

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 4373 of 2013

Bhoutha Ram Bhagat S/o Shri Khasu Ram, aged about 49 years,
Assistant Professor, Sociology, Government College Sitapur, District
Surguja (C.G.), Civil & Revenue District Surguja (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Higher Education Department, Mahanadi Bhawan, New Raipur (C.G.).
2. Under Secretary, Higher Education Department, Mahanadi Bhawan, New Raipur (C.G.).
3. Director, Higher Education, Sanchanalaya, Raipur (C.G.).

---Respondents

For petitioner	:	Shri Rahul Mishra, Advocate.
For State	:	Shri Ratan Pusty, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/12/2018

1. The relief sought for in the instant Writ Petition is for issuance of direction to the respondents to grant senior pay scale and also the selection pay scale on completion of 8 and 16 years of service respectively.
2. The Writ Petition as such was filed on 17/12/2013.
3. In the Writ Petition the counsel for the petitioner had submitted that, the petitioner has been granted the senior pay scale vide order dated 22/03/2007 with effect from 27/09/2006 whereas he should have got it from the year 1995 on the past service of the petitioner rendered as emergency appointee being considered by the respondents.

4. Having heard the contentions put forth by the counsel for the petitioner it reflect that the case of the petitioner is similar to the Writ Petition which has been disposed off by this Court on 13/11/2018 in WPS No. 6024/2016 (Smt. Vijayabala Lal v. State of C.G. & Ors.).

5. Further perusal of record would show that the said issue has already been decided by the High Court of Madhya Pradesh also where an identically placed person had made a similar claim and the High Court allowing the Writ Petition granted the benefit of the previous service to be counted. The said order of Madhya Pradesh High Court has been affirmed by the Hon'ble Supreme Court as well.

6. It would be relevant at this juncture to refer to the order dated 13/11/2018 passed in WPS No. 6024/2016. For ready reference it is reproduced herein under:-

“3. The petitioner is emergency appointee Assistant Professor. She is appointed in the year 1987 under the then existing M.P. Educational Services (Collegiate Branch) Recruitment Rules, 1967 (in short “the Rules, 1967”) . Rule 13(5) of the said Rules made provision for appointment of Lecturers on emergency basis.

4. In this writ petition, the petitioner has claimed grant of Senior Pay Scale and Selection Grade Pay Scale by counting her services from the date of initial appointment as emergency appointees. The petitioner has claimed that if her services are counted from the date of initial appointment as emergency appointees, she is entitled for Senior Pay Scale and Selection

Grade Pay Scale on and from the date, she became eligible for such benefit. The issue involved in this petition have already been decided by the Madhya Pradesh High Court in the matter of Dr. Sandhya Prasad vs. State of M.P. and others (W.P. No. 807/2007 {s}, decided on 13.07.2007). The Writ Appeals preferred by the State of Government against the said order was dismissed by the Division Bench. Against the writ appeals, the State Government preferred SLP before the Supreme Court, which came to be decided in the matter of State of Madhya Pradesh and others vs. Satyavrata Taran reported in (2012) 2 SCC 83. The Supreme Court remitted back the matter to the High Court for decision afresh with the following observations :

"31. We tried to wade through voluminous materials in the form of schemes, government orders and circulars produced by both the learned counsel appearing for the parties. More we tried to delve into the matter, more and more murkier facts, which we call normally Pandora's Box, started emerging. Going through these documents could have been done by us, but since those documents were not even produced by way of affidavit and since the learned counsel on the opposite side had no knowledge of those documents, we have thought it fit to remand these matters back to the High Court for fresh disposal in accordance with law, by granting liberty to both the parties to produce all these documents which they tried to rely upon before us.

32. We are also informed by both the learned counsel that it would be in the interest of all the parties that these petitions be heard before one Bench so that the possibility of divergent opinion(s) from the High Court could be possibly avoided. The expression of desire appears to be reasonable and, therefore, we accept the same.

33. In that view of the matter, we allow the appeals, set aside the orders passed by the High Court in all these matters and remand the matter back to the High Court for its fresh consideration in accordance with law. We also give liberty to both the parties to place on record all the documents on which they intend to rely in support of their case including the manner, mode and the source of appointment of each of the Assistant Professors.

34. We also request the learned Chief Justice of the Madhya Pradesh High Court to assign all these matters to the Principal Bench itself so that the matters could be finally settled by one Bench, instead of two or three Benches taking different views on the same set of facts and on the questions of law.

35. Since the matters were pending for some time, we request the learned Chief Justice to either take up the matters by himself or assign it to an appropriate Bench and request that Bench to dispose of the appeals at the earliest. We clarify that we have not expressed any opinion on the merits of the case. Ordered accordingly.”

5. The High Court of Madhya Pradesh thereafter considered the batch of writ petitions afresh and vide judgment rendered in the matter of Dr. Ramesh Chandra Dixit and others vs. State of M.P. reported in 2012 (3) M.P.H.T. 86, allowed the writ petitions, directing the State Government to consider the case of emergency appointees for grant of Senior Scale/Selection Grade Scale by treating the services rendered by them from the initial date of appointment as regular appointment for the purpose of conferring the benefit of Senior Pay Scale and Selection Grade Pay Scale. The State of Madhya Pradesh again preferred batch of writ appeals against the said order before the Division Bench, which came to be dismissed by the judgment rendered in the matter of State of M.P. and another vs. Dr. Ramesh Chandra Dixit, reported in 2013 (IV) MPJR 123, The following has been held by the Division Bench :

“14.....the persons who were duly recruited after following the procedure for emergency appointment except, the interview by the Commission, were entitled to be regularized from the date of initial appointment and not by subsequent date.

15. The learned Single Judge has considered the matter extensively and by a reasoned order. As discussed hereinabove, the emergency appointees were duly regularized even by the State after getting concurrence from the State Public Service Commission, though aforesaid order has been given effect to with effect from 24.12.1998 but considering the facts and circumstances

of the case, these were entitled for the benefit from the date of initial appointment as has been held by the writ Court.

16. In the result,, these appeals are found without merits and are dismissed. The appellants, however, shall give effect to the order passed by the writ court within a period of 60 days from today and shall also make payment of monetary benefit within the aforesaid period.”

6. The SLP No.6269/2012 and other connected SLPs preferred against the order passed by the Division Bench in writ appeals came to be dismissed by the Supreme Court on 18.02.2015.

7. It is informed at the bar that Review Petition (C) No.1348 of 2015 in SLP (C) No.30492/2013, which was one of the SLP in the batch has also been dismissed by the Supreme Court on 13.05.2015.

8. In the State of Chhattisgarh, the State Government framed Rules known as Chhattisgarh Regularization and Emergency Appointment Rules, 2005 (for short 'the Rules, 2005') for the benefit of such emergency appointees who were not regularized in the erstwhile State of Madhya Pradesh. The petitioners having already been regularized w.e.f. 24.12.1998 by the order issued by the State of Madhya Pradesh on 23.03.1989, were not covered under the said Rules. However, since other emergency appointees who were not regularized prior to 01.11.2000 i.e. creation of the State were still serving in this State, they preferred W.P. No.1164 of 2006 before this Court, which was

disposed of by the Division Bench on 01.04.2010 in the following manner:

“7. Since the Madhya Pradesh High Court has adjudicated the matter in the cases of similarly situated candidates to the instant writ petitioners, we are of the opinion that we may leave it upon the State Government to take fresh decision taking into consideration the judgment and order of the Madhya Pradesh High Court. However, with regard to seniority, we are of the opinion that since these petitioners could not succeed in the examination conducted by the P.S.C., the candidates selected in that particular selection process in which the petitioners could not be cleared by the P.S.C. examination, cannot become juniors to the petitioners and as such the State Government may also consider to place these petitions in appropriate place in the seniority list.”

9. When the order passed by the Division Bench was not complied by the State Government, Contempt Petition (C) No.20/2012 was preferred, wherein, the State Government submitted an undertaking for complying the order. Prior to that, the State Government had issued a Circular on 06.07.2011 in terms of the order passed by the High Court of Madhya Pradesh in the first round of litigation. However, the said Circular was withdrawn on 30.07.2012 mentioning therein that the order passed by the Division Bench of Madhya Pradesh High Court shall remain binding on the State Government of Chhattisgarh. This Circular was issued by the State of Chhattisgarh during

pendency of the writ appeals before the Madhya Pradesh High Court in the second round of litigation. Since the Division Bench had stayed the judgment rendered by the Single Judge in the matter of Dr. Ramesh Chandra Dixit (*supra*), the State Government of Chhatisgarh observed that the order on the issue to be taken by the State of Chhattisgarh shall be bound by the order passed by the Division Bench of the Madhya Pradesh High Court.

10. While the petitioners have relied on the orders passed by the Single Bench and Division Bench of the Madhya Pradesh High Court, which have allowed the Writ Petitions preferred by similarly placed emergency appointees, learned State Counsel would submit that the petitioners were emergency appointees and were back-door entrants, therefore, in terms of the law laid down by the Supreme Court in the matter of *Secretary, State of Karnataka and others v. Uma Devi (3) and others* 1 (2006) 4 SCC 1, they are not entitled for counting of their services prior to the regularization i.e. service rendered by their prior to 24.12.1998. He would also submit that all the petitioners failed to clear the examination undertaken by the Public Service Commission, therefore, in terms of Condition No.3 of the order of appointment they are not entitled to be regularized from a date prior to they having cleared the examination by the Public Service Commission or the date of regularization, as doing so would amount to regularize their past services before regularization.

11. Indisputably, the petitioner was also appointed in exercise of powers under Rule 13(5) of the Rules, 1967 and was similarly placed like the petitioner before the Madhya Pradesh High Court. In fact, when the petitioner was appointed in the year 1987 in the undivided State of Madhya Pradesh, she was governed by the same set of rules. Although the Rules of 1967 have since been replaced by the M.P./C.G. Educational Service (Collegiate Branch) Recruitment Rules, 1990 yet the same Rules still apply in the State of Chhattisgarh.

12. The law having been settled in the case of similarly appointed persons by the Single Bench of Madhya Pradesh High Court, affirmed by the Division Bench in Writ Appeal and SLP having been dismissed by the Supreme Court, this Court is of the considered opinion that the petitioner is also entitled for similar relief.

13. In view of the above, the writ petition stands allowed. The State Government shall consider the case of the petitioner/emergency appointee for grant of Senior Pay Scale/Selection Grade Pay Scale by treating the services rendered by her from the initial date of appointment as regular appointment for the purpose of conferring the benefit of Senior Pay Scale and Selection Grade Pay Scale.”

7. In view of the aforesaid decision that was rendered in the case of Smt. Vijayabala Lal (Supra) this Court is of the opinion that the case of the present petitioner also deserve to be given the same treatment.

8. Accordingly, it is ordered that the services of the petitioner rendered as an emergency appointee shall also be reckoned for the purpose of counting the length of service for grant of senior scale as well as selection pay scale.
9. Let the authorities concerned reconsider the claim of the petitioner for grant of senior pay scale as well as the selection pay scale counting the services rendered by the petitioner as an emergency appointee also.
10. Let this exercise be done within a period of 4 months from the date of receipt of certified copy of this order.
11. The Writ Petition accordingly stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit