted an opportunity of hearing in appropriate manner. Thus, it is clear that the petitioners were not afforded the proper opportunity of hearing.

5. Mere issuance of a show cause giving certain facts relating to consideration subsequently done would not satisfy the requirement of grant of due and appropriate opportunity of hearing.) If the order dated 3.8.2004 was not properly issued by a competent authority, action was required to be taken by the respondents against the said authority. In fact the Chief Engineer, Dhasan-Ken Basin of Water Resources Department, Sagar, has categorically said that petitioners were fit for regularization but they were not regularized only because the vacancies were not available. If such a finding was already given by such a competent authority and he issued the direction for grant of minimum of the pay scale of the post to the petitioners, how such an order become bad or how such an order was not justified or even without the authority of the said officer was required to be examined and was required to be intimated to the petitioners, their reply was required to be obtained and then only the order was required to be passed. From the perusal of the order impugned it is clear that nothing has been seen in this respect. Mechanically it is said that Since the Division Bench of this Court has said that the show cause is required to be issued if such benefit is not to be extended and since such a show cause is given, the order impugned was passed. This cannot be said to be the proper compliance of the order passed by this Court.

6. In view of this, the order impugned is quashed. The respondents are directed to look into the entire facts as have come on record, indicated herein above, and to issue proper show-cause notice to the petitioners in case it is found that the petitioners are not entitled to the minimum of the pay scale of the post against which they are working. Only after affording the due opportunity of hearing as is indicated herein above in appropriate manner, proper orders be passed. Till the said exercise is completed, the petitioners would be entitled to get the salary in the minimum of the pay scale as per the orders of the Division Bench of this Court. The writ petitions are allowed to the extent Indicates hereinabove. There shall be no order as to costs.