

:: 1 :: **Writ Appeal No.1693/2019**
(Smt. Kala Devi Vs. State of M.P. and others)

HIGH COURT OF MADHYA PRADESH :

BENCH AT GWALIOR

Writ Appeal No.1693/2019

Smt. Kala Devi

...APPELLANT

versus

State of M.P. and others

...RESPONDENTS

CORAM :

Hon'ble Shri Justice Rohit Arya &

Hon'ble Shri Justice Milind Ramesh Phadke

Shri M.P. Sharma and Ms. Gurusharan Kaur Sachdeva, learned
counsels for the appellants.

Shri Vijay Sundaram, learned Panel Lawyer for the respondent/State.

Whether approved for reporting : Yes/No

Reserved on : **23.03.2022**

Date of decision : 29/03/2022

ORDER

(29/03/2022)

Per Milind Ramesh Phadke, J.

By this writ appeal under section 2 (1) of Madhya Pradesh

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Uchha Nyalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, the appellant/petitioner had challenged the judgment dated 15.7.2019 passed by learned Single Judge in W.P. No.3998/2010, whereby the writ petition filed by the appellant/petitioner was dismissed, while holding that since the husband of the petitioner had not qualified minimum requirement service of regularized Work-charged establishment i.e. 10 years to enable him to qualify for pension or family pension, the authorities were justified in not granting the pension or family pension to the petitioner.

2. With consent of the parties the matter is finally heard at motion stage.

3. Brief facts leading to this appeal are that husband of the present petitioner was appointed as a Gangman in the Public Works Department on muster roll on 26/12/1963 and his services were regularized with effect from 01/01/1998 and he stood retired after attaining the age of superannuation on 31/05/2007 after completion of 9 years and 5 months and w.e.f. 26/12/1963 he had completed 43 years of service approx.

4. Before the learned Single Judge, it was the case of the petitioner that the petitioner's husband during his life time had asked for pension after his retirement but the same was denied on the ground that since he had worked only for 9 years as a regular employee, he doesn't qualify the minimum service required to be eligible for grant of pension. It was the case of the petitioner that though similarly situated employee had been granted pension by the department and even the law regarding counting of services rendered while working under Work charged Contingency Department is clear for the purposes of grant of pension, the Department had wrongly denied it and accordingly a prayer was made for a direction to the respondent department to count the services of the husband of the

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petitioner from initial date of appointment for pension purpose and to grant family pension and arrears with interest.

5. The stand of the respondent-department was that since the husband of the petitioner did not complete 10 years of service as regular employee which is the minimum requirement under the Pension Rules, the petitioner is not entitled for grant of family pension. After hearing the matter the learned Single Judge dismissed the petition holding that since the husband of the petitioner did not qualify the minimum requirement of regularized work-charged establishment i.e. 10 years to enable him to qualify for the pension/family pension, the authorities were justified for non-granting of the pension/family pension to the petitioner.

6. Learned Counsel for the petitioner vehemently argued that the learned Single Judge overlooked the fact that as per rule 6 sub-rule 3 of Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 which deals with commencement of qualifying service, specifically speaks of on absorption of temporary employee without interruption against any regular pensionable post, the service rendered with effect from 1st January, 1974 onwards, if such service is not less than six years shall be counted for pension as if such service was rendered in a regular post. It was further argued that rule 2(c) of the Pension Rules of 1979 defines term 'Permanent Employee' as a contingency paid employee or a work charged employee who had completed fifteen years of service or more on or after 1st of January, 1974 and if in the light of the above definition, the services of the husband of the petitioner is counted, he being in employment since 1963 and had completed more than six years of regular service prior to his regularization on 01/01/1998, was entitled for the pension and consequently the petitioner was entitled for family pension.

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7. Per contra the learned Government Advocate argued that since the husband of the petitioner did not complete 10 years of the service as regular employee which is the minimum requirement under the Pension Rules, the petitioner is not entitled for grant of family pension. He also relied upon the decision of Full Bench of this Court in the matter of **Mamta Shukla Vs. State of M.P. & others reported in (2011) 3 MPLJ 211** and contended that if an employee is not appointed as per the Recruitment Rules of 1977, his past services would not be counted as qualifying service for the purpose of pension in accordance with the Pension Rules of 1979.

8. Heard the Counsels for the parties in extenso.

9. Considering the entire controversy, we find that the order of learned Single Judge impugned herein deserves interference, as it is not based upon correct interpretation of the pension rules and also the stand of the respondent department is severely lopsided and injudicious. The case of the petitioner that he was a Gangman appointed on muster roll on 26/12/1963, was regularized from 01/01/1998 and stood retired on 31/05/2007 and for his services rendered, pension to be paid, would be regulated by the M.P. Pension Rules of 1979, has force in it and for that it is expedient to refer the relevant provisions of Pension Rules of 1979 and 1976.

10. Rule 4 A and Rule 6 of Pension Rules, 1979 thereof respectively provides for:

"4 A. Notwithstanding anything contained in rule 4 the family of a permanent employee, who dies while in service or after retirement on pension, on or after the 1st April 1981 shall be entitled to family pension at the rate of 30% of his/her pay drawn at the time of death/retirement subject to minimum, of Rs.40/- per month and maximum of Rs. 100/- per month subject to other conditions of

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Rule 47 of Madhya Pradesh Civil Services (Pension) Rules, 1976 except sub-rule (3) of the said Rules.

“6. Commencement of qualifying service-

(1) subject to the provisions of Chapter III of the Madhya Pradesh Civil Services (Pension) Rules, 1976 or section IV of the Madhya Pradesh New Pension Rules, 1951 as the case may be, for calculating qualifying service of a permanent employee who retires as such, the service rendered with effect from the 1st January, 1959 onwards shall be counted.

(2) On absorption of a permanent employee without interruption against any regular pensionable post, the service rendered with effect from 1st January, 1959 onward shall be counted for pension as if such service was rendered in a regular post.

(3) On absorption of temporary employee without interruption against any regular pensionable post, the service rendered with effect from 1st January, 1974 onwards, if such service is of less than six years shall be counted for pension as if such service was rendered in a regular post.

When the aforesaid two Rules are read together, it is clear as crystal that the provisions which govern the family pension has a different field of operation than the provisions regarding pension to an employee who retires from the work-charged establishment and are governed by Rule 6 of Rules of 1979.

11. By virtue of Rule 4 A the provisions as contained under Rule 47 of the M.P. Civil Services (Pension) Rules, 1976 are also attracted. The said Rule provides for:

“47. Contributory Family Pension

(1) The provisions of this rule shall apply:-

(a) to a Government servant entering service in a pensionable establishment or on after 1st April 1966,

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and,

(b) to a Government servant who was in service on 31st March, 1966 and came to be governed by the provisions of the Family Pension Scheme for State Government Employees, 1966 contained in Government of Madhya Pradesh Finance Department memo No 1963/C.R903-IV-R. II dated 17th August, 1966 as in force immediately before the commencement of these rules.

(2) Subject to the provision of sub-rule (5) and without prejudice to the provisions contained in sub rule (3), where a government servant dies-

(a) during the period of service he was found medically fit at the time of appointment.

(b) after retirement from service and was on the date of death in receipt of a pension or compassionate allowance, referred to in Chapter V other than the pension referred to in Rule 34, on the date of death, the family of the deceased shall be entitled to a contributory family pension (hereinafter in this rule referred to as Family pension) the amount of which shall be determined as follows:-

Pay of Government Servant Amount of monthly Family Pension

xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx

12. A harmonious reading of Rule 4 A, 6 (3) of Rules of 1979 and Rule 47 of Rules of 1976 would fresco that family of a person employed in a regular work-charged establishment, cannot be deprived of the pension which it would be entitled for by virtue of Rule 4 A of Rules, 1979.

13. As to the law laid down by the Full Bench of this Court in **Mamta Shukla (supra)** the issue before the Full Bench was-

"(i) Whether the decision of the Division Bench in W.A. No. 725/2007, Smt. Rahisha Begum Vs. State of M.P. and others is not a good law in view

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of the decision of the earlier Division Bench of this Court vide order dated 18-7-2005, passed in W.P. No. 1273/2000, State of M.P. and others Vs. Ram Singh and another ?

(ii) Whether an employee is eligible for the benefit of family pension in accordance with the provisions of Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 after completing qualifying service in accordance with the provisions of Recruitment Rules framed by the concerned Department for work charged and contingency paid employees or in accordance with the definition of Rule 2 of Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 in regard to "contingency paid employee", "work-charged employee" and permanent employee" ?

(iii) Whether for counting qualifying service of an employee for the purpose of grant of benefit of pension it is necessary that the employee has to be appointed in accordance with the provisions of contingency paid employee's recruitment rules framed by the concerned department in regard to work charged and contingency paid employees?"

The reference was answered in the following terms-

"24- On the basis of above discussion, we hold in regard to the substantial questions of law Nos: 2 and 3 that an employee is eligible to count his past service as qualifying service in accordance with Rule 6 of the Pension Rules, 1979, if he was appointed in accordance with the provisions of Recruitment Rules of 1977. We further hold that an employee, who was not appointed in accordance with the provisions of Recruitment Rules framed by the concerned department, i.e., the Recruitment Rules of 1977, would not be eligible to count his past service as qualifying service for the purpose of grant of pension in accordance with the Pension Rules of 1979 and we answer the substantial questions of law Nos. 2 and 3 accordingly.

25. In regard to substantial question of law No. 1 Earlier Division Bench of this Court in W.P. No. 1273/2000, State of M.P. Vs. Ramsingh and another, as held that a daily wager employee would not fall within

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the definition of work charged and contingency paid employee, hence his case would not be covered by Madhya Pradesh Workcharged and Contingency Paid Employees Pension Rules, 1979, has not been noticed by the subsequent Division Bench of this Court in *Rahisha Begum Vs. State of M.P. and others*, 2010(4) MPLJ 332. However, in the subsequent case, the Division Bench has held that if an employee comes within the definition of work charged and contingency paid employee as defined the Pension Rules of 1979, then he is eligible to count his past service for the purpose of qualifying service in accordance with the Rules of 1979. In our opinion, there is no conflict between the Division Bench judgments, because the findings of the Division Benches are based on different factual aspects. Accordingly, we answer the substantial question of law No. 1 that there is no conflict of opinion between the two Division Bench judgments. Hence, the decision of the Division Bench in the case of *Rahisha Begum Vs. State of M.P. and others*, 2010(4) MPLJ 332, is not per incuriam. We answer substantial question of law No. 1 accordingly."

14. Apparent, it is from the above, we find that the ratio laid down in the case of **Mamta Shukla** (supra) would not be applicable in the present case firstly for the reason that the issue as to grant of family pension to a widow of an employee of work charged who are covered by Rule 4A & sub-rule 3 of rule 6 of Rules of 1979 was not the term of reference there, nor was the same dwelt upon by the Full Bench and secondly the case of the appellant/petitioner is fully covered by rule 4A and sub-rule (3) of rule 6 as amended vide notification dated 30th of January, 1996 in the M.P. (Workcharged and Contingency Paid Employees) Pension Rules, 1979.

15. Consequently, in view of above, the order passed by the learned Single Judge holding that the respondents were justified in denying the family pension to the petitioner on the ground of petitioner's husband did not complete 10 years of service in Regular Work Charged Establishment, could not be sustained and therefore, it is

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hereby declared that the services of the husband of the petitioner would be governed by Rule 4A and sub-rule 3 of Rule 6 of M.P. (Work charged and Contingency Paid Employees) Pension Rules, 1979 and she would be entitled for the family pension.

16. The order dated 15.7.2019 passed by learned Single Judge dismissing the petition is hereby set aside. The respondent/State is directed to pay the pension and other consequential benefits to the petitioner, within a period of three months from the date of this order.

17. Accordingly, the writ appeal is hereby allowed. No orders as to cost.

E-copy/Certified copy as per rules/directions.

(Rohit Arya)
Judge
29/03/2022

(Milind Ramesh Phadke)
Judge
29/03/2022

*Pawar**