IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 8th OF DECEMBER, 2023

WRIT PETITION No. 9522 of 2022

BETWEEN:-

RAMBALI KORI S/O SHRI JAYPAL KORI, AGED ABOUT 64 YEARS, OCCUPATION: RETIRED AS HEAD MASTER SANKUL GOVT. PUSHPRAJ BOYS HIGHER SECONDARY SCHOOL, GOVINDGARH, DISTT. REWA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI RAHUL MISHRA - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY FINANCE DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **THE COMMISSIONER TREASURY AND ACCOUNTS PARYAWAS BHAWAN, 5TH FLOOR, ARERA HILLS, BHOPAL, (MADHYA PRADESH)**

3. **THE JOINT DIRECTOR TREASURY AND ACCOUNTS REWA DIVISION, DISTT. REWA (MP) (MADHYA PRADESH)**

4. **THE DISTRICT EDUCATION OFFICER SHILPI PLAZA, A BLOCK, REWA, DISTRICT REWA, (MADHYA PRADESH)**

5. **SANKUL PRINCIPAL GOVT. PUSHPRAJ BOYS HIGHER SECONDARY SCHOOL, GOVINDGARH DISTT. REWA, (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI VIKARAM CHOUDHARY - PANEL LAWYER)

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

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ORDER

With the consent of parties, the matter is heard finally.

2. By the present petition, the petitioner was retired on the post of Head Master who has been denied the benefit of FR-22D on account of his promotion from the post of Assistant Teacher to Upper Division Teacher.

3. It appears that on 08.11.2021, Principal Government Higher Secondary School, Govindgarh District Rewa has issued a letter to the petitioner on the basis of the order issued by the Divisional Joint Director, Treasury and Accounts, Rewa Division, Rewa, wherein it was mentioned that the petitioner is not entitled for the benefit of the Fundamental Rule, FR-22D.

4. The petitioner has pointed out that the said letter has been issued in contravention of the circular F7-06/07 dated 08.01.2008, in according to the said circular, the petitioner is entitled for the benefit of FR-22D.

5. Learned counsel for the petitioner heavily relief upon the order passed by the Co-ordinate Bench in the matter of **Asha Bajpai Vs. State of M.P. and others** reported in **2015(3) M.P.L.J. 169** wherein the Co-ordinate Bench after considering the provisions of FR 22-D has opined that FR 22-A (II) makes it clear that it is applicable to such appointments where new post does not involve assumption of higher/greater responsibility whereas FR 22-D (I) makes it clear that it is applicable to a post which carries duties and responsibilities of greater importance.

6. It is not in dispute that the promotional post of Head Master carries greater responsibility for the feeder post of UDT.

7. It is further held by the Co-ordinate Bench that case of the petitioner falls within the ambit of FR 22-D(I) and under FR -22 A(II) and therefore, the petitioner therein is entitled to get the benefit of the FR 22 -D. The relevant

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paragraphs of the said order reads as under:-

"8. It cannot be doubted that promotional post of Headmistress carries duties and responsibilities of greater nature. Admittedly, petitioner was getting same pay scale because of her financial upgradation w.e.f. 1986. In other words, the petitioner was in the pay scale 1640-2900 before her promotion on the post of Headmistress which also carries the same scale. In R.S.Sikarwar (supra), this Court considered this aspect. The same circular dated 25.5.1998 was also taken note of in para 2 of the said judgment. After considering FR 22-D and FR 22-A, this Court opined that the Government servant would be entitled to get his pay fixed in accordance with FR 22-D(i) of the Rules. A plain reading of this judgment makes it clear that this Court has taken note of the fact that promotion was made to a post which carried the same pay scale which employee was already gettingpursuant to grant of Kramonnati benefits. The judgment of R.S.Sikarwar (supra) is based on the judgment of Kunti Saxena vs. State of MP. In the said case, it was held that whenever an employee is promoted to discharge the functions of higher post with greater responsibility, even if the pay scale of feeder cadre and promotional post is identical, the employee has to be paid the benefit of FR 22-D. This Court in Ram Siya Sharma (supra) considered the purpose of grant of financial upgradation under Kramonnati Yojna and the purpose of grant of FR 22-D. This Court opined as under in para 6:-

"6. The reasons for grant of Krammonati and F.R. 22-D are different. It has no co-relation with each other. It is settled in law that

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benefit of Krammonati or financial up-gradation is granted when employee is not getting promotion for a considerable long time/stipulated period. To avoid the stagnation, he is being granted financial up-gradation which does not involve any change of nature of duties and responsibilities. In other words, upon grant of Krammonati, the employee performs same nature of duties with same designation, but gets higher scale of pay, whereas F.R. 22-D is given when employee is promoted from one post to another carrying same pay scale but having greater responsibilities and duties. Petitioner's specific assertion that the post of Head Master is carrying greater responsibilities and duties is not disputed by the other side. Thus, F.R. 22-D is clearly applicable. This Court in R.S.Sikarwar (supra) has also considered the same and decided to extend the benefit to the petitioner. Consequently, the stand of the respondents that F.R. 22-D is not applicable because of grant of financial up-gradation is without any basis and substance. No provision is shown to this Court which deprives the benefit of F.R. 22-D to the petitioner on grant of financial up- gradation. Consequently, the recovery arising out of taking away the benefit of F.R. 22-D is also impermissible."

9. In the light of aforesaid judgments, in my view, the petitioner is entitled to get the benefit of FR 22-D on the pay scale of 1640-2900.

10. The matter may be viewed from another angle. FR 22-A (ii) makes it clear that it is applicable to such appointments where new post does not involve assumption of higher/greater

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responsibility whereas FR 22-D (I) makes it clear that it is applicable to a post which carries duties and responsibilities of greater importance. At the cost of repetition, it may be noted that the promotional post of Headmistress carries greater responsibility qua the feeder post of UDT. Thus, petitioner's case falls within the ambit of FR 22-D(i) and not under FR 22-A(ii). Thus the formula devised by the respondents and reproduced in para 6 of this order has no application. Once the petitioner's case is not covered under FR 22-A (ii), the question of comparing the benefits and granting one benefit does not arise. Putting it differently, FR 22-D(i) begins with non obstente clause. It has an overriding effect on other provisions of Fundamental Rules. Thus, once FR 22-D (I) becomes applicable, it automatically makes the other provision inapplicable in this regard. Thus, the contention of department and ground based on FR 22-A(ii) pales into insignificance. It is noteworthy that when FR came into being, Kramonnati Yojna was not applicable. Thus, intention of law makers was to give benefit on the last pay scale enjoyed by the employee. Accordingly, the petitioner is entitled to get benefit under FR 22-D on the pay scale of Rs.1640-2900.

11. For this reason, the action of respondents is declared as illegal. The respondents are directed to grant benefits of FR 22-D to the petitioner in the pay scale of Rs. 1640-2900. The said exercise be completed within 90 days from the date of production of copy of this order. The petitioner shall get the difference of the amount with 12 per cent interest on delayed payment. In addition, the petitioner shall get Rs.5000/- as cost for compelling her to file this avoidable

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litigation."

9. Per contra, the learned Panel Lawyer appearing on behalf of the respondent Nos. 1 to 4/State supported the order passed by the Divisional Joint Director, Treasury and Accounts, Rewa Division Reawa on 29.10.2021 and the communication dated 08.11.2021 and submitted that the same have been issued in accordance with the circular No.F1-5/2007/Niyam/04 dated 09.04.2002 issued by the Finance Department and therefore, the petition is liable to be dismissed.

10. After hearing the parties and in view of the judgment passed by the Co-ordinate Bench in the matter of Asha Bajpai (supra) as well as the order passed by the Division Bench in W.P. No.1104/2001 **(State of M.P. Vs. Dayaram Patidar)** decided on 04.10.2002, I deem it proper to allow the petition preferred by the petitioner and the order passed by the Director Treasury and Accounts, Rewa Division Rewa, District Rewa dated 29.10.2021 and communication issued by the respondent No.5 Sankul Principal, Government Pushpraj Boys Higher Secondary School, Govindgarh District Rewa are hereby quashed and the petitioner is found eligible for the benefit of FR 22-D.

11. The benefit of the same be extended to the petitioner within a period of six months from the submission of the copy of this order, other wise the respondents shall be liable to pay the interest at the rate of 6% per annum.

12. With aforesaid, the present petition is allowed.

13. No order as to cost

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(VINAY SARAF)
JUDGE

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