
(2013) 01 MP CK 0044
In the Madhya Pradesh High Court
Case No : W.A. No. 702 of 2006

Vichitra Singh Hoda

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 13(2)

Citation : (2013) ILR (MP) 2068 : (2013) 2 MPHT 345 : (2014) 2 MPJR 129 : (2013) 2 MPLJ 170

Hon'ble Judges : Shantanu Kemkar, J; M.C. Garg, J

Bench : Division Bench

Advocate : A.K. Sethi, with Harish Joshi, for the Appellant; M. Ravindran, Deputy Government Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—This intra Court appeal is directed against the order dated 30-11-2004, passed by learned Single Judge of this Court in W.P. No. 3669/2003. Brief facts necessary for disposal of this writ appeal are that Vichitra Singh who had died during pendency of this appeal and whose legal representatives have been brought on record had filed an Original Application before the Madhya Pradesh Administrative Tribunal (in short, the Tribunal). On abolition of the Tribunal the said O.A. was transferred to this Court and was registered as W.P. No. 3669/2003.

2. The case of the original appellant was that he was appointed as a Group Secretary in Gram Panchayats Barkheda Khurd and Kelu Kheda by an order dated 14-10-1960 issued by the Collector, Ratlam. Thereafter vide order dated 31-1-1982 his services were absorbed w.e.f. 1-2-1982 on the post of Gram Sahayak in the Panchayat and Social Welfare Department of the State Government. He, therefore, prayed for counting of his qualifying services for the purposes of pension from 14-10-1960 and not from 1-2-1982 as has been done.

3. The respondent State opposed the prayer made by the appellant for counting his services for pension from the date of his initial appointment as a Group Secretary and submitted that his services have rightly been counted w.e.f. 1-2-1982 from the date of his absorption in the Government Service. It was also the case of the respondent State that there was no pension scheme applicable in the Panchayat where the appellant was serving before absorbing his services in the State Government and therefore also, he cannot claim counting of his previous services for the said purpose.

4. The learned Single Judge after considering the rival submissions dismissed the writ petition. Feeling aggrieved, this intra Court appeal has been filed.

5. It has been contended by learned Senior Counsel for the appellant that the learned Single Judge has committed error in holding that the appellant is not entitled for counting of his past services rendered as Group Secretary in the aforesaid Gram Panchayats for the purposes of pension.

6. On the other hand, learned Deputy Government Advocate appearing for the State argued that in view of the law laid down by the Division Bench of this Court in the case of Janpad Panchayat and Zila Panchayat Karmachari Sangh and Others Vs. State of M.P. and Others, the order passed by the learned Single Judge is perfectly justified.

7. Having considered the submissions made by learned counsel for the parties, we are of the view that the writ appeal has no merit and it deserves to be dismissed.

8. In the case of Janpad Panchayat and Zila Panchayat Karmachari Sangh and Ors. vs. State of M.P. and Ors. (supra) a Division Bench of this Court after considering an earlier Division Bench judgment in the case of Janpad Panchayat and Zila Panchayat Karmachari Sangh and Others Vs. State of Madhya Pradesh and Others, in which it has been held that servants appointed under M.P. Panchayat Act, 1962, 1981 and M.P. Panchayat Raj Adhiniyam 1990 are not Government servants, has held as under:--

However, from the material which has been placed before us and the scheme of the Act of 1962 right from 1962 to 1993 and specially after 73rd Amendment in Part-IX to the Constitution introducing Arts. 243 to 243-K giving total autonomy to the Panchayats in their governance, the employees of the Panchayats have to be treated as employees of the Panchayats. Therefore, in view of 73rd Amendment in the Constitution, it cannot be said that the employees of Panchayats are the employees of the State Government.

9. The Supreme Court in the case of Dhyan Singh and Others Vs. State of Haryana and Others, has held:--

The continuance/engagement of the appellants under a specific scheme cannot be held to be an employment under any establishment of the Government. Such schemes are taken up for certain contingencies when money for the same is

provided either by the Central Government or at times by some foreign country but the employment under such scheme not being a part of the formal cadre of the State Government, it is difficult to hold that the period for which an employee rendered service under such scheme can be counted either for the purposes of deciding their pensionary benefits or even for fixing of their salary in the scale of pay once they are regularly absorbed. The appellants' fresh recruitment as Teachers in accordance with the earlier directions of the Supreme Court was by way of concession. No right flowed from the past service rendered by them as Adult Education Supervisors under Non-formal Education Scheme. No rules or regulations have been shown which even confer pensionary benefits for the past service rendered by the appellants under the Scheme. Benefit of past service under the Scheme is therefore not admissible.

10. We find that though the appointment order of the appellant in the Gram Panchayat was issued by the Collector, but the appointment of the staff of the Panchayat was to be made by the Panchayats with the only rigour that the same should be with due approval of the prescribed authority which in the present case was Collector. The State Government was not having any involvement in the matter of the appointment of the staff of Panchayat. Therefore, even if the appointment order was issued by the Collector the appellant, who was employee of the Panchayat cannot claim that he was in service against a post under the Government within the meaning of Rule 13(2) of the M.P. Civil Services (Pension) Rules, 1976 (for short Pension Rules) He cannot be said to be a State Government employee for the purposes of counting of his services in the Panchayats as qualifying service for pension. The appellant became eligible only when on 31-1-1982 an order of his absorption in Government Service w.e.f. 1-2-1982 was issued and was rightly extended the benefit counting his qualifying services w.e.f. 1-2-1982.

11. It is also not the case of the appellant that at the relevant point of time the Panchayat employees were entitled for pension under any provision of law or pension Scheme. Rule 12 of the Pension Rules provides for commencement of qualifying services, which makes it clear that qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

12. Having regard to the aforesaid factual and legal position it is clear that the appellant was not entitled for getting the services rendered by him in the Panchayats counted for the purposes of qualifying services for pension. Therefore, we are of the considered view that no case for interference in the order passed by the learned Single Judge is made out. Accordingly, the appeal fails and is hereby dismissed. No orders as to costs.