HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

Writ Petition No.5639/2013

Govind Singh
Vs.
State of M.P. & others

Writ Petition No. 20611/2013

Ramakant Mishra
Vs.
State of M.P. & others

Writ Petition No.19602/2015

Ramesh Kumar Verma
Vs.
State of M.P. & others

Writ Petition No.9121/2016

Sarju Prasad Panika
Vs.
State of M.P. & others

Writ Petition No.7192/2016

Harilal Rajak
Vs.
State of M.P. & others

Writ Petition No.6692/2016

Raju
Vs.
State of M.P. & others

Writ Petition No.6460/2016

Shivlal Kewat & others
Vs.
State of M.P. & others

Writ Petition No.6455/2016

Krishna Kumar Pandey
Vs.
State of M.P. & others

Writ Petition No.9838/2016

Jagnandan Singh
Vs.
State of M.P. & others

Writ Petition No.7777/2016

Shivakant Shukla
Vs.
State of M.P. & others

Writ Petition No.9176/2016

Chatura Jaiswal
Vs.
State of M.P. & others

Date of Order	**29/05/2020**
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi
Whether approved for reporting	Yes/No
Name of counsel for parties	**For Pet.:** Shri K.C. Ghildiyal, Shri S.D. Shukla and Shri Shailendra Verma, Advocates. **For Respondents**: Shri S.P. Mishra, Government Advocate.

Reserved on: 27/01/2020

Delivered on: 29/05/2020

(O R D E R)

All the writ petitions have been filed by the respective petitioners under Article 226 of the Constitution of India

claiming relief therein that their services be regularized with effect from the date their juniors have been regularized and they be also given all consequential benefits, such as arrears of pay, seniority, promotion etc.

2. Since the basic facts of all the petitions are similar and the relief claimed by them are also identical, therefore, all these petitions have been linked together and accordingly they have been heard analogously and are being decided by this common order.

3. The petitioners were originally the employees of Health Department and were holding different posts in Work-charged & Contingency Paid Establishment. In all the petitions the basic grievance of the petitioners is that their juniors have already been regularized and granted the benefit of regular post. Therefore, the petitioners are also entitled to get the same benefit. In WP No.5639/2013, the petitioner is claiming his regularization w.e.f. 24.02.1990 saying that his juniors have already been regularized in the regular establishment from the said date, but, his claim has been ignored by the respondents. Likewise, in other petitions, the claim of regularization of the petitioners is from different dates where from their juniors have been regularized. The petitioners have claimed relief in regard to their regularization with retrospective dates.

4. The respondent-State have filed their reply and opposed the claim of the petitioners mainly on the ground that all the petitions deserve to be dismissed on the ground of delay and laches. The respondents have also taken preliminary objection that the petitioners were regularized

somewhere in the year 2003, but, that order of regularization was cancelled vide order dated 06.08.2003 and the said order was not challenged by number of petitioners and after a long period of ten years by filing present petitions, now they cannot claim their regularization with retrospective dates, that too without challenging the earlier order of cancellation of their regularization passed on 06.08.2003. It is also stated by the respondents-State that some of the petitioners have challenged the order of cancellation of their regularization by filing WP No. 9033/2005, which was dismissed vide order dated 01.09.2006, against which, a writ appeal i.e. WA No. 236/2015 was preferred, which was also dismissed. It is further stated by the respondents that all the petitioners have been regularized vide order dated 22.03.2016 by the State Government in pursuance to the directions issued by the Supreme Court in the case of ***Secretary, State of Karnataka vs. Uma Devi – (2006) 4 SCC 1*** and nobody has challenged the order of regularization passed on 22.03.2016 and as such they have accepted the same and the said order of regularization has now attained the finality. Therefore, the basic claim of their regularization with retrospective dates is misconceived and the same cannot be granted to them and, as such, all the petitions deserve to be dismissed.

5. However, during the course of arguments learned counsel for the petitioners have submitted that considering the facts and circumstances of the case, the relief can be moulded by the Court and, instead of granting regularization with retrospective dates, accepting the order of regularization passed in the year 2016, direction may be

issued to the respondents to protect the pay of the petitioners. As per the petitioners, after regularizing them vide order dated 22.03.2016, they have been fixed at the initial scale of pay. Resultantly, their salary has been reduced and as such they are suffering huge monetary loss. It is submitted by the counsel for the petitioners that after regularizing the services of the petitioners, the respondents are under obligation to protect their pay and should take note of the fact that the order of regularization may not cause any monetary loss to them. The law in this regard is also very clear that if such situation arises, the pay of the employee is protected. It is further submitted by the learned counsel for the petitioners that after regularization, the services, which they have rendered in the Work-charged & Contingency Paid Establishment, should also be counted for the purpose of granting pensionary benefits. They have also submitted that as per the law laid down by the Division Bench of this Court, which has also been affirmed by the Supreme Court, regarding grant of Kramonnati Vetanman to the employees working in the Work-charged & Contingency Paid Establishment, the petitioners may also be granted the same benefit and respondents may be directed to consider the claim of the petitioners for granting them Kramonnati Vetanman for the period they have performed their duties in the Work-charged & Contingency Paid Establishment. The petitioners in this regard have filed their written submission relying upon the decisions reported in ***(2016) 9 SCC 749-State of U.P. Vs. Dinesh Singh Chauhan, (2009) 10 SCC 197-Jai Prakash Gupta Vs. Riyaz Ahamad, (1995) 6 SCC 749-B.C. Chaturvedi Vs. Union of India and others***. In the aforesaid cases, the Supreme Court has considered the fact that in a petition under Article 226 of the Constitution

of India the High Court has ample power to mould the relief claimed in the writ petition. Likewise, for grant of benefit of Kramonnati Vetanman to the employees of Work-charged & Contingency Paid Establishment, this Court has dealt with the issue and passed the order in ***WP No. 9897/2016-Annulal Dehariya and others vs. High Court of M.P. & Anr***.

6. Considering the submissions made by learned counsel for the parties and on perusal of record available, I am of the opinion that so far as the claim in respect of regularization with retrospective dates is concerned i.e. in some of the petitions from the year 1990 and in some of the petitions there are different dates when the juniors of the respective petitioners were granted regularization, such relief cannot be granted. As per the stand taken by the respondents, the petitioners were regularized somewhere in the year 2003, but, that order of regularization was cancelled and most of the petitioners did not challenge the cancellation of their regularization. Although some petitioners challenged the cancellation of their regularization, but, their writ petitions were finally dismissed. Therefore, under such a circumstance, when the order of cancellation of regularization passed in favour of the petitioners has attained finality, no relief for granting regularization prior to the said date can be granted to the petitioners. Accordingly, the relief of regularization from retrospective dates is hereby denied.

However, the prayer regarding moulding of relief has been made by the petitioners in their written submission stating that the regularization order has already been passed by the respondents in favour of the petitioners on

22.03.2016 fixing them at the initial pay of scale, which has caused huge monetary loss to them as on the date of regularization they were getting higher salary. The order of regularization has reduced their salary, which is also not permissible in the eye of law. I find substance in the contention raised by the petitioners. Though such relief has not been claimed specifically in the petitions, but, in view of the fact situation of the case, the petitioners are entitled to get the benefit of pay protection. In this regard, the High Court in the case of ***Smt. Santosh Verma vs. State of M.P. & others – WP No. 379/2009*** decided on 19.07.2011 has laid down the law and observed as under:

> "Undisputedly the petitioner was granted promotion after the grant of benefit of Kramonnati pay scale to her. The scheme of Kramonnati was made with a specific condition that the persons who are working in one pay scale for a long period and who have not been given any promotion because of unavailability of the post, are to be given the benefit of next higher pay scale on which their promotion is required to be considered. In fact the specific condition mentioned in the order of Kramonnati is that in case after appointment in a particular post for a period of 12 years if any incumbent has not been given promotion then he be given the next higher pay scale so that he may not remain under impression that he may not get promotion. By Kramonnati in fact usually the pay scale of higher post is made available while the substantive post is not changed. Therefore, on account of promotion subsequent to grant of Kramonnati if the benefit of said Kramonnati is withdrawn, the same will not be justified in any manner. This being so, if the petitioner was granted the Kramonnati in a higher pay scale vide order dated 18.09.2000 and she was enjoying the benefit of such Kramonnati from the date it was made available to her, it was not open to the respondents to say that after 5 years when she is promoted, she will be put to a lower pay scale. The benefit of pay protection which is available to the petitioner could not have been taken away. In case there was no such stage in the pay scale of

> promotional post then also the amount which the petitioner was drawing in excess to the maximum of the amount of the pay scale of promotional post, the said amount should have been allowed to the petitioner as personal pay, which was to be merged in case of refixation/revision of pay in future. If this exercise would have been done in appropriate manner after the promotion of the petitioner, she would have been put to loss as has been caused to her by improper act of the respondents."

7. The petition is, therefore, allowed to the extent that the respondents cannot reduce the salary of the petitioners merely because they have been regularized w.e.f. 22.03.2016 and, therefore, the order of regularization would be implemented providing pay protection to the petitioners. Consequently, whatever monetary loss has been suffered by the petitioners be calculated by the respondents and the amount, which has been deducted by reducing the pay and not paid to the petitioners, be paid to them.

Likewise, the law has also been settled in respect of grant of benefit of Kramonnati Vetanman to the employee of Work-charged & Contingency Paid Establishment and, therefore, the respondents are further directed to scrutinize the claim of the petitioners regarding grant of Kramonnati Vetanman considering the services, which they have rendered in the Work-charged & Contingency Paid Establishment and during the said period if they are found entitled for grant of Kramonnati Vetanman, then, accordingly, their claim be settled and they be granted the benefit of Kramonnati Vetanman.

It is also an admitted position that initially the petitioners were appointed in the Work-charged & Contingency Paid Establishment, but, later on, they were regularized. According to the settled legal position, the

service rendered in the Work-charged & Contingency Paid Establishment is counted for the purpose of pensionary benefits. In the case of ***Gopi Pillai vs. MPEB Jabalpur and another 2002 (2) MPLJ 278*** it has been laid down that the Work-charged & Contingency Paid services are counted for the purpose of pensionary benefits. Accordingly, the respondents are directed to count the services of the petitioners even of those, who have already been retired, and grant them benefit of service rendered by them in the Work-charged & Contingency Paid Establishment for the purpose of granting pensionary benefits, if the same has not been done, and their pensionary benefits be revised and granted to them..

8. In view of the aforesaid directions, all the petitions are allowed to the above extent and disposed of directing the respondents to comply with the aforesaid directions within a period of six months from submitting certified copy of this order and grant the benefits to the petitioners accordingly.

(SANJAY DWIVEDI)
JUDGE

Raghvendra