IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 8th OF JANUARY, 2024

WRIT PETITION No. 68 of 2024

BETWEEN:-

1. **BASANT S/O SHRI HAJARILAL S.N., AGED ABOUT 63 YEARS, OCCUPATION: RETIRED OFFICE OF PWD. DEPARTMENT SUB DIVISION GUNA DIVISION GUNA, DISTRICT GUNA (MADHYA PRADESH)**

2. **BUNDEL SINGH S/O SHRI IMRAT SINGH, AGED ABOUT 64 YEARS, OCCUPATION: RETIRED , OFFICE OF P.W.D. DEPARTMENT SUB DIVISION GUNA DIVISION GUNA DIST. GUNA (MADHYA PRADESH)**

3. **BABU S/O SHRI HEERA, AGED ABOUT 62 YEARS, OCCUPATION: RETIRED OFFICE OF P.W.D. DEPATMENT SUB DIVISION GUNA, DIVISION GUNA DISTRICT GUNA M.P. (MADHYA PRADESH)**

4. **NARAYAN S/O SHRI MISHRILAL, AGED ABOUT 65 YEARS, OCCUPATION: RETIRED OFFICE OF P.W.D. DEPATMENT SUB DIVISION GUNA, DIVISION GUNA DISTRICT GUNA M.P. (MADHYA PRADESH)**

5. **SHEHZAD KHAN S/O SHRI BAMMAN, AGED ABOUT 67 YEARS, OCCUPATION: RETIRED OFFICE OF P.W.D. DEPATMENT SUB DIVISION GUNA, DIVISION GUNA DISTRICT GUNA M.P. (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI K.K.SHRIVASTAVA - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY PWD VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

2. **ENGINEER IN CHIEF PUBLIC WORKS**

DEPARTMENT OFFICE 27-28 NIRMAN BHAWAN ARERA HILLS BHOPAL (MADHYA PRADESH)

3. CHIEF ENGINEER (NORTH) PUBLIC WORKS DEPARTMENT GWALIOR (MADHYA PRADESH)

4. SUPERINTENDENT ENGINEER, PUBLIC WORKS DEPARTMENT DIVISION GUNA, DIST. GUNA (MADHYA PRADESH)

5. EXECUTIVE ENGINEER PUBLIC WORKS DEPARTMENT DIVISION GUNA, DIST. GUNA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI VIVEK KHEDKAR - ADDITIONAL ADVOCATE GENERAL)

This petition coming on for admission this day, the court passed the following:

ORDER

The present petition has been filed under Article 226 of the Constitution prays for the following reliefs:-

> *"(i) That, a direction may kindly be given to the respondents to give the benefit of regular/minimum pay scale of the post on which the petitioners are working and classified as permanent employees as w.e.f. 24.04.2013 and pay the difference of arrears on fixation of pay from the date of classification along with interest at the rate of 18% p.a. as per the law laid down by Hon'ble Supreme Court in the case of Ramnaresh Rawat (supra).*
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> *(ii) That, the respondents may kindly be directed to regularize the services of the petitioners and make the member of GPF;*
>
> *(iii) Cost of this petition may kindly be awarded; and*
>
> *iv) Any other relief which this Hon'ble Court deem fit in the facts and circumstances of the*

case may kindly be granted to the petitioner."

2. It is the case of the petitioners that they are appointed as daily wage employee in the respondents/Department as Labour. Petitioners submits that despite having been classified as a permanent employee under the M.P. Industrial Employment (Standing Order) Act 1961 only benefit of regular pay scale has been extended to them as per the policy dated 07.10.2016. It is submitted that they are claiming classification benefit prior to implementation of the policy. He submits that the classification order of the petitioners are still intact and has not been cancelled by the authorities at any point of time. The law in regard to the benefits flowing from an order of classification is now settled in view of the decision of Apex Court in the case of **Ram Naresh Rawat Vs. Ashwini Ray reported in 2017 (Vol 3) SCC 436**, relevant extract of which is reproduced below for convenience and ready reference:

> *"4…….. The precise submission is that once they are conferred the status of permanent employee by the court and it is also categorically held that they are entitled to regular pay attached to the said post, not only the pay should be fixed in the regular pay-scale, the petitioners would also be entitled to the increments and other emoluments attached to the said post. 18. Insofar as petitioners before us are concerned they have been classified as 'permanent'. For this reason, we advert to the core issue, which would determine the fate of these cases, viz., whether these employees can be treated as 'regular' employees in view of the aforesaid classification? In other words, with their classification as 'permanent', do they stand regularized in service?*
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> *2 6 . From the aforesaid, it follows that though a 'permanent employee' has right to receive pay in the graded pay- scale, at the same time, he would be getting only minimum of the said pay-scale with no increments. It is only the regularization in service which would entail grant of increments etc. in the pay-*

scale.

27. In view of the aforesaid, we do not find any substance in the contentions raised by the petitioners in these contempt petitions. We are conscious of the fact that in some cases, on earlier occasions, the State Government while fixing the pay scale, granted increments as well. However, if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in negative terms (See Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors.9).

28. These contempt petitions are, accordingly, dismissed.

3. Counsel for respondents is having no objection to the innocuous prayer made by the counsel for the petitioners.

4. In view of the above and considering the statement made by the counsel for the petitioners, it is directed that the petitioners will submit separate representation to the competent authority and in turn, the competent authority is directed to dwell upon the same and decide the same, subject to verification that the order of classification of the petitioners are not cancelled at any point of time, by passing a speaking order within a period of three months from the date of receipt of certified copy of this order. Arrears if any be worked out, as a necessary consequence and be paid to the petitioners within a further period of two months.

5. With the aforesaid direction, petition stands **disposed of** with no order as to the cost.

6. C.C. as per rules/directions.

(ANAND PATHAK)

JUDGE

Ashish*

ASHISH
CHAUR
ASIA