IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 2nd OF FEBRUARY, 2024

WRIT PETITION No. 2585 of 2024

BETWEEN:-

1. SMT GEETA RATHI W/O SHRI SUDHIR KUMAR RATHI, AGED-49 YEARS, OCCUPATION: SERVICE (TEACHER) R/O GOVT SHASTRI HIGH SCHOOL KODA MORENA (MADHYA PRADESH)

2. RAJKUMAR CHAUDHARI S/O SHRI MADAN LAL CHAUDHARI, AGED-49 YEARS, OCCUPATION- SERVICE (TEACHER) R/O GOVT. SHASTRI HIGH SCHOOL KODA MORENA (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI R.S. DHAKAD- ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

2. COMMISSIONER DIRECTORATE OF PUBLIC INSTRUCTION (DPI) GAUTAM NAGAR BHOPAL (MADHYA PRADESH)

3. THE CHIEF EXECUTIVE OFFICER JILA PANCHAYAT MORENA (MADHYA PRADESH)

4. DIST. EDUCATION OFFICER (DEO) MORENA (MADHYA PRADESH)

5. GOVT. SHASTRI HIGH SCHOOL MORENA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI K.S. TOMAR- GOVERNMENT ADVOCATE)

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

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following:

ORDER

The present petition has been filed seeking the following reliefs:-

> *1. That impugned order dated 12.05.2017 Annexure P/1 and there consequential order time to time passed by respondents also may kindly be quashed.*
>
> *2. That, remaining salary from date of absorption, service benefits and DA of the period from 22.03.2002 up to 31.03.2007 may kindly be directed to be paid as the regular pay as Govt. employee to the petitioners excluding the amount already paid and also directed to grant the benefit of the 7th pay-scale, kramonnati and other service benefits as applicable time to time.*
>
> *3.That, direction to grant of General Provident Fund (GPF) and gratuity with interest.*
>
> *4. That earned leave be directed to be paid at the time of retirement.*
>
> *5. Any other writ order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case be granted costs be awarded.*

The controversy involved in the present matter has already been decided by co-ordinate Bench of this Court vide order dated 4th of August, 2023 passed in W.P. No. 28660 of 2021 wherein in the light of the directions given in contempt petition no. 138 of 2012, the co-ordinate Bench has come to a conclusion that the petitioner therein is entitled for grant of consequential benefits accrued to him w.e.f. 22.03.2002 the date on which the government has taken over the institution which is also the date of absorption of the teaching staffs,

For reference the order passed on 4th of August, 2023 by the Co-ordinate Bench in W.P. No. 28660 of 2021 is reproduced herein below:-

> *This petition under Article 226 of the Constitution of India has been filed by the petitioner seeking the following reliefs:-*

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"A. To give direction to respondents to extend the benefit of absorption with effect from the date of initial appointment i.e. 01/07/1990. Or at least with effect from 22/03/2002 and grant revised regular pay scale with effect from initial appointment i.e. 01/07/1990 or at least with effect from 22/03/2002 alongwith all consequential benefits including seniority, yearly increment, krammonnati, and count period for qualifying since 01/07/1990 for pension and other retiral benefits and to grant, sanctioned and pay other benefit which has been granted to other Principal of School Education Department, without any discrimination of principal of school Education Department who were appointed/promoted as principal and Petitioner who has been absorbed and to sanction and pay all consequential monetary benefits and to pay arrears and interest upon arrears w.e.f. 01/07/1990, That Secretary of Public Welfare Department has issued an order dated 19/02/2013 by which the similar benefits has been granted to Principal of Public welfare department and Petitioner cannot be discriminated on the basis Petitioner is Principal of School Education Department.

B. It is therefore, prayed that this Hon'ble Court may kindly be pleased to call for the relevant record pertaining to case of the present petitioner.

C. To award the costs of this petition from the Respondents.

D. Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case in favour of Petitioner and against the Respondents."

2. The grievance of the petitioner is that he has not been given the benefit of absorption with effect from the date of his initial appointment i.e. 22.03.2002 and has been granted the benefit with effect from 01.04.2007.

3. Counsel for the petitioner has submitted that the petitioner is posted as Principal in the Education Department and an identical petition was filed before this Court, W.P. No.5306/2005 and in respect of the aforesaid order, a Conc. No.138/2012 was also filed in which this Court has clarified the position and it has been directed that the cut off date of absorption will be 21.03.2002. Thus, it is submitted that since the respondents have also relied upon the same order, the petitioner is liable to be given the benefit of absorption from 21.03.2002 instead of 01.04.2007.

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4. Counsel has also drawn the attention of this Court to para 8 of the reply filed by the respondents, which reads as under:-

> *''8. यह कि याचिकाकर्ता के द्वारा पी–7 पर जो आदेश पारित किया गया है, उसके सम्बन्ध में निवेदन है कि याचिकाकर्ता को संविदा प्राचार्य वेतन दिया गया है। याचिकाकर्त के द्वारा जिस विषय वस्तु पर यह याचिका प्रस्तुत की गई है। उस विषय वस्तु का निराकरण माननीय उच्च न्यायालय की ग्वालियर पीठ के द्वारा किया जा चुका है। इस सम्बन्ध में पी–8 के आदेश दिनांक 12.05. 2017 में जिन आदेशों का उल्लेख किया गया है, उनकी प्रति अनुलग्नक आर–2 पर प्रस्तुत है।''*

5. Similarly, attention of this Court is also drawn to the order passed by this Court in Conc. No.138/2012, in which this Court has held as under-

> *"1. Vide order dated 12.05.2017, which has been brought - on record by the respondents-contemnors, they have accepted that teaching and non-teaching employees of the petitioners Institutions shall be absorbed in respective local bodies in terms of the order dated 21.03.2002 issued by the State Government, This Court had earlier noted vide order dated 07.04.2017 that the cut off date of absorption will be 21.03.2002 and that has been accepted by the respondents. Therefore, all the benefits of absorption including pay fixation and revision of pay made from time to time will be applicable from 21.03.2002.*
>
> *4. Shri Vishal Mishra, learned counsel for the respondents contemnors submits that in para 4 of the order dated 12.05.2017, it is clearly mentioned that they are given appointment on contract rates in the the local bodies w.e.f. 21.03.2002. Since they have been given appointment on contract basis in the local bodies w.e.f. 21.03.2002, the date for entitlement for emoluments is inbuilt in this para 4 itself and it will be 21.03.2002 only. Therefore, this Court clarifies that even the non-teaching staff of the Schools, which have been taken over, will be entitled to contract salary as revised from time to time w.e.f. 21.03.2002 and not we.f. 2013 as has been sought to be clarified by the respondents in a very crafty manner in the last para of the impugned order that the date of payment of wages on Collector rate applicable to skilled labourers will be 21.03.2002 and the revisions made thereafter and not 2013, Shri Vishal Mishra undertakes to get this rectified within a period of 15 days from today and on such undertaking, these contempt petitions stand disposed of with the following directions:*

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1) As has been admitted by the respondents, the date of absorption of both the teaching and non-teaching staff will be 21.03.2002; and 2) Non-teaching staff will be entitled to payment of wages as are applicable to all the contract employees from time to time w.e.f. 21.03.2002 and the revisions so made thereafter."

6. Counsel for the respondents/State, on the other hand, has opposed the prayer, however, it is not denied that the order passed by the co-ordinate Bench of this Court in W.P. No.5306/2005 has not been challenged by the respondents and the order passed by this Court in Conc. No.138/2012 has been relied upon by the respondents.

7. In such circumstances, on perusal of the documents filed on record, this Court finds force in the submissions as advanced by the counsel for the petitioner and is of the opinion that the benefit of absorption ought to have been given to the petitioner with effect from 21.03.2002 as has been directed by this Court in Conc. No.138/2012.

8. Accordingly, the petition stands allowed and the order (Annexure P/8) dated 12.05.2017 is hereby quashed and the respondents are directed to grant all the consequential benefits to the petitioner accrued to him with effect from 22.03.2002, within a period of three months.

9. Needless to say, the amount which has already been paid to the petitioner shall be deducted from the amount which he is liable to receive with effect from 22.03.2002.

Petition stands disposed of."

In the light of the aforesaid view taken by co-ordinate Bench of this Court to which this Court fully agrees. Accordingly, the petition is hereby **allowed**. The respondents are directed to give all consequential benefits to the petitioners accrued to them w.e.f 22.03.2002 within a period of three months from today.

Since certain amount has already been paid to the petitioner, the same shall be deducted from the amount which he is liable to be received w.e.f. 22.03.2002.

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(MILIND RAMESH PHADKE)
JUDGE

Chandni

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