

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

WRIT PETITION No. 5123 of 2012

BETWEEN:-

**SANJEEV KIRTANE S/O SHRI MADHUSUDAN KIRTANE,
AGED ABOUT 57 YEARS, OCCUPATION: LECTURER, R/O
FLAT NO. 410, RAJ PALACE, 2, ANNAPURNA MAIN ROAD
MHOW NAKA CHOURAHA INDORE (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI SUMEET SAMVATSAR-ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH THROUGH
PRINCIPAL PRINCIPAL SECRETARY
DEPARTMENT OF TECHNICAL EDUCATION AND
TRAINING, VALLABH BHAWAN, BHOPAL**
- 2. SHRI VAISHNAV SAHAYAK KAPDA MARKET
TECHNICAL EDUCATION SOCIETY THRU:
SECRETARY (MADHYA PRADESH)**
- 3. SHRI VAISHNAV POLYTECHNIC INSTITUTION
MOG LINES (MADHYA PRADESH)**
- 4. CHAIRMAN SHRI VAISHNAV POLYTECHNIC
INSTITUTION MOT LINES (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SUDARSHAN JOSHI- GOVERNMENT ADVOCATE)

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

Heard and reserved on : 12.09.2023

Order pronounced on : 29 .09.2023

ORDER

Petitioner has filed the present petition being aggrieved by the action of

the respondents whereby he has not granted the benefit of Senior Pay Scale from 1991 and Selection Grade w.e.f.1999 alongwith arrears.

2 . Vide order dated 26.11.1981, this petitioner was appointed as Assistant Lecturer on 'ad hoc' basis in the respondent No.3 institution. Thereafter, he was confirmed on the said post on 11.11.1982. Thereafter, he was made Lecturer w.e.f. 08.07.1983. According to the petitioner, he sought permission from the Chairman of the institute to join M.E. Course at S.G.S.I.T.S.. The petitioner was served with show cause notice dated 12.04.1991 alleging that he attended M.E. Course in S.G.S.I.T.S.Indore without obtaining requisite permission from the Department. The petitioner submitted reply which was found unsatisfactory, accordingly, charge sheet dated 27.05.1991 was issued. After enquiry petitioner was punished by way of penalty of withholding one increment without cumulative effect vide order dated 19.07.1993. However, the Board of Director decided to review the aforesaid punishment by reopening the case. The Board of Director proposed punishment of dismissal from service and accordingly vide order dated 22.09.1994, the petitioner was terminated from the services. Thereafter, petitioner preferred an appeal before the Appellate Authority. Vide order dated 31.07.1995, the Appellate Authority remanded matter back to the Board for reconsideration. The Board of Director affirmed its earlier order of dismissal. The petitioner again preferred an Departmental Appeal but same was dismissed vide order dated 16.08.1996.

3 . Being aggrieved by the aforesaid dismissal of appeal, the petitioner preferred Writ Petition No.1249/1996. This Court set aside the order passed by Appellate Authority vide order dated 24.04.1998 remanded the matter to the Appellate Authority but again order of dismissal was affirmed. The petitioner

again approached this Court by way of Writ Petition No.1632/2018. Vide order dated 01.03.2005, the Writ Petition was allowed, order of termination was set aside with direction to reinstate him into services. So far as back wages is concerned, this Court directed the respondents to hold enquiry and decided the amount to be paid towards the back wages.

4 . After the aforesaid order, the petitioner submitted joining on 18.05.2005 which was accepted. The respondents passed the order dated 01.06.2006 fixing the petitioner in pay scale w.e.f. 12.05.2005. After the remand, the Appellate Authority vide order dated 19.01.2006 denied the back wages on the principle of " No Work No Pay". The petitioner again approached this Court by way of Writ Petition No.6912/2006 which was dismissed vide order dated 20.10.2008.

5 . The petitioner preferred a Writ Appeal No.941/2008 against the dismissal of Writ Petition No.6912/2006. The Writ Appeal was allowed vide order dated 26.07.2011 directing the respondents to pay 25% back wages to the petitioner. This is how, the matter of termination and back wages came to be end.

6. The respondents constituted Committee for considering the cases of Lecturers for grant of benefit of Senior Pay Scale as well as Selection Grade, however, the Committee recommended the name of the petitioner for grant of Senior Pay Scale w.e.f.01.01.1991, however, the other Lecturers have been granted benefit of Senior Pay Scale as Senior Grade as per Rules, 1986 and 1996 respectively. The petitioner submitted representation claiming Senior Pay Scale w.e.f. 19.07.2008 instead of 01.01.1991. According to the petitioner as per scheme i.e. Annexure P/15 framed by the Government of Madhya Pradesh

"Manpower Planning Department for revision of Pay Scale and fixation and other measures for maintaining the standard for Government and Non Government Polytechnics". After completion of 16 years of services the Lecturers would be eligible for placement in the selection grade if they fulfill the qualification for the post of Lectures as per the Recruitment Rules, 1967. According to the petitioner, he has completed 16 years of services from the date of initial appointment, therefore, he become entitled for Selection Grade. When the aforesaid benefit was not given to the petitioner, thus he filed present petition before this Court.

7. After notice, the respondent No.1 filed reply by submitting that the petitioner was terminated from services on 22.09.1994 and thereafter in compliance of the High Court order, he was reinstated into services on 12.05.2005. The service record of the petitioner from 01.04.1989 to 31.03.1991 was considered and service record from 1994 to 2005 was not available because of termination. The petitioner was not having adequate good two CRs out of three years CRs, therefore, he was not given the benefit of Senior Pay Scale from 19.07.2008 and so also the Selection Grade.

8. The respondent No.2 has also filed reply by submitting that the Board of Directors in its 41 meeting held on 21.03.1991 was considered the case of the petitioner, since he did not work for 11 years, therefore, he was not found entitled for Senior Pay Scale and Selection Pay Scale. No interference is liable to be made in the decision of respondent and Writ Petition is liable to be dismissed.

9. The petitioner filed rejoinder by submitting that once the order of termination was set aside and he was directed to be reinstated, therefore, he is liable to be treated to be into services from the date of initial appointment

without any break. So far as adverse CRs are concerned, same were never communicated to the petitioner. The petitioner obtained the CRs under Right to Information Act, 2005. There was no proper assessment of his work and no reasons are given to write average CRs for the year 1989 to 1991, thus such adverse CRs are not liable to be considered in view of law laid down by the Apex Court in case of *Dev Dutt Vs. Union of India reported in (2008) 8 SCC 725*.

I have heard learned counsel for the parties.

10. After the order passed by this Court in Writ Petition No.6912/2006, the petitioner was reinstated into the service, therefore, he is entitled to be treated continuity into service from 08.07.1983 i.e. from the date of initial appointment. There cannot be any break into the services, once the order of termination is set aside and delinquent directed to be reinstated into the services. Had it been the case of fresh appointment after High Court's order then there could have been break in the services. Once the order of termination has been set aside, therefore, it has to be treated as it has never been passed and no break in service liable to be treated. Thus entire services of the petitioner is liable to be counted for grant of all benefits. So far as denial of Senior Pay Scale and Selection Grade is concerned, same were denied to the petitioner for want of adverse CRs. The petitioner has specifically stated that these adverse CRs were never communicated to him. These CRs were supplied to him under the Right to Information Act, 2005. There is no additional return submitted by the respondents to controvert the aforesaid fact, therefore, CRs from 1989 to 1991 are not liable to be considered to deny the benefit of Senior Scale Pay and Selection Grade. The petitioner after completion of services as per scheme is

entitled to get Senior Pay Scale from 01.01.1991 thereafter Selection Grade after completion of 16 years of service w.e.f.01.01.1999.

With the aforesaid observation, Writ Petition is allowed.

No order as to cost.

(VIVEK RUSIA)
JUDGE

Praveen

