

Janpad Panchayat & Zila Panchayat Karamchari Sangh and Others

Vs

State of M.P. and Others

Civil Appeals Nos. ... of 1996, 14259, ... (CC No. 2591), ... (CC No. 2699), ... (cc no. 2763), 14305, 14232, 14234, 17024 and 18305 of 1995)

(B.P. Jeevan Reddy, B.N. Kirpal JJ)

10.01.1996

ORDER

1. Heard counsel for the parties. Delay in filing the SLPs is condoned.
2. Leave granted in all the SLPS.
3. Special Leave Petition No. 3919 of 1993 arises from the judgment of the Madhya Pradesh High Court dismissing the writ petition filed by the Janpad Panchayat & Zila Panchayat Karamchari Sangh and others. The reliefs sought for in the writ petition were :
 - (1) to declare that the petitioners are government employees just like similar employees in Mahakoshal region of the State of Madhya Pradesh; and
 - (2) to direct the respondents in the writ petition to pay all benefits admissible to government employees including retrial allowance, bonus, pension, gratuity, family pension, death-cum-gratuity (ex gratia payment to the family).
4. The High Court was of the opinion that the petitioners are not entitled to either declaration and accordingly dismissed the writ petition. When the SLP came up for admission before a Bench of this Court, a notice was issued limited to the question of entitlement of the employees belonging to Madhya Pradesh (other than erstwhile Mahakoshal region) to payment of gratuity and pension. While this SLP was pending, ten other SLPs have been filed by the State of Madhya Pradesh against a common judgment of the Madhya Pradesh Administrative Tribunal, Indore holding that since the writ petitioners therein were appointed by the erstwhile Madhya Bharat Government they are entitled to the benefits of pension and gratuity. All these ten SLPs have been filed accompanied by applications for condoning the delay in filing them. The delay ranges from 300 to 350 days.
5. It would thus appear that the common question in all the 11 SLPs is whether the employees of the Panchayats - whether it be a Gram Panchayat, Janpad Panchayat or the Zila Panchayat - are entitled to the benefit of pension and gratuity. We have perused the judgment of the Tribunal which is under appeal in the aforesaid ten SLPs. We have also seen the judgment of the learned Single Judge of the High Court of Madhya Pradesh which is referred to by the Tribunal in its judgment but none of them present to us a clear picture either on facts or law.
6. The Madhya Pradesh Panchayats Act, 1962 contains four provisions relevant in this behalf, viz., Sections 75, 147, 189 and 386. They read as under :

"75. Establishment of Provident Fund. - A Gram Panchayat may in accordance with the rules made under this Act :

- (a) establish and maintain a Provident Fund on behalf of its officers and servants;
- (b) grant gratuity to any officer or servant subject to the previous approval of the prescribed authority; and
- (c) grant pension to any officer or servant subject to the previous approval of the State Government.

147. Establishment of Provident Fund. - A Janpad Panchayat may in accordance with the rules made under this Act :

- (a) establish and maintain a Provident Fund on behalf of its officers and servants;
- (b) grant gratuity to any officer or servant subject to the previous approval of the prescribed authority; and
- (c) grant pension to any officer or servant subject to the previous approval of the State Government.

189. Establishment of Provident Fund. - A Zila Panchayat may in accordance with the rules made under this Act :

- (a) establish and maintain a Provident Fund on behalf of the officers and servants;
- (b) grant gratuity to any officer or servant subject to the previous approval of the prescribed authority; and
- (c) grant pension to any officer or servant subject to the previous approval of the State Government.

386. Savings as to existing permanent employees. - (1) Notwithstanding anything contained in this Act or any rule or bye-law made thereunder, the pay and allowances, pension and retirement benefits of all permanent officers and servants or other employees of (the Mandal Panchayat or as the case may be, the Janpad Sabha, Kendra Panchayat or Tehsil Panchayat, on the date of the constitution of the first Zila Panchayat or, as the case may be, the first Janpad Panchayat or the Janpad Panchayat under this Act for the respective area) shall be existing pay and allowances, pension and retirement benefits.

(2) All or any of the permanent officers, servants or other employees serving under (Janpad Sabha, Kendra Panchayat or Tehsil Panchayat, as the case may be, immediately before the date of the constitution of the Janpad Panchayat or Janpad Panchayats under this Act for the respective area) may, notwithstanding anything in the terms of their appointment or their conditions of service, be required to serve in or in connection with the affairs of any Janpad Panchayat or if suitable arrangements cannot be made for their absorption in the same Tehsil, in other Tehsils.

(3) Notwithstanding anything in sub-section (1) or (2) it shall be competent to the Collector subject to the previous sanction of the State Government to discontinue services of any officer or servant of (Mandal Panchayat, Janpad Sabha, Kendra Panchayat or Tehsil Panchayat) who in his opinion cannot be suitably absorbed in any other local body or who is not necessary or suitable to the requirement of the Zila Panchayat or the Janpad Panchayat, as the case may be, after giving such officer or servant such notice as is required to be given by the terms of his employment and every officer or servant whose services are discontinued, shall be entitled to such leave, pension, provident fund and gratuity as he would have been entitled to take or receive on being invalidated out of service as if the (Mandal Panchayat, Janpad Sabha, Kendra Panchayat or the Tehsil Panchayat) in the employment of which he was, had not ceased to exist."

A reading of the above sections discloses the following position :

Sections 75, 147 and 189 enable a Gram Panchayat/Janpad Panchayat Zila Panchayat to grant gratuity and pension to their employees subject to the previous approval of the prescribed authority and in accordance with the Rules made under the Act. Section 386 is in the nature of a saving clause. It saves the pay and allowances including pension and other retirement benefits of all permanent officers and servants of the Panchayat as specified therein. It may be noted that in erstwhile Madhya Bharat, there was an Act called M.B. Panchayat Act of 1949 and it is alleged by the writ petitioners that it provided for payment of pension and gratuity to the employees of these Panchayats. Be that as it may, the employees of Panchayats can claim to be entitled to the benefit of pension and gratuity in either of the two ways, viz., (1) grant of these benefits under Sections 75, 147 or 189 of the Madhya Pradesh Panchayats Act, 1962 read with Rules thereunder, or (2) that prior to the 1962 Act, they were in receipt of the said benefit which is saved under Section 386. The orders impugned herein do not make it clear as to which petitioner falls under which of the above two categories. There is no reference to the provisions of the Madhya Bharat Panchayats Act, 1949 or to any orders made thereunder granting pension and gratuity nor do they say that the said benefits were granted under Sections 75, 147 and 189 of the Madhya Pradesh Panchayats Act, 1962. Now coming to the 1981 Act, it again contains a provision in the nature of a saving clause, i.e., Section 125 which reads as follows :

"125. Savings as to existing permanent employees. - (1) Notwithstanding anything contained in this Act or any rule or bye-laws made thereunder the pay and allowance, pension and retirement benefits of all permanent officers and servants or other employees of the Mandal Panchayat on the date on April 24, 1981 shall be existing pay and allowances, pension and retirement benefits.

(2) All or any of the panchayat officers, servants or other employees serving under a Mandal Panchayat immediately before April 24, 1981 may, notwithstanding anything in the terms of their appointment or their conditions of service, be required to serve in or in connection with the affairs of any Zila Panchayat.

(3) Notwithstanding anything in sub-section (1) or (2) it shall be competent to the Commissioner, subject to the previous sanction of the State Government to

discontinue services of any officer or servant of Mandal Panchayat, who in his opinion, cannot be suitably absorbed in any other local body or who is not necessary or suitable to the requirement of the Zila Panchayat after giving such officer or servant such notice as is required to be given by the terms of his employment and every officer or servant whose services are discontinued, shall be entitled to such leave, pension, provident fund and gratuity as he would have been entitled to take or receive on being invalidated out of service as if the Mandal Panchayat, in the employment of which he was, had not ceased to exist."

7. This section speaks expressly of saving of the service conditions of officers and servants and other employees of the Mandal Panchayat. Whether it can be extended to the employees of the other Panchayats is again a matter for consideration.

8. In view of the above situation, the matter has to go back for a proper decision on the question of entitlement of the employees of these Panchayats to the benefit of pension and gratuity. We may clarify that if the employees can claim the said benefits on a basis other than the two bases mentioned above, it is open to them to do so.

9. Accordingly, the appeals are allowed and the matters remitted to the High Court and the Administrative Tribunal, respectively. We, however, think it appropriate that the question in issue herein should be decided by the High Court. The respondents in the other appeals before us (appeals preferred by the State of Madhya Pradesh) shall be permitted to intervene in the said matter before the High Court. The hearing of the matters before the Administrative Tribunal pursuant to this order are stayed pending the decision of the High Court. The High Court shall decide the question of entitlement of these employees to pension and gratuity in accordance with law. The High Court shall permit both parties to file such further material as they think appropriate in support of their respective cases, along with affidavits. The High Court may consider an early disposal of the matter. We also think it desirable that this matter is heard by a Division Bench of the High Court. After the High Court renders its decision, the Madhya Pradesh State Administrative Tribunal shall dispose of the matters before it (matters now remanded to it) in accordance with the decision of the High Court.

10. The appeals are disposed of with the above directions. No costs.