IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 4th OF JULY, 2023

WRIT PETITION No. 2061 of 2022

BETWEEN:-

MANIRAM RAJAK S/O LATE SHRI PALUA, AGED-68 YEARS, OCCUPATION: RETIRED EMPLOYEE R/O BHEEM NAGAR COLONY, NEAR KALIMATA MANDIR DABRA DISTRICT GWALIOR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI S.N. SETH- ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY PWD VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
2. **THE CHIEF ENGINEER PUBLIC HEALTH ENGINEERING DEPARTMENT, PWD THATIPUR, GWALIOR (MADHYA PRADESH)**
3. **THE EXECUTIVE ENGINEER PUBLIC WORKS DEPARTMENT DIVISION NO. 2 GWALIOR (MADHYA PRADESH)**
4. **THE ASSISTANT ENGINEER PUBLIC WORKS DEPARTMENT SUB- DIVISION DABRA DISTRICT GWALIOR (MADHYA PRADESH)**
5. **THE TREASURY OFFICER, TREASURY AND ACCOUNTS GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SOHIT MISHRA- GOVERNMENT ADVOCATE)

This petition coming on for hearing this day, ***Hon'ble Shri Justice Milind Ramesh Phadke*** *passed the following:*

ORDER

1. The present petition under Article 226/227 of the Constitution of India has not been preferred against any particular order, but had been preferred against the inaction on the part of the respondents, whereby though the petitioner is entitled for grant of 7th Pay Scale, it had not yet been finalized.

2. Brief facts of the case are that the petitioner was initially appointed on 08.07.1976 on the post of Beldar as daily rated employee and accordingly, his service book was prepared from the date of his appointment. The petitioner had continuously worked in the respondent department which is clear from the service book of the petitioner and on 08.12.1989 the petitioner was given the work as work charged and contingency paid employee on the post of Chawkidar in the respondent department which is also mentioned in the service book of the petitioner.

3. At the time of retirement, the services of the petitioner as

daily rated employee since 08.07.1976 till 07.12.1989 were not counted for pensionary purposes, which is contrary to the Rules 12 and 13 of the M.P. Civil Services (Pension) Rules, 1976 and also against the settled provisions of law in view of judgment passed by this Court in W.P. No.16652/2016, the present petition came to be filed. In the petition it was averred that before superannuating the benefit of 7th Pay Commission was also not extended to the petitioner though from the service book it was clear that on 08.12.1996 the benefit of 5th Pay Commission was extended to the petitioner and later from 01.01.2006, the benefit of 6th Pay Commission was also extended and because of that the petitioner is receiving a meager amount of pension. It was further averred therein that since the petitioner got superannuated on 31.12.2016, the benefit of 7th Pay Commission which was applicable since 01.01.2016 was required to be extended to the petitioner. Since the said benefit was not extended, therefore, representations were moved by him and since no action was taken upon them, a complaint was made to the Collector, District Gwalior in Jan Sunvayi No.5651/2016 on

13.12.2016, wherein respondent no.3 took a note of the complaint and reported the matter to the Collector and a copy thereof was also forwarded to the petitioner with an intimation that the matter has been sent for consideration to respondent no.2, but till date no reply has been received by the petitioner neither the entitlement of the petitioner has been rejected nor has been considered. In the petition it was also averred that the Finance Department of the State Government vide policy dated 21.09.2016 has extended the benefit of time scale pay to the work charged and contingency paid employee in view of the circular of the State Government from 01.01.2016 and due to the circular dated 21.09.2016 the petitioner became entitled for time scale pay which was also not extended to the petitioner.

4. In that regard, a detailed representation was again submitted by the petitioner to the respondent/authorities but till date the said benefit has also not been extended nor finalized. In spite of the representations moved by the petitioners they have not been dealt with till date as provided under Rule 12 of Rules of 1976, neither the Kramonnati first, second and third has been

extended to the petitioner nor the benefit of the 7th Pay Commission has been extended to him. Thus, the present petition has been filed.

5. Learned counsel for the petitioner has vehemently argued that from the policy of the State Government with regard to grant of benefit of time pay scale to the work-charged and contingency paid employees, it is apparently clear that the petitioner was entitled for the benefit of time scale pay since 1.1.2016 as the petitioner has worked for more than 30 years, likewise he was also entitled for first, second and third time scale pay but in spite of his entitlement the benefit has not been extended to the petitioner which is *per se* illegal.

6. It was further argued that though as per the Pension Rules of 1976 the period of service the petitioner has worked as daily rated employee is required to be counted so far as pensionary benefits are concerned, but the same has not been counted due to which the petitioner is suffering daily loss in terms of pension.

7. It was further argued that it is apparent from the service book of the petitioner that the petitioner was initially appointed

as Beldar on 08.07.1976 and got the status of work-charged and contingency employee on 08.12.1989 and hence the said period from 1976 to 1989 was required to be counted for the pensionary benefits as per the provisions contained in Rules 12 and 13 of the Rules of 1976 but since the same has not been calculated the action of the respondents thereof is *per se* illegal.

8. It was lastly argued that from the circulars issued by the State Government the benefit of recommendations of Seventh Pay Commission was required to be extended from 01.01.2016 as the petitioner stood retired w.e.f 31.12.2016 and though the benefit of 5th and 6th pay commission has been extended to the petitioner which is reflected from the service book, it was incumbent upon the respondents to have extended the benefit of seventh pay commission also w.e.f. 01.01.2016 and as it has not been extended, the action of the respondents in that regard is also illegal. To bolster his submission, reliance has been placed on the matter of **Chandrakanta w/o Manaklalji Sharma vs. State of M.P. and others, 2007(2) MPLJ 339 and also in the matter of Gaurishankar Pandey vs. State of M.P. And Ors**

passed in W.P. No.16652/2016 on 4th of October, 2017.

9. On the other hand, learned Government Advocate Shri Sohit Mishra vehemently opposed the prayer made by counsel for the petitioner and submitted that the petitioner is trying to mislead this Court on the basis of facts and norms that he is entitled to get the benefit of seventh pay commission as well as the benefit of first, second and third time scale pay but the true fact is that the petitioner is not entitled to seek any relief as prayed by him. It was further argued that the petitioner is trying to demonstrate that he was entitled to get the third time pay scale for the period of his service as work-charged and contingency paid employee whereas the work-charged and contingency paid employees are not entitled to get the benefit of third time pay scale. It was further argued that it is not denied that the petitioner had received the benefit of fifth and sixth pay commission and now since provision of up-gradation (Kramonnati) has been abolished and new time scale has been given to the employee and the petitioner has already been given the time scale pay as per the norms, he is not entitled to any

benefit thereof. Thus, it was submitted that the petitioner being sans merits deserves to be dismissed.

10. Heard the counsel for the parties and perused the record.

11. Three-fold reliefs which are being claimed by the petitioner viz.:

(i) Counting of his past services for the pensionary benefits;

(ii) Extending the benefit of seventh pay commission w.e.f. 01.01.2016;

(iii) Grant of first and second time scale of pay as per the policy of the State government.

12. So far as the counting of the past services of the petitioner is concerned, it is an admitted fact that the petitioner was appointed on 08.07.1976 on the post of Beldar as daily rated employee and thereupon on 08.12.1989, the petitioner was given the status of work-charged and contingency paid employee on the post of Chowkidar.

13. Rule 12 (2) of the Rules of 1976 is relevant for

consideration of aforesaid aspect, which reads as under:

> *"12. Commencement of qualifying service:-*
>
> *2. Subject to the provision of these rules qualifying service of a Government Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in officiating or temporary capacity."*

14. Rule 12 (2) of the Rules of 1976, provides for counting of the qualifying service of a government servant which commences from the date he takes charge of the post to which he was first appointed either substantially or in officiating or **temporary capacity**. From the record, it is apparent that since 1976 till 1989 the petitioner has worked as a daily rated employee till he was given the status of work-charged and contingency paid employee on the post of Chowkidar and thereafter he stood retired after attaining the age of superannuation on 31.12.2016, thus, the petitioner had already spent approximately around 40 years in service out of which he had worked as a daily rated employee for 13 years. This Court in

the case of **Chandrakanta w/o Manaklalji Sharma (supra)** has observed in paragraphs 11(a), and 12 to 17 as under:

> *"**11A.** Learned counsel appearing for the parties have agreed that the pension and gratuity of the petitioner shall be regulated, as per M.P. Civil Services (Pension) Rules, 1976. Chapter III, which starts from Rule 12, and deals the qualifying service, and Rule 13 which deals with the condition subject to which service qualifies; the relevant extract of those rules are reproduced herein below:-*
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> > ***12.** Commencement of qualifying service. – (1) Except for compensation gratuity, a Government servant's service does not qualify till he has completed 18 years of age, provided that nothing contained in this clause shall apply in the case of persons who were in service on the date of commencement of these rules and in whose case a lower age limit has been prescribed.*
> >
> > *(2) Subject to the provisions of these rules, qualifying service of a Government servant shall commence*

from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

13. *Conditions subject to which service qualifies.- (1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.*

(2) For the purposes of sub-rule (1), the expression "service" means service against a post under the Government and paid by the Government from the consolidated Fund of the State which has not been declared as non-pensionable."

12. *On perusal of the sub-rule (2) of Rule 12, it is apparent that subject to the provisions of the Pension Rules, the qualifying service of the employee shall commence from the date, on she/he takes charge of the post to which she/he is first*

appointed either substantively or in an officiating or temporary capacity. Rule 13 specifies that unless the duties and pay of the employee concerned is regulated by the Government it shall not qualify the service rendered by such employee. The word qualifying service has been defined under rule 3(p) of the Pension Rules which is reproduced as under :-

> *"3(p) "Qualifying Service" means the period between the date of joining pensionable service under the State Government and retirement therefrom which shall be taken into account for purpose of the pension and gratuity admissible under these rules and includes the period which qualifies under any other order or rule for the time being in force;"*

13. *However, on reading of the aforesaid rules, it is apparent that the date of joining to a post on which the employee is first appointed, either substantively or officiating or temporarily and*

takes over the charge on that post and retired therefrom shall be, the period of service on that post, and the date of taking over the charge till attaining the age of superannuation be treated as qualifying service. Under Rule 13(1) it is clarified that the service of the employee shall not qualify unless duties and pay of the Government servant is regulated by the Government under the conditions determined by them. Sub clause (2) of Rule 13 clarifies the word service for the purpose of Rule 13(1), by which it is apparent that if the service rendered against a post under the Gov. and paid salary from the consolidated fund of Govt., which is not declared as non-pensionable to be treated as service of the Govt. In view of reading of the aforesaid rules, it is apparent that qualifying service has been defined under clause 3(p) of the Pension Rules. Rule 12(2) of these rules indicates the commencement of the qualifying service and Rule 13(1)(2) explains that service against the post paid from consolidated fund, not declared as non-pensionable, shall be qualified service, only with the rider of regularization of pay and duties by the Govt.

14. *In the facts of the present case and as per the*

return submitted by the Govt., it is apparent that the petitioner was appointed temporarily as Teacher though on a fix pay of Rs.100/-. On the date of appointment petitioner was possessing the requisite qualification of the post of Assistant Teacher. She has taken over the Teacher by joining her duties on 10-1-1974 and remain continued on such post till attaining the age of superannuation. She has performed the work attached to the post of Teacher. The payment of the salary either of fixed pay or in the regular scale of the pay was allowed to her from the consolidated fund of the Govt. was not declared as non-pensionable. The order of regulation of pay was passed by the Govt. on 28-2-1989 extending such benefit with effect from 6-1-1989. However, it is apparent that, her pay has also been regulated by the Govt.

15. *The argument of the Dy. Govt. Advocate Shri Joshi is only confined, that the services rendered by the petitioner in between 10-1-1974 to 5-1-1989 she had received fix pay, however, such period shall not be counted under the qualifying service, to the Govt. servant. The service may qualify, only with effect from the date from which the pay is regulated by the Govt., under the*

conditions as determined by them under Rule 13(1); this argument is of no substance. Because Rule 12(2) of the Pension Rules deals with the commencement of the qualifying service, whereby it is apparent that the commencement of the qualifying service shall be with effect from the date on which he/she takes the charge of the post to which he/she is first appointed. Thereafter Rule 13(1) specifies the conditions subject to which the service qualifies. Wherein, it is mentioned that the service shall not qualify under his duties and pay are regulated. Sub-rule (2) deals with the service, whereby it is apparent that if the payment is made to the employee from the consolidated fund of the Govt. which is not declared as non-pensionable. Thus, it is apparent that the commencement of the qualifying service starts from the date on which the employees takes the charge of the post and receives payment from the consolidated fund of the State Govt., which has not been declared as non-pensionable. Thereafter Rule 13(1) deals that under which condition the service of a Govt. servant shall be treated as qualifying service. In the present case the commencement of the service of the petitioner has been started on 10-1-1974

and the salary has been received by her from consolidated fund which has not been declared as non-pensionable. The pay has been qualified by the regulating the same as per the order of the competent authority in the regular scale, therefore, the period of the service with effect from 10-1-1974 to 5-1-1989 deserves to be counted as qualifying service, under Rules 12(20 and 13(1) and (2) of M.P. Civil Services Pension Rules, 1976.

16. *The aforesaid interpretation of Rules 12 and 13 finds support from the various judgments of this Court in the case of Madhukant Yadu, Hariom Soni, Jagdish Prowal and Vibha Mathur (supra), whereby this Court has held that if the Assistant Teachers appointed on the fix pay, are entitled to get regular scale of the pay and increment since the date of appointment. If the ratio of the aforesaid judgments is made applicable in the facts of the present case then petitioner was entitled to get regular scale of pay since the date of initial appointment, which was not allowed to her by the Govt. arbitrarily. However, taking into consideration this aspect, and in view of the discussion made hereinabove the service rendered*

by the petitioner on a fix pay of Rs.100/- or Rs.300/- shall be treated as qualifying service for the purpose to grant her, the benefit of pension and other retiral dues.

17. *In view of the discussion made hereinabove and on perusal of Rule 12, 13, 3(p), 43 and 44 of the Pension Rules, and in the facts of the present case the entire period rendered by the petitioner from 10-1-1974 till attaining the age of superannuation i.e. 30-9-1997, deserves to be counted as qualifying service. However, in the light of Rule 43 and 44 of the Pension Rules of 1976 because the petitioner has rendered the services for more than ten years, hence, she is entitled for pension and gratuity after its re-determination..”*

Thus, so far as the rendering of total services by the petitioner is concerned, it is an admitted fact that he had already served for 13 years as daily rated employee in a temporary capacity and there is no clarification from the State that the salary of the petitioner was not being given from the consolidated funds of the State.

14. The Co-ordinate Bench of this Court in the matter of

Gaurishankar Pandey (supra) after relying on the case of similarly situated person Sudama Prasad Pandey, had also relied on the decision of Division Bench passed in WA No.682/2009 wherein it had been held that since the petitioner has already worked as daily rated employee, then it cannot be said that the aforesaid services of the petitioner shall not be included in the qualifying service and while allowing the petition had directed the respondents to consider and settle the claim of the petitioner and decide the entitlement with regard to retiral dues in light of decision in the case of Sudama Prasad Pandey within a period of three months.

15. So far as the benefit of the third time pay-scale to the petitioner in the light of the circular dated 21.09.2016 w.e.f. 01.01.2016 is concerned, the circular dated 21.09.2016 specifically mentions that the benefit of the third time pay-scale scheme had been extended for the employees who are drawing their salary from the head of work charged contingency fund and had been made effective since 01.01.2016 and admittedly since the petitioner stood retired on 31.12.2016 he was entitled for the

extension of the said benefit, subject to this eligibility and denial thereof without any reason appears to be not justified.

16. So also the extension of benefit of the 7th Pay Commission to the petitioner which according to the petitioner was required to be extended to him from 01.01.2016 and has not been rebutted by the respondents in specific terms is required to be considered as it is not the case of the respondents that he was not entitled at all rather the contentions of the respondents are that since he stood retired and had taken all the benefits of service as per the norms the benefit of 7th Pay Commission cannot be extended to him appears to be not reasonable.

17. Accordingly, the petition stands allowed and the respondents are directed to count the past services of the petitioner from 1976 till 1989 during which the petitioner has worked as a daily rated employee for the purpose of pensionary benefits and issue fresh PPO and also to consider the case of the petitioner for grant of time pay scale in the light of the circular dated 21.09.2016 and the extention of benefit of 7th Pay Commission.

18. Let this exercise be done within a period of three months from the date of receipt of certified copy of this order.

19. With the aforesaid, the petition stands allowed and **disposed of.**

20. CC as per rules/directions.

(Milind Ramesh Phadke)
Judge

chandni/-

