

(2017) 05 MP CK 0060
MADHYA PRADESH HIGH COURT
Case No: 20837 of 2015

Vijay Kumar

APPELLANT

Vs

Anandlal & others

RESPONDENT

Date of Decision: May 4, 2017

Hon'ble Judges: Vandana Kasrekar

Bench: Single Bench

Advocate: Pradeep Kumar Naveriya, Piyush Dharmadhikari

Judgement

1. The petitioner has filed the present petition challenging the order dated 23.09.2015 passed the respondent No.3 whereby refused to extend the benefit of second Kramonnati to the petitioner.

2. The petitioner was appointed on the post of Lower Division Teacher vide order dated 17.06.1967 and was conferred with the benefit of first kramonnati on 01.01.1986. On 03.03.1986, the respondent No.1 has issued a circular for extending the benefit of kramonnati to the employees on completion of 12 and 24 years of service. As the petitioner has completed more than 25 years of her service from the date of her initial appointment, therefore, she became entitled to second kramonnati but as the said benefit was not extended to the petitioner, therefore the petitioner has submitted number of representations and ultimately filed the writ petition No.6063/2014 before this Court. The said writ petition was disposed of vide order dated 07.05.2014 thereby directing the respondents to consider the case of the petitioner for grant of time bound pay-scale in the light of the order passed in writ petition No.843/2011. In pursuance of the directions issued by this Court, the petitioner again submitted a representation on 27.06.2014 to the respondent No.3 as the order passed by this Court was not complied with. Thus, the petitioner was compelled to file contempt petition No.1472/2014. After receiving notice of contempt petition, the respondent No.3 has passed the order dated 23.09.2014

thereby rejecting the claim of the petitioner for grant of second kramonnati on the ground that she has refused to accept the promotions on three occasions and therefore, in view of circulars dated 31.03.2001 and 09.04.2001 she is not entitled to get the benefit. In the light of the order passed by the respondent No.3, the contempt petition was disposed of vide order dated 16.10.2015 with a liberty to the petitioner to challenge the said order.

3. Learned counsel for the petitioner submits that the impugned order is illegal and arbitrary. He further submits that the claim of the petitioner has been rejected on false grounds as the petitioner has never refused to join on promotional post. In support of his submission, learned counsel for the petitioner relied on the judgment passed by the Division Bench of this Court in the case of State of Madhya Pradesh and another Vs. Trilok Chand Gupta , 2010 (4) M.P.L.J. 266, in which it has been held that non-joining on the promotional posts by the employees cannot be a ground for denying the benefit of kramonnati to the said employees.

4. The respondents have filed the reply and in the reply, the respondents have stated that as the petitioner has refused to join on the promotional post thrice, therefore in the light of circular issued by the State Government dated 31.03.2001 and 13.03.2011, the petitioner is not entitled for the benefit of kramonnati scheme.

5. I have heard learned counsel for the parties and have perused the record. The Division Bench of this Court in the case of State of Madhya Pradesh Vs. Trilok Chand (supra) in paragraph No.6 has held as under :

"6. We do not find any force in the submission for the reason that admittedly, the petitioner/respondent was given the higher pay scale vide "Kramonnati" in the year 1991, whereas the said order of promotion which he declined was passed in the year 2002 and, thus, the benefit already accrued and given to the petitioner/respondent could not have been withdrawn on the ground that he refused to join at the transferred place in the year 2002 much after the grant of benefit of higher pay scale, on completion of 12 years of service. Therefore, in our view, the refusal to join at the transferred place on promotion would not have any impact or effect so far the grant of benefits of higher pay scale is concerned which was given on completion of required years of service. Besides, by the order placing the petitioner/respondent in a lower pay scale obviously visited with civil consequences and, therefore, before passing the said order, an opportunity of hearing or show cause against the reduction of his salary ought to have been given. Learned Government Advocate could not point out from record that such opportunity was afforded to the petitioner/respondent before taking recourse of recovery. Therefore, the order being in violation of principle of natural justice cannot sustain."

Thus, in the light of the aforesaid judgment, the benefit which has already accrued and given to the petitioner could not have been withdrawn on the ground that he has refused to join at the transferred place in the year 2002 much after after the grant of benefit of higher pay scale on completion of 12 years of service. It has further been held that the refusal to join at the transferred place on promotion would not have any impact or effect so far the grant of benefits of higher pay scale is concerned which was given on completion of required years of service. Thus, in the present case, from the facts narrated above, the petitioner has been extended the benefit of first kramonnati after completion of 12 years of service. However, the respondents have refused to extend the benefit of second kramonati to the petitioner on the ground that the petitioner has refused to join on the promotional post. As per the findings given by the Division Bench, the refusal to join on promotional post at the transferred place would not have any adverse effect so far as grant of benefit of higher pay scale is concerned.

6. In view of aforesaid and in the light of aforesaid judgment passed by the Division Bench of this Court, the petition is allowed. The impugned order dated 23.09.2015 is hereby set aside and the respondents are directed to extend the benefit of second kramonati to the petitioner from the date of her entitlement along with all arrears within a period of 4 months from the date of receipt of certified copy of the order passed today.