



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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 1st OF OCTOBER, 2024

WRIT PETITION No. 9650 of 2012

***DEVENDRA KUMAR DUBEY (DECD.) THR. LRS OM PRAKASH
DUBEY***

Versus

STATE OF M.P. AND 2 ORS. AND OTHERS

Appearance:

Shri L.C. Patne, counsel for the petitioner.

Shri Apoorv Joshi appearing on behalf of A.G..

ORDER

1] This writ petition has been filed by the petitioner Devendra Kumar Dubey under Article 226 of the Constitution of India seeking the following reliefs:-

- “(a) To call for the relevant record of the case from the respondents;
- (b) To quash the impugned letters dated 05/02/2009 (Annx.P/6), 30/12/2011 (Annx.P/11), 16/04/2012 (Annx.P/14) and 08/07/2012 (Annx.P/16) issued by Respondent no.2, by a writ of certiorari or any other appropriate writ, direction or order;
- (c) To direct the respondents to sanction and make payment of annual increments to to the petitioner from 21/11/2002 onwards, to revised his pay in the pay-scale of 6th Pay Commission w.e.f. 01/01/2006 and to make payment of all arrears of pay and revised pension and other retiral benefits,



with interest on the entire amount @12% per annum till the date of retirement (interest amount to be recovered from the personal pay of Respondent no.2), by writ of Mandamus or any other appropriate writ, direction or order,

- (d) To allow this petition with cost, and;
- (e) To pass such other orders as may be deemed appropriate, to grant relief to the petitioner.”

2] During the pendency of this petition, petitioner has already passed away on 22/04/2019, and his younger brother Om Prakash Dubey has been brought on record as his legal representative.

3] The grievance of the petitioner was that he was not given the annual increment since his order of appointment dated 28/05/1986. The aforesaid claim of the petition has been refused by the respondents vide impugned order dated 08/07/2012, on the ground that the petitioner has not passed the requisite departmental examination, which he was required to pass while on probation period of two years.

4] Counsel for the petitioner has drawn the attention of this Court to the circular dated 03/06/2002, issued by the Women and Child Welfare Department which has been filed along with the rejoinder, in which, it is provided that since the department has not fixed any syllabus for the departmental examination, hence, the person who is posted in the said department is not required to pass the requisite departmental examination. The aforesaid rejoinder was filed way back on 06/05/2013, and there is no rebuttal of the same by the State Government. Although certain instructions were also obtained by the State in this regard, which have been filed by the State on 25/07/2019, according to which, as per the letter dated 20/12/2013, it has been



informed that since the petitioner has not passed the departmental examination in time i.e. within two years of his period of probation, he would not be entitled to claim the increment in pay. Hence, it is submitted that even the said instructions are of no help to the respondents, hence, the impugned orders be quashed and the petition be allowed.

5] Counsel for the State, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out.

6] Heard. On due consideration of rival submissions and on perusal of the record, it is found that so far as the appointment of the petitioner is concerned, it is not disputed that he was appointed on 28/05/1986 in the Department of Panchayat and Social Welfare, and subsequently, on 21/11/2002, he was absorbed in School Education Department. Clause-4 of his appointment order provides that the petitioner is required to pass the departmental examination in two years of his appointment. So far as the relevant para of the impugned order dated 08/07/2012 is concerned, the same reads as under:-

“अतः प्रकरण में आयुक्त राज्य शिक्षा केन्द्र (प्रौढ़ शिक्षा विभाग) भोपाल से इस कार्यालय के पत्र क्रमांक/स्था-1/2012/1894 धार दिनांक 27/06/2012 के द्वारा मार्ग दर्शन चाहा गया है। समाज कल्याण पंचायत विभाग के द्वारा वेतनवृद्धि स्वीकृत नहीं की गई है। ऐसी स्थिति में यह विभाग (कार्यालय जिला शिक्षा अधिकारी धार) उत्तरदायी नहीं है। पंचायत समाज विभाग के हस्तांतरित कर्मचारियों में आपको महिला एवं बाल विकास विभाग में भेजा ही नहीं गया है आपके आवेदन का बिन्दु क्रमांक 6 आप पर लागू नहीं होता है। उक्त प्रकरण में आपके द्वारा नियुक्ति आदेश की कण्डिका 4 अनुसार निर्धारित विभागीय परीक्षा उत्तीर्ण नहीं करने से समाज कल्याण पंचायत विभाग द्वारा वार्षिक वेतनवृद्धि स्वीकृत नहीं की गई है। इसी क्रम में इस विभाग के द्वारा आपको वार्षिक वेतन वृद्धि दी जाना संभव नहीं है।”

(emphasis supplied)



7] In contrast to the same, the relevant para of the circular dated 03/06/2002 issued by the Govt. of M.P., Women and Child Welfare Department, Bhopal filed along with the rejoinder reads as under:

“4- विभाग द्वारा नियुक्त कर्मचारियों के लिये विभाग ने विभागीय परीक्षा के लिये कोई पाठ्यक्रम निर्धारित नहीं किया गया है। अतः पंचायत एवं समाज कल्याण विभाग द्वारा निर्धारित विभागीय परीक्षा उत्तीर्ण करने के बंधन नहीं रहेगा।”

8] On perusal of the aforesaid circular, it would clearly reveal that since the department itself has not prepared any syllabus for the departmental examination, there was no occasion for the petitioner to appear in the examination which was not even conducted by the department. In such circumstances, this Court is of the considered opinion that the petitioner was not required to pass the aforesaid examination within his probation period.

9] In view of the same, impugned order dated 08/07/2012 is hereby quashed, and the respondents are directed to extend the benefit of annual increment to the petitioner from the date on which he first became entitled to the same, within a period of four months from the date of receipt of certified copy of this order. Needless to say that the arrears shall also carry the applicable bank interest.

10] Accordingly, writ petition stands *allowed and disposed of*.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

krjoshi