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

**BEFORE
JUSTICE SUJOY PAUL
ON THE 4th OF SEPTEMBER, 2023**

WRIT PETITION No. 3669 of 2016

BETWEEN:-

1. **SANTOSH GANDHI S/O LATE SHRI N.M. GANDHI, AGED ABOUT 59 YEARS, R/O E-116/2 SHIVAJI NAGAR, BHOPAL (MADHYA PRADESH)**
2. **INDRAJEET JAIN S/O SHRI BABULAL JAIN, AGED ABOUT 57 YEARS, R/O E-7/4, CHAR IMLI, BHOPAL (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI SANJAY K. AGRAWAL - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH, THROUGH THE PRINCIPAL SECRETARY, DEPARTMENT OF COMMERCIAL TAXES, GOVERNMENT OF M.P., VALLABH BHAWAN MANTRALAYA, BHOPAL (MADHYA PRADESH)**
2. **INSPECTOR GENERAL OF REGISTRATION AND STAMPS, GOVERNMENT OF M. P., 35-A PANJIYAN BHAWAN ARERA HILLS, BHOPAL (MADHYA PRADESH)**
3. **COMMISSIONER, TREASURY AND ACCOUNTS, GOVT. OF M.P., BLOCK-A, 5TH FLOOR PARYAVAS BHAWAN BHOPAL (MADHYA PRADESH)**
4. **TREASURY OFFICER, GOVT. OF M.P. VALLABHA BHAWAN, BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI RITWIK PARASHAR - GOVERNMENT ADVOCATE)

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

ORDER

Heard.

2. In this petition filed under Article 226 of the Constitution of India, the challenge is mounted to the order dated 04.02.2016 (Annexure P/6) whereby respondent No.3 opined that the petitioners were not entitled to get the revised pay scale of Rs.37400-67000/- Rs.8700/- G.P. Consequently, the direction was issued to recover the said amount by informing the Directorate.

3. Shri Sanjay K. Agrawal, learned counsel for the petitioners submits that petitioners were initially appointed on the post of Joint Inspector General of Registration in the Commercial Tax Department. The petitioners were promoted as Deputy Inspector General (DIG) of Registration in the scale of Rs.3000-4500/- (revised as Rs.15600-39100/- Rs.6600/- G.P. as per 6th pay commission).

4. Pursuant to recommendations of Brahma Swaroop Committee, the pay scale of DIG was revised to Rs.3700-5000/- (Rs.15600-39100/- Rs.7600/- G.P.).

5. Shri Sanjay K. Agrawal submits that relevant Recruitment Rules namely M.P. Registration and Stamp Executive (Gazetted) Service Recruitment Rules, 2007 (Recruitment Rules) were amended and in Scheduled-I the pay scale of Joint Inspector General of Registration was revised as Rs.12000-375-16500/-. Emphasis is laid on order of Commercial Tax Department dated 05.11.2012 (Annexure P/4) which shows that the pay scale of Rs.15600-39100/- Rs.7600/- G.P. was revised as Rs.37400-67000/- Rs.8700/- G.P. pursuant to an approval given by the Finance Department on 17.10.2012.

6. The said Recruitment Rules were again amended in consonance with order date 05.11.2012 by an amendment published in M.P. Gazette on

24.12.2013 (Annexure P/5). The pay scale of Joint Inspector General of Registration stood revised as Rs.37400-67000/- Rs.8700/- G.P.

7. Shri Sanjay K. Agrawal, learned counsel for the petitioners submits that petitioners were promoted pursuant to the recommendation of Departmental Promotion Committee (DPC) and accordingly, received the revised pay-scale of Rs.37400-67000 8700 (GP). The respondent No.3 passed the impugned order dated 04/02/2016 (Annexure P/6) whereby opined that for three reasons, the grant of said pay scale is bad in law, namely (i) the Department granted the said pay scale without recommendation of Council of Ministers; (ii) the Recruitment Rules have not been amended; and (iii) DPC has not recommended in favour of said employees.

8. By taking this Court to the Rules of Business, Government of Madhya Pradesh, it is submitted that as per said Rules, it was not obligatory for the Department to place the matter before the Council of Ministers because necessary requirement of Rule 7 of Part-I and Rule (xiv) of Part-II was not fulfilled. *Secondly*, the Recruitment Rules were indeed amended and petitioners were given the benefit after the recommendations of DPC which is evident from the proceedings filed along with the return (Annexure R/2). Thus, all the three reasons assigned in the order are bad in law.

9. Shri Ritwik Parashar, learned Government Advocate opposed the prayer on the basis of reply filed.

10. Parties confined their arguments to the extent indicated above.

11. I have heard the parties at length and perused the record.

12. A careful reading of impugned order dated 04/02/2016 shows that the argument of Shri Agrawal, learned counsel for the petitioners has substance and the impugned order is based on three reasons.

13. *Firstly*, a conjoint reading of Rule 7 of Part-I of the said Rules leaves no room for any doubt that only such matters are required to be brought before the Council of Ministers which contained special directions of (i) the Chief Minister; (ii) the Minister-in-charge of the case with the consent of the Chief Minister, or (iii) the Governor under Article 167(c). Likewise, Rule (xiv) of Part-II shows that service rules and their amendments are required to be placed before the Council when the General Administration Department (GAD) has not agreed to such rule or amendment and the concerned Department deems it necessary to submit such cases before the Council.

14. In Para-5.16 of the writ petition, the petitioners have categorically pleaded that 'Department of General Administrative was consulted and approval of Finance Department was also obtained'. There is no rebuttal in the reply to these averments. **In Naseem Bano (Smt) vs State of U.P., 1993 Supp (4) SCC 46**, the Apex Court categorically held that if a pleading is not specifically denied, it can be treated to be admitted. Thus, first reason assigned in the impugned order cannot be permitted to stand. There was no reason to place the matter before Council of Ministers.

15. The matter may be viewed from another angle. Once statutory rules became part of statute book on its publication in the Official Gazette, it is no more open to any Administrative Officer to not to follow it by questioning the process by which rules came into being. The first reason aforesaid assigned in the impugned order shows as if it was within the province of respondent No.3 to examine the constitutionality/vires of the rules by commenting on rule making process. The law is well settled that if the rules are in vogue and constitutional validity of the same are not called in question, even Courts are required to take

decision in consonance with the said rules. Respondent No.3 does not have higher power than that. For this reason also, the impugned order cannot sustain judicial scrutiny [See: **Molar Mal v. Kay Iron Works (P) Ltd., (2000) 4 SCC 285** and **Anand Sharadchandra Oka v. University of Mumbai, (2008) 5 SCC 217**].

16. The second and third reasons in the impugned order are relating to amendment of the Recruitment Rules and convening the DPC for granting the said benefits. As noticed above, which fact remained undisputed, the Recruitment Rules were indeed amended on 24/12/2013 (Annexure P/5). Likewise, Annexure R/2 dated 11/09/2007 shows that the benefits were granted to the petitioners pursuant to a recommendation of DPC. Thus, all the three reasons on which edifice of the impugned order dated 04/02/2016 rests is collapsed. In other words, all the three reasons assigned for passing the impugned order are factually incorrect and legally impermissible. Resultantly, the impugned order dated 04/02/2016 is set aside. The petitioners are entitled to get all consequential benefits.

17. The Writ Petition is **allowed**.

(SUJOY PAUL)
JUDGE

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