

HIGH COURT OF MADHYA PRADESH, BENCH INDORE

(Single Bench : Hon'ble Shri Justice Vivek Rusia)

- 1.Case No. : **Writ Petition No.11126/2013**
2.Parties name : Pareshrao s/o Laxmanrao
Jagdale
V/s
Addl. Secretary, M.P.P.K.V.V.C
Ltd. & others
3.Date of Order : 16th December, 2020.
4.Bench (SB) : Hon'ble Shri Justice Vivek Rusia.

5.Whether approved for Reporting. : Yes.

6.Name of counsels for parties : Ms.Sumanlata, learned for the petitioner.
Shri G.S.Patwardhan, learned counsel for the respondents.

7.Law laid down :

The up-gradation schemes introduced by the Government/ Employer envisage mere placement in the higher pay scale/grant of financial benefits through financial up-gradation on a personal basis. Though normal promotion norms available for consideration of an employee for promotion, would be attracted under the scheme, yet only financial up-gradation could be given, even though the duties of the employee, the designation etc. remain the same, as enjoyed by him before granting of financial up-gradation. Such up-gradation did not confer any privilege relating to the higher status and was meant for the promotional post.

The grant of the higher pay scale is only compensation to the Government employee by giving a higher pay scale because due to some compelling reasons the Government is not in a position to grant promotion to the employees. Despite getting higher pay scale which is a pay scale of the promotional post the employees substantially works on a feeder post irrespective to the fact he is getting pay of promotional post , as the case may be. He never gets the perks of and benefits attached to promotional post.

**[VIVEK RUSIA]
JUDGE**

**HIGH COURT OF MADHYA PRADESH: BENCH AT
INDORE**
SINGLE BENCH: HON'BLE SHRI JUSTICE VIVEK RUSIA

WRIT PETITION No.11126/2013

Petitioner : *Pareshrao s/o Laxmanrao
Jagdale*

Versus

Respondents : *Addl. Secretary, M.P.P.K.V.V.C
Ltd. & others*

Ms.Sumanlata, learned counsel for the petitioner.

Shri G.S.Patwardhan, learned counsel for the respondents.

Heard learned counsel for the parties through video conferencing.

ORDER

(Reserved on 10.12.2020)

(Passed on 15.12.2020)

Petitioner has filed the present petition being aggrieved by the order dated 15.05.2012 and 29.07.2013 passed by the respondents whereby his pension has been reduced by withdrawing two Higher Pay Scales .

Facts of the case are as under:

2. Petitioner was appointed as Assistant Lineman in the erstwhile M.P State Electricity Board on 20.08.1977 After bifurcation of the Board into different companies, the petitioner became the employee of M.P Paschim Kshetra Vidyut Vitaran Co. Ltd. (hereinafter referred to as 'MPPKVVCL'). After completing the age of superannuation

i.e. 60 years, he was permitted to retire from service on 31.07.2011 by the respondents. Vide order dated 13.07.2011 his pension was finalized and other benefits were also paid to him. During his service, he was given the benefit of the first and second higher time pay scales and accordingly his pensionary benefits were assessed and paid.

3. All of a sudden vide revised order dated 29.07.2013, his pension has been revised @ Rs.8870 per month w.e.f. 01.08.2011 by withdrawing first higher pay scale given w.e.f. 25.02.1997 and second higher pay scale given w.e.f. 02.05.2004. Being aggrieved by the aforesaid order, the petitioner has filed the present petition.

4. After notice, respondents have filed the return by submitting that the petitioner was appointed as a class-IV employee on 20.08.1977. As per the prevailing policy, after completing 9 years service, he was given the benefit of first up-gradation of pay scale w.e.f. 25.02.1997. Before granting such benefit, a written undertaking was obtained from the petitioner to the effect that he is ready to accept a higher pay scale applicable to the post of Asstt. Lineman which is a class-III post. Accordingly, vide order dated 02.05.2004 he was given the second higher time pay scale of Line Inspector, which is also a class-III post. As per Circular dated 03.08.1995, those who were not willing to get the promotion from class-IV to class-III would give the consent of foregoing the promotion and continue to remain into the service of class-IV employee. It is further submitted that the

retirement age of class-IV employee is 60 years and the retirement age of a class-III employee is 58 years. Since the petitioner accepted both the pay scales, therefore, he came under the cadre of class-III employee and was entitled to continue in the service up to the age of 58 years, however, since the petitioner had continued into service up to the age of 60 years as class-IV employee, therefore, he is not entitled to get the benefit of First Time and Second Time Higher Pay-scales. The petitioner gave an option on 08.09.2010 that he opted to avail the benefit of the higher pay scale, therefore, vide order dated 15.05.2012 the pay scale given to him has been withdrawn and accordingly his pension has been re-fixed on the basis of the pay scale drawn for the post of Senior Line Inspector and the impugned revised order was passed.

I have heard learned counsel for the parties at length.

5. Facts of the case are not in much dispute. The petitioner was initially appointed as class-IV employee in the year 1977. After completing 9 years of service, he became eligible to get the First Time Higher Pay Scale and after completing 25 years of service he became eligible to get the Second Time Higher Pay Scale . Both the pay scales were given to the petitioner during his entire service. The petitioner gave an option for both the pay scales. Both the pay scales are the same which are payable on regular promotional higher posts. The feeder post of the petitioner is the class-IV post and the promotion post is the class-III post.

The only issue which requires consideration in this case is whether merely getting higher pay scale as per the Circular of the State Govt. the employee becomes class-III employees or only gets the higher pay scale of the promotional post. As per the Circular dated 24.01.2008, the criteria to get the higher pay scale is the same which applies to the promotion.

6. The up-gradation schemes introduced by the State Government envisaged mere placement in the higher pay scale/grant of financial benefits through financial up-gradation on a personal basis. Emphasis had been laid upon granting of financial up-gradation. Though normal promotion norms available for consideration of an employee for promotion, would be attracted under the scheme, yet only financial up-gradation could be given, even though the duties of the employee, the designation etc. remain the same, as enjoyed by him before granting of financial up-gradation. Such up-gradation did not confer any privilege relating to the higher status and was meant to be purely personal to the employee.

7. The grant of the higher pay scale is only compensation to the Government employee by giving a higher pay scale because due to some compelling reasons the Government is not in a position to grant promotion to the employees. Despite getting higher pay scale which is a pay scale of the promotional post the employees substantially works on a feeder post irrespective to the fact that he is getting pay of promotional post, as the case may be. He never gets the

perks of and benefits attached to the promotional post. For all practical purpose, except getting the salary of the promotional post, he/she continues to enjoy the other perks of lower post. He cannot be treated in the cadre of the higher post.

8. The respondents had only compensated the petitioner by granting him two higher pay scales, but his cadre remained as class-IV post, that is why the respondents permitted him to continue in service up to the age of 60 years. Had he been treated as Asst. Lineman (Cass-III), he would have been retired at the age of 58 years, therefore, the respondents have wrongly acted upon after retirement and reduced the pension of the petitioner. After retirement reduction of pension can be done only by the Governor under Rule 9 of the M.P Pension Rules that too by way of punishment.

9. In view of the above, the respondents have wrongly reduced his pension by withdrawing the benefits of both the higher time pay scales merely because he had worked up to 60 years of age in service. There is no dispute in respect of entitlement of the petitioner in getting the benefits of two higher pay scales after completing 9 & 24 years of service. The only controversy is that after getting two higher pay scales he had worked up to the age of 60 years which is the retirement age of class-IV employees but as held above despite getting two higher time pay scales the petitioner was a class-IV employee.

10. In the result, the petition is allowed with cost of Rs.10,000/- and the impugned orders dated 15.05.2012 and 29.07.2013 are hereby quashed. The pension of the petitioner be restored and any amount recovered be paid to him forthwith. The petitioner shall be entitled to all the arrears of pension and other benefits forthwith.

