

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
W.P. No.8084/2016
Raghav Singh Chouhan Vs. State of M.P. & Ors
Indore, dated 05.12.2017

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

Smt. Swati Ukhale, learned Government Advocate for the respondent/State.

The petitioner before this Court is a retired government servant being aggrieved by the order dated 19.07.2016 passed by the respondents, by which, the respondents have directed the recovery of Rs.2,21,998/-.

The facts of the case reveal that the petitioner was appointed as Lower Division Clerk in the services of State of Madhya Pradesh under the Water Resources Department and he was not granted increments by the respondents. He came up before this Court by filing a writ petition and the same was registered as W.P. No.1208/2009(s). The learned Single Judge vide order dated 28.02.2009 has allowed the writ petition filed by the present petitioner.

The order passed by learned Single Judge dated 28.02.2009 (Annexure-P/1) reads as under:-

“Petitioner is working on the post of Assistant Grade-III in the office of Sub-Divisional Officer Water Resources Department Sub- Division Thikri, Division

Barwani. He is aggrieved by non-grant of annual increment after completion of one year of service.

Shri Agrawal, learned Counsel for the petitioner, argued that the question involved in this petition has already been considered by a learned Single Judge of this Court in case of *Dongar Singh Pawar Vs. State of M.P. & ors.* vide order dated 16.05.2006 passed in Writ Petition No.2849/2005 (s) and W.P. No.4148/2005 (s) in the case of *Smt. Nirupama Vs. State of M.P. & ors.* He submits that the learned Single Judge considered the Division Bench judgment of this Court passed in case of *State of M.P. & ors. Vs. Sushma Surana* W.P. No. 712/2000 and held that the respondents of the said petition are entitled for grant of regular increment after one year from the date of initial appointment even though they did not pass the Typing Examination.

Shri Patwa, learned Dy. GA on the other hand, submits that in view of the condition of employment of passing Hindi Typing Examination, the petitioner is not entitled for the grant of benefit of one increment after completion of one year of service.

Today when the matter came up for hearing. It has been prayed by learned Counsel for the petitioner, that this petition may be disposed of directing the respondents to consider the petitioners grievance in the light of the various decisions on the point. He submits that the petitioner shall submit a detailed representation with supporting documents before the respondents.

The prayer has not been opposed by the learned Dy. GA.

Accordingly, without commenting upon the merits and the petitioners entitlement I am inclined to dispose of this petition with liberty to the petitioner to submit a detailed representation with supporting documents before the respondents. On receipt of such representation, the respondents shall examine the same and shall take appropriate decision on it in accordance with law within a period of four months from the date of receipt of such representation.

With the aforesaid direction, the petition stands disposed of.”

The State of Madhya Pradesh being aggrieved by order passed by the learned Single Judge went in writ appeal and Division Bench of this Court by an order dated 04.02.2011 passed in W.A. No.06/2011 has dismissed the appeal preferred by the State of Madhya Pradesh. The order passed by the Division Bench dated 04.02.2011 (Annexure-P/2) reads as under:-

“This is an application seeking condonation of delay in filing this intra-Court appeal against the order dated 28.02.2009 passed by the learned Single Judge in W.P. No.1208/09(s). As per office note, appeal is barred by 602 days.

Facts in brief emerging from the record is as under. Respondent was initially engaged on daily wages on the post of Lower

Division Clerk and later on his services were regularized. One of the condition in the said regularization order was that the respondent was required to pass Hindi Typing examination within a period of two years, failing which respondent would not be entitled for any increment. On 16.01.1992 State Government issued a Circular granting exemption from passing Hindi Typing Test to those who crossed the age of 40 years. A writ petition was filed by the respondent seeking release of increment from the date of his initial appointment. Learned Single Judge disposed of the writ petition vide order dated 28.02.2009 with liberty to the petitioner to submit a detailed representation with supporting documents before the respondents and respondents were also directed to examine the same and to take an appropriate decision on it in accordance with law. It was made clear in the order that this Court did not comment upon the merits of the case.

After going through the averments made in the application for condonation of delay, we are not satisfied that petitioners have made out sufficient cause for filing this intra-Court appeal. The unusual delay of 602 days is attributed to the bureaucratic lethargy in taking a final decision to challenge the order of the learned Single Judge. According to the averments made in the application, the sanction to prefer this appeal was accorded by the Law Department on 09.11.2010 and it took more than one and half months to present this appeal in the month of January, 2011 without explaining why it took so long to present this appeal. No specific ground or

reason has been assigned in the application except making sweeping statement that the Officer-In-charge of the appeal was collecting record of the case before contacting the office of the Advocate General at Indore. In this view of the matter, we are not satisfied to show indulgence to the petitioners especially when case was not decided by the learned Single Judge on merit but it was disposed of with the consent of the Deputy Govt. Advocate directing the petitioner to submit a detailed representation with supporting documents before the respondents and respondents were also directed to examine the same and to take an appropriate decision on it in accordance with law.

In view of the foregoing, we dismiss the application for condonation of delay. As a consequence, this Intra-Court appeal is stands dismissed.”

The respondents thereafter, passed an order dated 23.07.2011 granting the benefit of increments and revision of pay scale to the petitioner, and thereafter, the respondents preferred a review petition i.e. Review Petition No.373/2016.

The review petition was filed for reviewing the basic order dated 28.02.2009 passed in W.P. No.1208/2009(S) on the ground that subsequently, a full Bench has considered the issue for grant of increments, by passing an order in W.P. No.13259/2011 (*2015 SC Online MP 7358*).

The Division Bench has dismissed the review petition by an order dated 20.02.2017 with costs and following order was passed by the Division Bench:-

“By this review petition, the review petitioner / the State of Madhya Pradesh is praying for review of order dated 28.02.2009 passed in Writ Petition No1208/2009(s).

2. This review petition has been filed on 19.12.2016.
3. As per Office Report, the review petition is barred by 2514 days.
4. In the meanwhile, Writ Appeal No.06/2011 filed by the review petitioners has been dismissed by Division Bench of this Court vide order dated 04.02.2011.
5. In view of the aforesaid, no case for review of order passed in writ petition, as prayed, is made out nor any sufficient cause is made out to condone the delay of 2514 days.
6. Accordingly, I.A. No.9771/2016, an application for condonation of delay is rejected.
7. Consequently, Review Petition No.373/2016 is dismissed, with cost of Rs.5,000/- (rupees five thousand) to be paid by the State of Madhya Pradesh to the respondent (writ petitioner).”

The respondents/State has also granted all monetary benefits to the petitioner.

Thereafter, an order of recovery has been passed and the petitioner being aggrieved by the recovery done by the respondents has approached this Court and the fact is that the

recovery proceedings have been initiated based upon some audit objection raised by Joint Director of Treasury Account and Pensions.

In the considered opinion of this Court once there is a judgment delivered in the case of petitioner by a learned Single Judge, by Division Bench and review petition has been dismissed by a Division Bench, the respondents by taking shelter of a subsequent judgment delivered by this Court cannot recover the amount in the manner and matter it is being done.

The Hon'ble Apex Court in the case of *Union of India Vs. Madras Telephone SC & ST Social Welfare Assosiation* in paragraph-21 has held as under:-

“Having regard to the above observations and clarification we have no doubt that such of the applicants whose claim to seniority and consequent promotion on the basis of the principles laid down in the Allahabad High Court's judgment in Parmanand Lal's case have been upheld or recognized by Court or Tribunal by judgment and order which have attained finality will not be adversely affected by the contrary view now taken in the judgment reported in 1997 (10) SCC 226. Since the rights of such applicants were determined in a duly constituted proceeding, which determination has attained finality, a subsequent judgment of a Court or Tribunal taking a contrary view will not

adversely affect the applicants in whose cases the orders have attained finality. We order accordingly.”

In light of the aforesaid judgment, once the benefit has already been extended to the petitioner on account of judgments delivered by learned Single Judge as well as by Division Bench and only because subsequently, the Full Bench has delivered a judgment in respect of grant of increments, the benefit which has already accrued in favour of the petitioner cannot be withdrawn

Resultantly, the present writ petition is allowed. The impugned recovery orders passed by the respondents are quashed. The respondents are directed to finalise the pension as well as other terminal dues of the petitioner within sixty days from the date of receipt of certified copy of this order, failing which, the petitioner shall be entitled for interest at the rate of 12.50% per annum from the date of entitlement till the amount actually paid to the petitioner.

Certified copy as per rules.

(S.C. Sharma)
Judge