

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 30th OF NOVEMBER, 2022

WRIT PETITION NO.5575 OF 2022

Between:-

**RAM AVTAR SHARMA S/O LATE
SHRI KHOOB CHAND SHARMA,
AGED 62 YEARS, OCCUPATION –
RETIRED FROM MANDI SERVICE
R/O VILLAGE & POST
DEVPURMAFI, TEHSIL
SABALGARH, DISTRICT MORENA,
MADHYA PRADESH**

.....PETITIONER

(BY SHRI ALOK KUMAR SHARMA – ADVOCATE)

AND

- 1. MADHYA PRADESH STATE
AGRICULTURAL MARKETING
(MANDI) BOARD, THROUGH ITS
MANAGING DIRECTOR, KISAN
BHAWAN, 26, JAIL ROAD, ARERA
HILLS, BHOPAL, MADHYA
PRADESH-462011**
- 2. JOINT DIRECTOR, MADHYA
PRADESH STATE AGRICULTURAL
MARKETING (MANDI) BOARD,
DEEN DAYAL NAGAR, HOUSING
BOARD COLONY, IN FRONT OF**

**GATE NO.1, GWALIOR, MADHYA
PRADESH 474004**

**3. KRISHI UPAJ MANDI SAMITI,
VIJAYPUR, DISTRICT SHEOPUR,
THROUGH ITS SECRETARY-476337**

....RESPONDENTS

(SHRI S.P. JAIN – ADVOCATE)

This petition coming on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking following reliefs :

(i) That, this Hon'ble Court may kindly be pleased to allow this petition and the impugned order of revised pay fixation dated 28.12.2021 contained in Annexure P-1 may kindly be declared as illegal and the same may kindly be quashed.

(ii) That, Respondents may kindly be directed to correct the pay fixation of petitioner granting him annual increments from 9.8.1984 notionally and actual benefits from the award of reinstatement by Labour Court dated 9.1.1997 with all consequential benefits of Kramonnati 1st, 2nd and 3rd Time Scale benefits. Respondents may also be directed to consider the case of petitioner for promotion to the post of Mandi Inspector from the date of promotion of his immediate Junior.

(iii) That, respondents may kindly be restrained from effecting any recovery from the retiral dues of the petitioner pursuant to impugned order of revised pay fixation.

(iv) That, respondents may kindly be directed to settle the all retiral dues such as GIS, Leave Encashment, Gratuity and pension of petitioner without

any recovery at the earliest.

(v) That, interest on the unpaid retiral dues such as GIS, Leave encashment, Arrear of pension and gratuity amount @ 12% p.a. may also be awarded till the date of actual payment in terms of law laid down in 2013(1) MPLJ 53.

(vi) Any other relief, which this Hon'ble Court may deem fit and proper may also be given to the petitioner along with interest and costs.

2. It is the case of the petitioner that initially w.e.f. 9.4.1981 he was appointed in the Krishi Upaj Mandi Samiti, Sabalgarh, District Morena on daily wages on the post of Nakedar/Assistant Sub Inspector. Subsequently, selection committee appointed him on regular vacant post of Nakedar w.e.f. 9.8.1984 and the regular appointment of the petitioner was approved by the competent authority i.e. Regional Office of M.P. State Agriculture Marketing Board vide its letter dated 12.10.1984. Thus, it is clear that after 12.10.1984 the petitioner was working as a regular employee. The services of the petitioner were terminated vide order dated 21.12.1984. He challenged his termination by raising Industrial Dispute under the provisions of Industrial Disputes Act and after failure of conciliation proceedings, his case was referred to Labour Court No.1, Gwalior for adjudication. After proper service of notice by Labour Court as well as after filing of Vakalatnama by counsel for the respondent/Mandi Samiti, the Mandi Samiti did not attend the proceedings before the Labour Court and consequently, the Labour Court proceeded ex parte in the matter and by award dated 9.1.1997, declared the termination of service of petitioner as illegal and directed the respondents to reinstate the petitioner without back wages.

3. The respondent Mandi Samiti filed an application for setting aside

the ex parte award, however the said application was rejected by order dated 9.9.1999.

4. The order of Labour Court was challenged by Mandi Samiti before this Court in W.P.No.1870/1999 which was dismissed in limine by order dated 20.12.1999.

5. In the meanwhile the respondent Mandi Samiti reinstated the petitioner back in service w.e.f. 6.12.1999 and the pay of the petitioner was fixed in the pay scale of Rs.3050-4500 i.e. at the lowest without increment whereas he was entitled to the increment and fixation was to be done after fixing his pay adding all increments from 1884 onwards. The post of Assistant Sub Inspector got upgraded w.e.f. 31.12.2005 and pay scale of Rs.4000-6000 was granted and, accordingly, pay of the petitioner was revised and he was sanctioned 1st and 2nd Time Scale benefit i.e. w.e.f. 1.4.2006 as per the policy of Time Scale and the circular of Finance Department of State Government dated 23.3.2009. The petitioner was sanctioned 3rd Time Scale benefit on completion of 30 years of service w.e.f. 13.8.2014 and grade pay of Rs.4200 was sanctioned to him. However, according to the petitioner, his pay was not fixed properly in the pay band as per Table No.10 whereas there is no stage of Rs.13050 and 13570 in the pay band. It is also submitted that the counsel for respondent Mandi Samiti had given an opinion that the notional seniority and notional pay fixation by treating the petitioner on regular appointment from 9.8.1984 has been rightly done. The petitioner stood retired from service on 31.5.2021. The last pay certificate of petitioner and no dues certificates were also issued by all Mandi Samities.

6. It is submitted that after the retirement of petitioner on 31.5.2021, only GPF amount has been paid and all other retiral dues have not been paid. The petitioner made several representatives for payment of his retiral dues but instead of making the payment, the respondents have arbitrarily revised the pay fixation of the petitioner by impugned order and directed for recovery of the alleged excess payment before finalization of retiral dues. The respondent No.3 is pressurizing the petitioner to give consent for recovery from the retiral dues and is pressurizing the petitioner to sign the pension papers on the basis of pay fixation revised by the impugned order. It is further claimed that in case of delay in settlement of pension case, the respondents are obliged to sanction anticipatory/provisional pension under Rule 61 of M.P. Civil Services (Pension) Rules, 1976 but the same has not been done.

7. It is the case of the petitioner that before revised pay fixation and effecting recovery, no opportunity of hearing was provided to the petitioner and the impugned order is against the principles of natural justice.

8. It is further submitted that the word "resinstatement" carries a definite meaning i.e. to restore the original status of position which was held by the employee before his termination.

9. The respondents No.1 and 2 have filed their return and claimed that the impugned order dated 28.12.2021 passed by the Joint Director, M.P. State Agricultural Marketing Board, Gwalior is valid and in accordance with law. It is further submitted that the petitioner had an efficacious remedy of submitting representation to the Managing Director, M.P. State Agricultural Marketing Board, M.P. Bhopal but that

has not been done and the petitioner has approached this Court directly.

10. It is the stand of the respondent that undisputedly the petitioner was engaged as daily-rated employee w.e.f. 9.4.1981. However, the contention of the petitioner that subsequently he was regularly appointed w.e.f. 9.8.1984 on the vacant post of Nakerdar in the regular pay scale after his selection by the Selection Committee constituted under the Rules and Regulations in force at that point of time, cannot be accepted in view of the fact that no document has been filed. The respondents have also tried to challenge the findings given by the Labour Court by holding that the judgment was passed without commenting upon and saying anything on the illegality and propriety of order dated 21.12.1984 and without holding the said order to be illegal or void had merely directed for reinstatement of the petitioner without back wages on the ground that since the petitioner had worked from 1981 to December, 1984 for a period of more than 240 days and as such his services have been terminated in violation of provisions as contained in Section 25-F of the Industrial Disputes Act, 1947. There is no specific or clear direction in the said award to the effect that as a result of his reinstatement, the workman would be entitled to get all consequential benefits including the benefit of continuity of service or benefit of seniority or benefit of yearly increments and it was specifically held that the petitioner would not be entitled to get back wages for the intervening period during which he remained out of employment consequent upon the said order of his termination dated 21.12.1984. The petitioner was taken back in service w.e.f. 6.12.1999 on the post of Nakerdar as Assistant Sub Inspector of Mandi w.e.f. 15.06.1997 consequent upon the amendment in Section 26

of the M.P. Krishi Upaj Mandi Adhiniyam, 1972. In view of his reinstatement, the petitioner became a member of State Mandi Board w.e.f. 6.12.1999 by serving on the said post of Assistant Sub Inspector of Mandi under the direct administrative and disciplinary control of the respondent No.1/Board. It is further submitted that although the petitioner was working as a daily rated employee in the Krishi Upaj Mandi Samiti, Sabalgarh under its direct administrative and disciplinary control but the petitioner has deliberately not impleaded the Krishi Upaj Mandi Samiti, Sabalgarh as respondent. By virtue of amendment in Section 26 of M.P. Krishi Upaj Mandi Adhiniyam, 1972, all incumbents who were working on the post of Nakerdar in different Krishi Upaj Mandi Samities of the State were re-designated as Assistant Sub Inspector of Mandi and were treated to be a member of State Mandi Board serving under the direct administrative and disciplinary control of respondent No.1/Board. Resultantly, on his reinstatement w.e.f. 6.12.1999, the petitioner too became a member of State Mandi Board Service w.e.f. 6.12.1999. Accordingly, the pay of the petitioner was re-fixed in the pay scale as applicable at that point of time on his reinstatement i.e. 6.12.1999. It is denied that the seniority of the petitioner was also not fixed correctly. It is not disputed by the respondents that the pay scale applicable to the post of Assistant Sub Inspector was upgraded to Rs.4000-6000 w.e.f. 31.12.2005 and, accordingly, the pay of the petitioner was also fixed in the said upgraded pay scale of Rs.4000-6000 and, accordingly he was given the benefit of 1st and 2nd Time Pay Scale of pay w.e.f. 1.4.2006 treating him to be an appointee on the post of Assistant Sub Inspector of Mandi in the year 1984. It is submitted that

after his pay fixation was done in such a manner, the petitioner submitted undertaking to the respondent No.1/Board mentioning therein that if any mistake is found in his pay-fixation and on account of such mistaken/wrong pay-fixation, if any excess amount is paid to him, then he would repay the said amount to the Department/respondent No.1. Copies of the undertaking given by the petitioner have also been filed as Annexure R/4, R/5 and R/6. It is submitted that the petitioner was not legally entitled to get the benefit of 1st Time Pay Scale and 2nd Time Pay Scale w.e.f. the date he was granted i.e. 9.8.1984. In fact the petitioner was entitled to get the benefit of 1st Time Scale w.e.f. 6.12.2009 and thereafter the benefit of 2nd Time Scale we.f. 6.12.2019.

11. So far as the 3rd Time Pay Scale is concerned, he was not entitled to get the benefit of 3rd Time Pay Scale in view of the fact that the petitioner stood superannuated w.e.f. 31.5.2021 and upto the date of his superannuation he had not completed and rendered 30 years of his service in his Department. Thus, the earlier pay fixation was not done correctly. It is further submitted that the opinion given by a counsel to his client, is not binding on the client. The client is not suppose to act upon or not to act upon such an opinion. It is further claimed that the petitioner has not disclosed the source through which he has been able to get the copy of opinion of the counsel as contained in Annexure P/8 for the reason that the said opinion of the counsel was not addressed to the petitioner. On the date of retirement, the petitioner was working on the post of Assistant Sub Inspector of Mandi in Krishi Upaj Mandi Samiti, Vijaypur, District Sheopur and in pursuance of order dated 2.2.2020, issued by the Managing Director of respondent No.1/Board, the

petitioner was ordered to be superannuated w.e.f. 31.5.2021 issued by the Secretary, Krishi Upaj Mandi Samiti, Vijaypur, District Sheopur. After his retirement, the pension case of the petitioner was forwarded and, accordingly, it was found that the 1st, 2nd and 3rd pay scale were not properly given to the petitioner and, accordingly, pay has been refixed. The petitioner was directed to appear before the Office of Secretary, Krishi Upaj Mandi Samiti, Vijaypur, District Sheopur for finalization of his pension case but he did not appear for completing the formalities as mentioned in the letters dated 19.2.2022 and 21.3.2022. As a result no further steps could be taken by the Secretary of Krishi Upaj Mandi Samiti, Vijaypur, District Sheopur for preparation and finalization of the pension case of the petitioner in accordance with rules. Accordingly, the Secretary of respondent No.3 vide his letter dated 25.3.2022 informed the respondent No.2, Joint Director, M.P. State Agricultural Marketing Board, Gwalior along with original service book of the petitioner and complete pension case and anticipated recovery statement. Accordingly, the respondent No.2 informed the petitioner to appear in the Office of respondent No.2 for completing the requisite formalities for the purpose of preparation, settlement and finalization of his pension case. However, in response to the aforesaid letter dated 13.4.2022 (Annexure R/11), the petitioner has not appeared either in the office of respondent No.3 nor in the office of respondent No.2 for completing the requisite formalities for the purposes of preparation, settlement and finalization of his case. The result is that the pension case of the petitioner could not be finalized and settled by the respondents.

12. To buttress his contention, the counsel for the respondents have

relied upon the judgment passed by the Supreme Court in the case of **A.P. State Road Transport Corporation (A.P.S.R.T.C.) vs. Abdul Kareem** reported in **(2005) 6 SCC 36**.

13. Heard the learned counsel for the parties.

14. The Labour Court No.1, Gwalior in Case No.87/94-I.D. Act (Reference) has passed the following award:

एक पक्षीय साक्ष्य में आवेदक ने कहा है कि वह अनावेदक मंडी में नाकेदार के पद पर सेवा नियुक्त होकर कार्यरत था। वह 9.4.01 को नियुक्त किया गया था तथा उसे 9.8.84 को नाकेदार के पद पर नियमित किया गया जिसका आदेश प्रदर्श पी/1 और पुष्टि का आदेश प्रदर्श/2 एवं प्रदर्श पी/3 है। उसने यह भी कहा है कि उसे आदेश प्रदर्श पी/3 के द्वारा 21.12.84 को सेवा से पृथक कर दिया है और उसे कोई छटनी मुआवजा अथवा नोटिस या नोटिस वेतन नहीं दिया गया। आवेदक के उक्त साक्ष्य के कथन से यह स्पष्ट है कि आवेदक ने अनावेदक के यहां 1981 से दिसम्बर 84 तक 240 दिन से अधिक कार्य किया तथा उसे धारा 25-एफ.आई.डी. एक्ट के प्रावधानों का पालन किये बगैर सेवा से पृथक किया गया। इस कारण वह सेवा में पुनः स्थापित किये जाने का अधिकारी है।

परिणामतः अनावेदक को आदेशित किया जाता है वह आवेदक को पूर्ववत् सेवा में पुनः स्थापित करें। उसे पिछले वेतन की पात्रता नहीं होगी। यह अवार्ड अभिस्वीकृति हेतु संबंधित को भेजा जावे।

15. Thus the award has been passed on four grounds:

- (1) That the petitioner had worked for more than 240 days in a calendar year.
- (2) His services have been terminated without following the provisions of Section 25-F of Industrial Disputes Act, 1947.
- (3) The petitioner be reinstated in service.
- (4) He shall not be entitled for back-wages.

16. Thus, it is clear that the petitioner was reinstated in service without any back-wages. There was no observation with regard to denial of consequential relief or continuity of service.

17. Now the next question for consideration is whether there should be a specific order for continuity of service, or whether the benefit of continuity of service is inbuilt in absence of any specific denial for the same.

18. The aforesaid question is no more *res integra*.

19. The Supreme Court in the case of **Nandkishore Shravan Ahirrao vs. Kosan Industries (P) Ltd.** passed in **Civil Appeal No.201-202 of 2020** has held as under:

6 The first grievance of the learned counsel appearing on behalf of the appellant is that the High Court was in error in misconstruing the award of the Labour Court as having denied continuity of service. We find merit in the submission. The award of the Labour Court is in the following terms:

“The reference of second party Nandkishor Shravan Ahirrao, 94, Shriram Kutir, near Chikuvadi, Post Office – Fatehnagar, Udhna, Surat – 304220 – C/o. Bombay foods Ltd. and Kosan Industries Ltd., Worker/Employee Union, Surat is hereby partly allowed.

And the first party of this case is hereby ordered that, they have to reinstate the second party in service with 25% back-wages for his surplus days within 30 days from the publication of this order.”

7 *Ex facie*, the Labour Court having awarded reinstatement to the appellant, continuity of service would follow as a matter of law. The award of the Labour Court dated 27 February 2008 does not

specifically deny continuity of service. Hence the observation of the High Court to the effect that the Labour Court had denied continuity of service is erroneous and would accordingly stand corrected in terms of what has been observed herein-above. The appellant would be entitled to continuity of service.

20. Thus, it is clear that where the Labour Court has not specifically denied the benefit of continuity of service, then the same would follow as a matter of law. In the present case also there is no denial of continuity of service in specific terms. The petitioner was merely denied the benefits of backwages. Thus, it is clear that the petitioner was entitled for continuity of service upon his reinstatement.

21. Now the next question for consideration is as to what was the status of the petitioner on the date of termination of his service.

22. According to the petitioner he was initially appointed as a daily wager and thereafter by order dated 9.8.1984 he was appointed on regular basis against the regular vacant post and such regular appointment was approved by the competent authority i.e. Madhya Pradesh State Agricultural Marketing Board vide order dated 12.10.1984. The aforesaid claim made by the petitioner has been denied by the respondents. No document has been filed by the petitioner to show that his services were regularized. Even it is not clear from the order passed by the Labour Court that the services of the petitioner were ever regularized.

23. Following two situations would arise:

(1) In case of a daily wager, upon his reinstatement, his status of daily wager would continue and under these circumstances the daily wager would not get any advantage of continuity of service.

(2) Upon reinstatement of a regular employee, the regular employee would automatically get the benefit of continuity of service.

23. In the present case, initially the 1st, 2nd and 3rd time pay scale were granted by treating the petitioner to be in service from 9.8.1984.

25. The following dates are important:

On 9.4.1981 the petitioner was appointed on the post of Nakedar as daily wager.

9.8.1984 : It is the claim of the petitioner that he was regularized but has been denied by respondents.

12.10.1984: It is the claim of the petitioner that his order of regularization was approved by Madhya Pradesh State Agricultural Marketing Board but has been denied by respondents.

21.12.1984 : The services of the petitioner were terminated.

Case No.87/94-I.D. Act (Reference) was registered before Labour Court No.1, Gwalior.

The respondent Department did not appear in spite of notice and, accordingly, it was proceed ex parte.

On 9.1.1997 an ex parte award was passed for reinstatement.

An application for setting aside ex parte award was filed which was rejected by the Labour Court by order dated 9.9.1999 in Case No.12-F/99(Misc.) I.D. Act.

20.12.1999: W.P.No.1870/1999 filed by the respondent Krishi Upaj Mandi Samiti against the order dated 9.9.1999 passed by Labour Court No.2, was dismissed.

The petitioner was reinstated by order dated 6.12.1999.

The benefit of 1st, 2nd and 3rd Kramonnati were granted under an

impression that the petitioner was regularized on the post of Nakedar by order dated 9.8.1984.

By the impugned order dated 28.12.2021, the salary of the petitioner has been reassessed and the date for grant of 1st and 2nd time scale has been changed and the 3rd time scale has been denied for the reason that the petitioner has superannuated prior to completing his 30 years of service.

26. Since the petitioner was reinstated on 6.12.1999, therefore, the 1st time pay scale has been granted w.e.f. 6.12.2009 and 2nd time scale has been gained w.e.f. 6.12.2019.

27. Now the only question for consideration as to whether the first time scale was payable to the petitioner by treating the date of his regular appointment on 9.8.1984 as claimed by the petitioner or the respondents have properly granted first time scale w.e.f. 6.12.2009 after treating 6.12.1999 as a date of his regular appointment.

28. This Court has already held that the petitioner has not filed any document to show that his services were regularized on the post of Nakedar w.e.f. 9.8.1984. Neither the order of regularization has been placed on record nor the order of approval of regularization dated 12.10.1984 passed by Madhya Pradesh State Agricultural Marketing Board has been placed on record. Even the respondents have not admitted that the services of the petitioner were regularized w.e.f. 9.8.1984. Thus the following two situations were arises:

(1) Whether the petitioner was regularized w.e.f. 9.8.1984?

(2) Whether his services were not regularized w.e.f. 9.8.1984?

29. If the services of the petitioner were regularized w.e.f. 9.8.1984,

then he would be entitled for continuity of service but if the services of the petitioner were not regularized as claimed by him, then on the date of his reinstatement his status would be that of a daily wager.

30. Since the petitioner has failed to prove that his services were regularized w.e.f. 9.8.1984, therefore, it is held that on the date of his reinstatement the status of the petitioner was that of a daily wager because even in the award passed by the Labour Court there is no mention that the services of the petitioner were ever regularized. On the contrary his termination order was quashed on the ground of non-compliance of provisions of Section 25-F of Industrial Disputes Act.

31. Now the next question for consideration is as to whether the respondents have rightly granted 1st time pay scale w.e.f. 6.12.2009 or not?

32. The order of termination was quashed by Labour Court by award dated 9.1.1997 passed in Case No.87/94-I.D. Act (Reference). However, it appears that the services of the petitioner were taken back on 6.12.2009. Thus it is clear that the petitioner was not taken back in service immediately after 9.1.1997 and the respondents took approximately three years to reinstate the petitioner. Thus it is held that the respondents committed a material illegality by treating the petitioner as a regular employee w.e.f. 6.12.1999 by granting him 1st time pay scale w.e.f. 6.12.2009 whereas the petitioner should be treated in service w.e.f. 10.1.1997 and the respondents cannot take advantage of their own act of not complying the award dated 9.1.1997 passed by Labour Court No.1, Gwalior in Case No.87/94-I.D. Act (Reference). The respondents have treated the petitioner as a regular employee from the date of his

reinstatement but the said benefit should have been given to the petitioner w.e.f. 10.1.1997 which has not been done, therefore, the order dated 28.12.2021 is **set aside** with a direction to the respondents to grant the benefit of 1st time pay scale by taking his date of reinstatement as 10.1.1997 and, accordingly, 2nd time pay scale shall also be granted.

33. Since the petitioner could not complete 30 years of service and he stood retired prior to that, therefore, he has been rightly denied the third time pay scale.

34. So far as the recovery is concerned, it is the specific stand of the respondents that the petitioner had given an undertaking of refund of excess payment. Accordingly, in the light of judgment passed by Supreme Court in the case of **High Court of Punjab and Haryana vs. Jagdev Singh** reported in **(2016) 14 SCC 267** it is held that excess payment made to the petitioner can be recovered. However, as excess payment is made without there being any misrepresentation by petitioner, therefore, respondents shall not be liable to charge interest on the excess payment.

35. With aforesaid observations, the petition is finally **disposed of**.

(G.S. AHLUWALIA)
JUDGE

(alok)