IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 7th OF NOVEMBER, 2023

WRIT PETITION No. 19282 of 2019

BETWEEN:-

1. **JOSEPH VARGHESE S/O LATE KURIEN VARGHESE, AGED ABOUT 58 YEARS, OCCUPATION: HAND PUMP MECHANIC R/O DX/E - 44 OLD MIND RESIDENCY, J.K. ROAD, GOVINDPURA, BHOPAL (M.P.) (MADHYA PRADESH)**

2. **MUJEEB AHMED (DIED) THROUGH LRS. SMT. KISHWAR JAHAN W/O LATE SHRI MUJEEB AHMED, AGED ABOUT 50 YEARS, OCCUPATION: HOUSEWIFE 9/1 CHAMARPURA (CHATAIPURA) BUDWARA HUZUR BHOPAL (MADHYA PRADESH)**

3. **SAAD AHMED S/O LATE MUJEEB AHMED, AGED ABOUT 25 YEARS, OCCUPATION: SERVICE 9/1 CHAMARPURA (CHATAIPURA) BUDWARA HUZUR BHOPAL (MADHYA PRADESH)**

4. **MUNEER AHMED S/O LATE SHRI MUJEEB AHMED, AGED ABOUT 18 YEARS, OCCUPATION: STUDENT 9/1 CHAMARPURA (CHATAIPURA) BUDWARA HUZUR BHOPAL (MADHYA PRADESH) (Above LRs of the deceased - Mujeeb Ahmad were brought on record vide Court order dated 31-08-2023)**

5. **RAGHUNATHSINGH S/O BHIKAMSINGH THAKUR, AGED ABOUT 57 YEARS, OCCUPATION: HAND PUMP MECHANIC A-19 ROHIT NAGAR BAIRASIA BHOPAL (MADHYA PRADESH)**

6. **RAMKRISHNA S/O HALKAIPRASAD NAMDEV, AGED ABOUT 59 YEARS, OCCUPATION: HAND PUMP MECHANIC R/O 139, PRIYADARSHINI NAGAR T.T. NAGAR BHOPAL (MADHYA PRADESH)**

7. **NAGESHWAR PRASAD S/O RAMKUMAR PRASAD SHARMA, AGED ABOUT 55 YEARS, OCCUPATION: HAND PUMP MECHANIC 739 NORTH T.T. NAGAR BANGANGA BHOPAL (MADHYA PRADESH)**

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8. RAJENDRA PRASAD S/O SHIVMANGAL SINGH YADAV, AGED ABOUT 58 YEARS, OCCUPATION: HAND PUMP MECHANIC VILLAGE POST RUHANA TEHSIL BERASIA DISTRICT BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI KAMAL KISHORE KAUSHAL AND SHRI ABHAY GUPTA - ADVOCATES)

AND

1. THE STATE OF MADHYA PRADESH THR. ITS SECRETARY PUBLIC HEALTH ENGINEERING DEPTT. VALLABH BHAWAN BHOPAL (M.P.) (MADHYA PRADESH)

2. THE ENGINEER IN CHIEF PUBLIC HEALTH ENGINEERING DEPARTMENT R/O JAL BHAWAN, BANGANGA BHOPAL (MADHYA PRADESH)

3. THE CHIEF ENGINEER PUBLIC HEALTH ENGINEERING DEPARTMENT SATPURA BHAWAN, BHOPAL (MADHYA PRADESH)

4. THE EXECUTIVE ENGINEER PUBLIC HEALTH ENGINEERING DEPARTMENT DIVISION BHOPAL DIVISIONAL OFFICE, MATA MANDIR CHOURAHA, BHOPAL (MADHYA PRADESH)

5. THE JOINT DIRECTOR TREASURY AND ACCOUNTS DEPARTMENT (FINANCE DEPARTMENT) SATPURA BHAWAN BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SANJEEV KUMAR SINGH - PANEL LAWYER)

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

ORDER

This is a petition filed by the petitioners while praying for the following reliefs :

"(a) That, the disputed order Annexure-P/4 and P/5

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may kindly be quashed and the respondents be directed to grant the petitioners their salary as pay scale of Rs.975-1650 revised Rs.1150-1800 p.m. it is further revised 3500-5200 p.m. from the date of their intially appointment as Hand Pump Mechanics.

(b) That, same as total arrears of pay scale, allowance, other benefits from the date of their appointments.

(c) Any other relief which this Hon'ble Court deems fit in the interest of justice may also be awarded in favour of the petitioners."

2. The facts as detailed in the writ petition, reveal that the petitioners herein, were initially appointed as daily-rated employees in the Public Health Engineering Department. Thereafter, the petitioners were posted as Hand Pump Mechanics in the Work-charged Establishment by the orders which are contained in Anenxure-P/1. The petitioners were granted the pay-scale of Rs.975-1650 and its revised scale i.e. Rs.1150-1800, and thereafter further revised pay-scale of Rs.3500-5200. The petitioners were drawing regular pay-scale of Rs.975-1650 (revised pay-scale Rs.1150-1800) from the date of their initial appointment. However, the respondents suddenly without issuing any show cause notice and opportunity of hearing to the petitioners, reduced the pay-scale from Rs.975-1650 (revised pay-scale Rs.1150-1800) and re-fixed the petitioners' pay at the lower pay-scale of Rs.870-1420 (revised pay-scale Rs.950-1530).

3. The action of the respondents of reducing the pay-scale on the strength of the order dated 12-10-2018 and also the subsequent order dated 10-

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06-2019 which are contained in Annexure-P/5 and Annexure-P/4 respectively, are the subject-matter of challenge in this writ petition.

4. Learned counsel for the petitioners contends that in the present case, the impugned orders deserve to be quashed, inasmuch as firstly, the Department of Public Health Engineering issued a Circular dated 20-04-1988 contained in Annexure-P/7 and it was decided by the Government that Hand Pump Mechanics will be entitled for the pay-scale of Rs.975-1650.

5. It is further contended by the learned counsel that the aspect of grant of the said pay-scale to the Hand Pump Mechanics came up for consideration before this Court in **W.P. No.4473 of 2009 (S) [Ajay Singh Rathore vs. State of M.P. and others]** and this Court found the petitioners therein entitled for the pay-scale of Rs.975-1650 with its further revision, who were working as Hand Pump Mechanics in the said pay-scale.

6. It is further contended by the learned counsel for the petitioners that the judgment in the case of **Ajay Singh Rathore (supra)** has been subsequently considered by this Court in the case of **Jagjit Singh vs. The State of M.P. & ors. (W.P. No.12488/2003**) and this Court has quashed the recovery while placing reliance on the decision in the case of **Ajay Singh Rathore (supra).** It is, therefore, contended by the learned counsel that the impugned orders deserve quashment. It is the further contention of the counsel that the petitioner vide covering memo dated 27-10-2023 (I.A. No.14413/2023) enclosed a copy of the M.P. Work-charged Contingency Paid Employees Revision of Pay Rules, 1990.

7. It is contended by the learned counsel for the petitioners that the said Rules came in force with effect from 01-01-1986 and as per the Scheduled appended to the Rules the pay-scale of Rs.975-1650 was revised to the pay-

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scale of Rs.1150-1800. Therefore, contends that the impugned order contained in Annexure-P/5 which suggests that the petitioners were entitled for the said pay-scale from a prospective date i.e. 07-07-1998 and not from the year 1988 is misconceived.

It is contended by the learned counsel for the petitioners that the impugned orders have been issued in ignorance of the Circular dated 20-04-1988 and also the law laid down by this Court in **Ajay Singh Rathore (supra)**. Thus, the learned counsel submits that the impugned orders deserve to be set aside.

8. Per contra, learned counsel for the respondents submits that a detailed order has been passed by the respondents which is contained in Annexure-P/5. It is contended by the learned counsel that the petitioners were initially extended the pay-scale of Rs.975-1650 and on the contrary, they were entitled for the pay-scale of Rs.950-1530, the pre-revised pay-scale of the same was Rs.870-1420. Therefore, the said aspect having been appreciated by the authorities, the orders impugned have been passed, which require no interference by this Court.

9. No other point is pressed or argued by the parties.

10. Heard the submissions advanced on behalf of the parties and perused the records.

11. In the present case, the controversy is as regards the extension of benefit of pay-scale of Rs.975-1650, revised pay-scale of Rs.1150-1800 and further revised pay-scale of Rs.3500-5200 from the date of appointment to the petitioners against the post of Hand Pump Mechanics. The records reflect that the petitioners herein, were appointed in the Work-charged Establishment

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against the post of Hand Pump Mechanic and they were granted pay-scale of Rs.975-1650 which is evident from Annexure-P/2 dated 29-12-1988. The said order dated 29-12-1988 was issued in terms of the Circular issued by the Public Health Engineering Department, dated 20-04-1988.

12. The said Circular specifically provided that the Hand Pump Mechanics shall be entitled for the pay-scale of Rs.975-1650. Therefore, undisputedly, the present petitioners having been appointed as Hand Pump Mechanics in the Work-charged Establishment, were extended the pay-scale of Rs.975-1650. As the said pay-scale was being withdrawn by the Department, some of the employees approached this Court and this Court in **Ajay Singh Rathore (supra)** passed the following order :

> *"In the present case it has been admitted that the petitioners were appointed in the pay-scale of Rs.975-1650 and the order passed by the M.P. State Administrative Tribunal in O.A. No.5/94 also reflects that the petitioners were enjoying the pay scale of Rs.975-1650 at the time of their appointment and the action of the respondents in withdrawing the aforesaid pay scale was held to be bad in law. The petitioners by virtue of the order passed by the Tribunal were entitled for pay-scale of Rs.975-1650. However, erroneously higher pay scale of Rs.1150-1800 was paid to the petitioner and w.e.f. 1/9/96 the pay scale of Rs.975-1650 has been revised to Rs.3500-5200 and the respondents have also admitted in the impugned order dated 11/5/09 that the petitioners are entitled for the aforesaid pay scale of Rs.3500-5200 and, therefore, this Court is of the considered opinion that the petitioners are*
>
> *certainly entitled for the pay scale of Rs.3500-5200 w.e.f. 1/1/96.*

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So far as the excess amount received by the petitioners on account of wrong fixation is concerned, as the petitioners were not at fault in the matter, the question of recovering the same in the light of judgment delivered in the case of Sahibram (supra) does not arise.

Resultantly, pay fixation done by the respondents is upheld in the matter. However, the recovery ordered against the petitioners is quashed.

With the aforesaid, the writ petition stands partly allowed. No order as to costs."

13. The order passed in **Ajay Singh Rathore (supra)** has attained finality, as the said order was affirmed by the Division Bench by a slight modification and the subsequent SLP was not entertained by the Apex Court. Therefore, since the petitioners herein, also stand on similar footing, as they were extended the benefit of pay-scale of Rs.975-1650 at the time of their initial appointment, by virtue of the impugned orders they could not have been deprived of the said benefit.

14. The respondents in the entire return have failed to controvert the asseveration as regards the Circular dated 20-04-1988 contained in Annexure-P/8. The respondents have also failed to controvert the fact that the Revision of Pay Rules 1990 came into force with effect from 01-01-1986 by which the pay-scale of Rs.975-1650 was revised to Rs.1150-1800.

15. Thus, in view preceding analysis, the order impugned contained in Annexure-P/4 and Annexure-P/5 deserve to be and are hereby quashed. The respondents are directed to restore the benefit of pay-scale of Rs.975-1650, revised pay-scale of Rs.1150-1800, and further revised pay-scale of Rs.3500-5200 to the petitioners, with effect from the due dates. Accordingly, any amount recovered on the strength of the impugned orders contained in Annexure-P/4

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and Annexure-P/5 be also refunded to the petitioners within a period of ninety days from the date of production of certified copy of this order.

16. With the aforesaid, the writ petition stands allowed.

(MANINDER S. BHATTI)
JUDGE

ac

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