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

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
ON THE 5th OF FEBRUARY, 2024**

WRIT PET. (SERVICE) No. 11056 of 2004

BETWEEN:-

**SHER BAHDUR SINGH CHOUHAN S/O SHRI PHAL SINGH
CHOUHAN, AGED ABOUT 64 YEARS, RESIDING AT H.NO.
2/16/511 NEHRU NAGAR REWA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI A. J. MATTHEWS - ADVOCATE)

AND

- 1. THE STATE OF M.P. THROUGH SECRETARY
DEPARTMENT OF COMMERCIAL TAXES
VALLABH BHAWAN, BHOPAL (MADHYA
PRADESH)**
- 2. SECRETARY DEPARTMENT OF FINANCE
VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
- 3. COMMISSIONER COMMERCIAL TAXES VALLABH
BHAWAN, BHOPAL (MADHYA PRADESH)**
- 4. SALEX TAX OFFICER REWA (MADHYA PRADESH)**
- 5. JOINT DIRECTOR TREASURY AND ACCOUNTS
REWA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SHIV KUMAR SHRIVASTAVA - GOVERNMENT ADVOCATE)
.....

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

ORDER

This writ petition is filed claiming relief that notesheet dated 12/11/2003
Annexure P-6 and letter dated 3/03/2004 Annexure P-8 be quashed by a writ in

the nature of certiorari and respondents be restrained from reducing pension of the petitioner.

Brief facts leading to the present case are that petitioner was appointed as a 'Craft Teacher' vide order dated 10/08/1966 and in pursuance thereof, he had joined at Kawardha on 12/08/1966 vide Annexure P-1. The order of appointment as a 'Craft Teacher' was issued by the office of Divisional Superintendent of Education, Raipur Division, Raipur.

The pay scale in which petitioner was appointed as a 'Craft Teacher' was Rs. 150-5-160-6-190 ER-6-220-10-240-ER-12,290/- per month with usual Dearness Allowance as per sanctioned by the State Government from time to time. He was posted at Government Boys Higher Secondary School, Kawardha, District Durg. This order of appointment is available on record as Annexure P-1. Petitioner later on applied for the post of Sales Tax Inspector and on being selected had joined the post in pursuance to the appointment order dated 22nd January, 1974 Annexure P-2 whereby he was appointed as Sales Tax Inspector in the pay scale of Rs. 246-6-270-10-350-EV-12-400-20-460. Consequent to petitioner's appointment as Sales Tax Inspector Annexure P-2, he had joined his services. Vide Annexure P-3, he was permitted to count his past services in the School Education Department from 12/08/1966 to 31/01/1974 in terms of Finance Department circular dated 26/09/1972.

It was also ordered that consequent to adding of the past services in the School Education Department, his pay protection will be in terms of the provisions contained in Fundamental Rule 22-A. Since, petitioner was earlier working as a 'Crafts Teacher' in the pay scale of Rs. 246-460, his pay was protected and his pay was fixed as on 1/02/1974 at Rs. 310/-.

It is also not in dispute that petitioner whose pay was subsequently

revised in the pay scale of Rs. 4400-125-7000 on completion of 12 years of service was given benefit of Kramonati in the pay scale of Rs. 5,000-150-8,000/- and pay was fixed at Rs. 7,250/-.

Vide order Annexure P-4, the Joint Director, Treasury, Accounts and Pension, Rewa Division Rewa had informed the Commercial Tax Officer, Rewa Circle that benefit of F.R.-22 is available to a permanent employee and if an employee is permanent on the earlier post, then benefit of pay protection was available otherwise not. Thereafter, it has come on record that petitioner had moved an application to the Human Rights Commission as contained in Annexure P-5 where Human Rights Commission has given some directions on 25/10/2002. Vide Annexure P-6, it has come on record that notesheet was drawn to the effect that petitioner was not permanent on the post of 'Craft Teacher' and, therefore, the objection which was taken by the Joint Director, Treasury and Accounts, Rewa was termed to be legal and this notesheet was approved by the Secretary, Finance Department.

Consequently, vide order Annexure P-7 Commissioner, Commercial Tax, Madhya Pradesh had informed that in the case of similarly situated employees namely Shri Ramgopal Joshi Assistant Commercial Tax Officer and Shri Jagannath Khandekar the then Commercial Tax Inspector and at present Assistant Commercial Tax Officer, K.L. Pardesi retired Assistant Commercial Tax Officer, State Administrative Tribunal had taken a decision treating them to be quasi permanent and had given them a benefit of pay protection on the basis of they having put in three years of service. It is also submitted that in the case of K.L. Pardesi, even the High Court has shown indulgence.

Thereafter, Commissioner, Commercial Tax informed the Registrar

(Human Rights Commission) Bhopal that the decision of the State Administrative Tribunal was in *Personam* and not in *Rem* and, therefore, the objection taken by the Joint Director, Treasury and Accounts, Rewa is to be accepted and a proposal was forwarded to the State Government to treat the petitioner as a quasi permanent 'Craft Teacher' and extend him the benefit of pay protection. Thereafter, the State Government noted that it cannot extend the benefit of quasi permanency to the petitioner and rejected its proposal. Hence this petition.

The State Government had filed its return and along with the return, it is mentioned that petitioner retired from the post of Sales Tax Inspector in the year 2000. In terms of the objection of the Joint Director, Treasury and Accounts and in terms of GAD circular dated 9th December, 1974 which provides that a Government servant is to be appointed on probation and on completion of the probation if permanent post is not available, then a certificate be issued that as and when permanent post be available, he will be declared to be permanent. It is also provided that how pay will be fixed on his permanent appointment.

After perusing the record and going through the provisions contained in the relevant rules/statutes, Rule 3 of the Madhya Pradesh Civil Servants (Temporary & Quasi-Permanent Service) Rules 1960 provides that " A Government servant shall be deemed to be in quasi- permanent service (i). If he has been in temporary service in same service or post continuously for more than three years : and (ii). if the appointing authority being satisfied as to his suitability in respect of age, qualifications, work and character for employment in a quasi-permanent capacity, has issued a declaration to that effect in accordance with such instructions as the Governor may issue from time to

time."

Petitioner's appointment as a 'Crafts Teacher' was made in a temporary capacity on 10th August, 1966. Petitioner had completed three years of service as a 'Crafts Teacher' on 10th August, 1969. He resigned from service of School Education Department as a 'Crafts Teacher' in January 1974. By that time, he had already put in eight years of service. Therefore, it is evident that he had attained the status of quasi-permanent employee.

When this aspect is examined in the light of the provisions contained in Fundamental Rule 22, then Fundamental Rule 22-A provides that how initial substantive pay of the Government servant who is appointed substantively on the post on the time scale of pay is to be regulated.

Fundamental Rule 22-A (a) (ii) provides that when appointment to a new post does not evolve such assumption, he will draw as initial pay, the stage of the time scale which is equal to his substantive pay in respect of the old post, or if there is no such stage, the stage next below that pay plus personal pay equal to the difference, and in either case will continue to draw that pay until such time, he would have receive an increment in the time scale of the old post or for the period after which an increment is earned in the time scale of the new post whichever is less, but if the minimum pay of the time scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay".

Fundamental Rule 22-A (b) (2) reads as under :-

is appointed substantively "to a tenure post on the time scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated, then the initial pay shall not be less than the

pay other than the special pay, personal pay or emoluments classed as pay by the Governor General in council under Fundamental Rule 9 (21) (a) (III) which he drew on the last such occasion and he shall count the period during which he drew that pay on such last and in the previous occasions.

It is further provided below the aforesaid provision that "If, however the pay last drawn by the Government servant in a temporary post has been inflated by the grant of premature increments, the pay which he would have drawn but for grant of those increments, shall unless otherwise ordered by the authority competent to create the new post, be taken for the purpose of this proviso to be the pay which he last drew in the temporary post.

Thus, reading in conjunction of the provisions contained in Rule III of the Madhya Pradesh Civil Servants (Temporary and Quasi-Permanent Service) Rules, 1960 leads no iota of doubt that petitioner had attained quasi-permanent status by way of putting more than three years of service in a temporary post before joining on the post of Commercial Tax Inspector in the Commercial Tax Department. His pay was required to be fixed in terms of Fundamental Rule 22-A and when the provisions of Fundamental Rule 22-A as enumerated above are taken into consideration, then looking to the fact that both the posts of Craft Teacher and that of Commercial Tax Inspector were in the same pay scale as is evident from Annexure P-3 i.e. in the pay scale of Rs. 246-460/-. Therefore, his initial pay in the Commercial Tax Department should not be less than the pay other than special pay, personal pay or emoluments which he drew on the last such occasion and he was entitled to count for increments the period during which he drew that pay on the last previous occasions. Therefore, the authorities were not justified in refusing the petitioner to give the benefit of pay protection and withdrawing it unilaterally on the eve of his superannuation.

It will not be out of place to mention that the Commissioner, Commercial Tax had clearly sent a note to the Secretary of the Department to treat the earlier services of the petitioner as quasi permanent and that was since approved, there was no justification by the department of Finance especially overlooking the judgment of the State Administrative Tribunal and the High Court in the case of K.L. Pardesi treating it to be a judgment in *Personam* and not in *Rem*.

Therefore, the impugned decision to withdraw the benefit of pay fixation is hereby quashed. Respondents are directed to extend the benefit of pay fixation along with arrears, if any, and also revise the pension and family pension of the employee who is now deceased.

This kind of treatment in the hands of the Government authorities cannot be given a seal of approval especially when it is not justified and is violative of Article 14 of the Constitution.

In view of such facts, since the decision of the State Administrative Tribunal in the case of K.L. Pardesi is fully applicable to the facts and circumstances of the present case, all the dues of the petitioner be cleared within a period of thirty days from the date of receipt of certified copy of this order.

In above terms, the petition is allowed and disposed of.

The State Government will also bear the cost of this litigation which is quantified at Rs. 10,000/- which will be payable to the widow/legal heirs of the petitioner.

(VIVEK AGARWAL)
JUDGE

