

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

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**ON THE 7<sup>th</sup> OF DECEMBER, 2023**

**WRIT PETITION No. 7586 of 2023**

**BETWEEN:-**

**SANJIVE KUMAR NAIK S/O LATE SHRI SUBHASH CHANDRA  
NAIK, AGED ABOUT 65 YEARS, 302, ROSE BUILDING, SHALIMAR  
TOWNSHIP, A.B. ROAD, INDORE (MADHYA PRADESH)**

**.....PETITIONER**

***(PETITIONER PRESENT IN PERSON)***

**AND**

**THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY  
1. DEPARTMENT OF LABOUR MANTRALAYA, VALLABH BHAWAN,  
BHOPAL (MADHYA PRADESH)**

**PRINCIPAL SECRETARY DEPARTMENT OF FINANCE  
2. MANTRALAYA VALLABH BHAWAN BHOPAL, M.P. (MADHYA  
PRADESH)**

**3. DIRECTOR ESI SERVICES NANDA NAGAR INDORE (MADHYA  
PRADESH)**

**4. DIRECTOR DIRECTORATE OF PENSION BHOPAL (MADHYA  
PRADESH)**

**5. DIVISIONAL PENSION OFFICER ADMINISTRATIVE COMPLEX  
COLLECTORATE INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI KUSHAL GOYAL, DEPUTY ADVOCATE GENERAL)***

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

**O R D E R**

The petitioner has filed the present petition under Article 226 of the Constitution of India seeking direction to the respondents to release his full pension, gratuity, commuted pension, etc. along with interest.

02. Facts of the case in short are as under:-

2.1. The petitioner was appointed on *ad hoc* basis vide order dated 30.06.1984 in the services of Employee's State Insurance Services (ESIS) as a Doctor. Vide order dated 30.12.1990 after the completion of the probation period, a certificate regarding confirmation was issued under Rule 8(6) of the Madhya Pradesh Civil Services (General Condition of Services) Rules, 1961 for want of vacant posts. Along with the petitioner, as many as 73 doctors were declared permanent, meaning thereby, by the aforesaid order, the services of the petitioner were regularized on the post of Doctor after the completion of the probation period.

2.2. The State Government decided to grant a senior pay scale after completion of six years of service and selection grade after ten years of service to the Medical Officer of the Public Health Department. Dr. Arvind Singhal working in ESIS approached the State Administrative Tribunal by way of O.A. No.1041/1992 claiming the same benefit of senior pay-scale and selection pay-scale at par with the Medical Officers. Vide order dated 06.06.1995 learned Tribunal directed the State Government to extend the same benefit to the Medical Officer appointed in the services of ESIS.

2.3. Against the said order, the State Government preferred the

SLP which was dismissed vide order dated 12.08.1997. In compliance with the order of the learned Tribunal, the State Government vide order dated 03.05.2006 extended the benefit of senior pay-scale to as many as 204 Doctors / Medical Officers working in the ESIS. In compliance with the aforesaid order, pay fixation was done without raising any objection by the Finance Department or Treasury.

2.4. Thereafter, the petitioner was granted the benefit of pay revision after the implementation of the 5<sup>th</sup>, 6<sup>th</sup> & 7<sup>th</sup> Pay Commission. The petitioner attained the age of superannuation and retired w.e.f. 31.03.2022. After retirement, the pension case of the petitioner was submitted to respondent No.5 / Divisional Pension Officer and he objected to the inclusion of a period of *ad hoc* services for grant of senior pay scale. On such objection, respondent No.1 clarified that vide order dated 03.05.2006, the benefit of selection grade had already been granted to the petitioner in compliance with the order passed by the Tribunal, despite that the Divisional Pension Officer did not issue the pension order.

2.5. According to the petitioner, respondent No.3 again submitted an explanation vide letter dated 05.04.2022 but respondent No.5 vide letter dated 27.04.2022 reiterated the same objection. Again respondent No.3 explained in detail vide letter dated 24.08.2022. Vide letter dated 23.09.2022, respondent No.5 started dissection of the Tribunal's order as well as the order passed by the State Government and opined that before

implementing the order of the Tribunal, the consent of the Finance Department of the Government of M.P. was necessary. Again respondent No.3 informed that the petitioner had already been granted the benefit of selection grade after issuance of order dated 03.05.2006. The petitioner also sent a legal notice, but respondent No.5 remained adamant about not finalizing the pension of the petitioner. Hence, the present petition is before this Court.

03. After notice, respondents No.1 & 3 filed the reply virtually in support of the petitioner and respondents No.4 & 5 filed separate replies for opposing the relief claimed in the Writ Petition. Respondents No.1 & 3 filed the return by submitting that the Director, Pension, PF and Insurance, Bhopal vide letter dated 06.06.2023 has directed the Joint Director, Treasury & Account for reconsideration of pay fixation in light of Clause (B) 4 of the Circular dated 16.10.2019. The Insurance Medical Officer vide letter dated 13.06.2023, again examined the matter that the senior pay-scale was rightly granted to the petitioner and his pension be finalized. Again the Divisional Pension Officer directed the ESIS that for correction of the pay-scale of the petitioner in respect of counting of *ad hoc* services, the matter be sent to the Joint Director, Treasury & Account for re-examination. The ESIS vide letter dated 01.08.2023 sent the matter to the Joint Director, Treasury, Indore for approval of pay fixation. Therefore, respondents No.1 & 3 have no objection in respect of grant selection grade to the petitioner.

04. Respondents No.4 & 5 filed a reply by submitting that

respondent No.4 vide letters dated 06.06.2023 & 07.06.2023 directed respondent No.5 for re-examination of pay fixation in light of the Circular dated 16.10.2019 issued by the Finance Department. It is submitted that the order passed by the Tribunal dated 06.06.1995 is not in favor of the petitioner but is in favor of Dr. Arvind Singal and it is not a judgment in rem and it is a judgment in persona. It is further submitted that the petitioner contends that the implementation of senior scale in all the Departments of State Government is incorrect. The respondents have relied on a Circular dated 12.01.1993 issued by the General Administrative Department regarding determination of seniority of *ad hoc* employees, according to which the *ad hoc* employees can only be entitled to get annual increment for the *ad hoc* services and benefit of seniority from the date of regular appointment and not from the date of *ad hoc* appointment. According to respondent No.4, the petitioner has been granted the benefit of senior pay-scale w.e.f. 06.04.1991, however, he is not entitled for the said benefit from 06.04.1991. It is further submitted that his services are liable to be counted from the date of regular appointment which was given to him on 26.06.1987, as per the amended provision of Madhya Pradesh Employees State Insurance Service (Gazetted) Recruitment Rules, 1981. The duration of six years of service of the petitioner was completed on or after 23.05.1993, hence, he would be entitled for the benefit of selection grade after completion of six years. Therefore, the order dated 03.05.2006 granting him the senior pay scale is illegal,

erroneous, and liable to be reconsidered. Since Respondent No.3 rectified the objection raised by Respondent No.5, hence, pension cannot be fixed.

05. I have heard the petitioner is a person and learned Deputy Advocate General for the respondents / State at length and perused the record.

06. The main objection of the Divisional Pension Officer, Indore seems to be that after the order passed by the Tribunal, the State Government has decided to give selection grade after completion of six years to the Assistant Medical Officers / Doctors, but in the said order it is not mentioned that *ad hoc* services will be counted for the said benefit. According to the Divisional Pension Officer, the employees of ESIS are also entitled for senior pay-scale after completion of six years from the date of regular appointment and not from the date of *ad hoc* appointment. The petitioner was given the *ad hoc* appointment on 30.06.1984 and after completion of the probation period he was declared confirmed vide order dated 31.12.1990.

07. Dr. Arvind Singal, who approached the Tribunal joined as Assistant Surgeon in the month of July 1979 on an *ad hoc* basis and was further selected by MPPSC on 22.07.1980. The Tribunal vide order dated 06.06.1995 specifically directed the Government of M.P. to give the benefits of selection grade from retrospective effect i.e. from the date of completion of six years of service as Assistant Surgeon **including *ad hoc* appointment**. The aforesaid order was challenged by the State Government by way of Special

Leave Petition No.10868/1996 and on 12.08.1997, SLP was dismissed. Thereafter, the Labour Department, State of Madhya Pradesh issued a general order dated 03.05.2006 for grant of senior pay-scale selection grade to the Insurance Medical Officer and Assistant Surgeon, Class – II working in ESIS at par with the Medical Officers of the Department of Health. In this order, the sanction of the Finance Department vide letter dated 11.04.2020 and consent of General Administration Department vide letter 18.04.2020 are specifically mentioned / written and a copy of this letter was sent to the Principal Secretary, Finance Department. After the aforesaid order, not only the present petitioner but 204 other Medical Officers were given the benefits of the senior pay scale and selection grade from the date of their initial *ad hoc* appointment. The necessary entries were made in the service books and the then officers of the Treasury Department did not raise any objection. All the financial benefits were given to the petitioner counting his service from the date of initial appointment. Therefore, respondent No.5 is unnecessarily objecting that the petitioner's services rendered on an *ad hoc* basis are not liable to be counted and he was entitled to get all the benefits from the date of regular appointment. *Prima facie* respondent Nos. 5 & 6 have virtually committed contempt of the judgment passed by the Apex Court and the M.P. State Administrative Tribunal whereby specific directions were given to grant the senior pay-scale from the date of initial appointment including the *ad hoc* services. The relevant portion of the order

passed by the Tribunal is reproduced below:-

“12. The petitioner is therefore allowed and it is hereby ordered as under:-

The respondents should give the benefit of selection grade to the applicant from retrospective effect i.e., *from the date of completion of 6 years of service as Assistant Surgeon including ad-hoc appointment*. The applicant would further be entitled to all arrears of pay and D.A. As well as refixation of his pay. This order be carried out within a period of 4 months from today.”

[Emphasis Supplied]

08. The aforesaid order had attained finality after the dismissal of the SLP and issuance of the order dated 03.05.2006 and thereafter, the Government of M.P. had implemented it in later and spirit.

09. To justify the action, respondents No.4 & 5 are relying on the amended provisions of Madhya Pradesh Employees State Insurance Service (Gazetted) Recruitment Rules, whereby benefit of grant of senior pay-scale is to be considered only after completion of six years of service only from the date of initial appointment, however, the fact remains that before amendment, the benefit of senior pay-scale had already been granted to the petitioner, therefore, by way of amendment the said benefit cannot be taken away. This is nothing but an unsuccessful attempt to justify the illegal action of respondents No.4 & 5. These respondents also relied on Circular dated 16.10.2019 issued by the Finance Department, whereby ESIS was directed to reconsider the pay fixation of the petitioner, but the said circular has not been filed along with the return. Even otherwise, the Circular dated 16.10.2019 will not have a retrospective effect to withdraw the



benefit that had already been granted.

10. It is also important to mention here that the objection is being raised only in case of the petitioner and not in the case of all similarly placed Medical Officers who had been granted the benefit of the order dated 03.05.2006 and most of them are getting full pension. The respondents have filed a copy of Circular dated 12.05.1993 regarding determination of seniority of *ad hoc* employees. This circular is in respect of the grant of annual increment to the *ad hoc* employees from the date of regular appointment, therefore, respondents are making all efforts somehow to deny the pension of the petitioner. Hence, the action of these respondents is nothing, but contempt of the order passed by the Tribunal as well as the Apex Court. This amounts to the harassment of retired employees who had already been given the benefit of the senior pay-scale by the Department with approval and consent given by the General Administration Department and Finance Department. Respondents No.4 & 5 are unnecessarily insisting on changing the date for the grant of senior pay-scale after 13 years, that too after retirement of service.

11. Sub-rule (4) of Rule 12 of the Madhya Pradesh Civil Services (General Conditions of Service) Rules provides that *if a person is appointed on an ad hoc basis by substantially following the procedure laid down by the Recruitment Rules and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service shall be counted for seniority.*

12. Even otherwise, it is a settled law that after regularization / confirmation, the entire *ad hoc* services are liable to be counted for all purposes. Therefore, if the *ad hoc* services of the petitioner were counted, nothing wrong was done. Hence, the pension of the petitioner be paid along with interest @ 6% per annum. The petitioner is also entitled to the cost of Rs.25,000/- which shall be recovered from respondents No.4 & 5.

13. With the aforesaid, Writ Petition stands allowed.

(VIVEK RUSIA)  
J U D G E

Ravi