

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE VIVEK RUSIA

WRIT PETITION No. 2866 of 2023

BETWEEN:-

SMT. SADHNA JOSHI W/O LATE SHRI VINOD KUMAR DONGRE, AGED ABOUT 61 YEARS, OCCUPATION: SERVICE DK-2-166-B, DANISH KUNJ, KOLAR ROAD, BHOPAL DISTRICT BHOPAL. PRESENTLY WORKING AT-BLOOD BANK DISTRICT HOSPITAL, UJJAIN DISTRICT UJJAIN (MADHYA PRADESH)

.....PETITIONER

(BY SHRI PRASANNA R. BHATNAGAR, ADVOCATE)

AND

- THE STATE OF MADHYA PRADESH HEALTH DEPARTMENT**
- 1. PRINCIPAL SECRETARY VALLABH BHAWAN MANTRALAYA, BHOPAL (MADHYA PRADESH)**
 - 2. COMMISSIONER HEALTH SERVICES SATPUDA BHAWAN, BHOPAL (MADHYA PRADESH)**
 - 3. DIRECTOR HEALTH SERVICES DIRECTORATE SATPUDA BHAWAN, BHOPAL (MADHYA PRADESH)**
 - 4. REGIONAL JOINT DIRECTOR HEALTH SERVICES UJJAIN, DISTRICT UJJAIN (MADHYA PRADESH)**
 - 5. CIVIL SURGEON CUM CHIEF HOSPITAL SUPERINTENDENT UJJAIN, DISTRICT UJJAIN (MADHYA PRADESH)**
 - 6. JOINT DIRECTOR TREASURY ACCOUNTS AND PENSION UJJAIN, DISTRICT UJJAIN (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI DEVDEEP SINGH, PANEL LAWYER)

Reserved on : 26th April, 2024

Delivered on : 02nd May, 2024

This petition having been heard and reserved for order coming on

for pronouncement this day, the court pronounced the following:

O R D E R

The petitioner has filed the present petition under Article 226 of the Constitution of India being aggrieved by the order dated 06.12.2022 (Annexure-P/1) and order dated 25.04.2023 (Annexure-P/14) passed by the respondents.

02. Facts of the case in short are as under:-

2.1. The petitioner was initially appointed vide order dated 01.09.1987 on the post of Medical Social Worker. The appointed order was issued by the Joint Director, Health Services, Gas Relief, Bhopal. Initially, the appointment was made for six months on a fixed salary of Rs.1,212/- including allowances, however, the said appointment was continued from time to time.

2.2. The General Administration Department issued a letter dated 29.03.1993 for the merger of surplus employees working in the Gas Relief Department by way of regularization. Respondent No.1 vide order dated 31.03.1997 sanctioned various posts for absorption and recruitment of the staff of the Gas Relief Department under the Blood Banks run by the Health Department.

2.3. The petitioner approached the State Administration Tribunal (SAT) vide O.A. No.392 of 1998 seeking absorption and regularization in the Government Department. The said OA was disposed of vide order dated 02.11.1999 by directing the respondents, either to regularize the service of the applicant as per their submissions made in the return or the applicant be appointed against equivalent post available in the other Departments as per Circular dated 29.03.1993.

2.4. After the aforesaid order, the Director, Health Services vide order dated 08.08.2005 appointed the petitioner to the post of Medical

Social Worker in the pay scale of Rs.1600 – 2340.

2.5. The petitioner was relieved from the Gas Relief Department and joined the office of CMHO, Ujjain. The last pay certificate was sent by the Assistant Surgeon / Chief Medical & Health Officer, Gas Relief, Bhopal along with the service book.

2.6. The petitioner retired from service on 30.06.2023 after attaining the age of superannuation. The petitioner submitted a representation on 15.12.2022 claiming pay increment and other benefits after counting service from 10.09.1987 till 30.06.2023. Vide impugned order dated 06.12.2022, the respondents treated the date of appointment of the petitioner on the post of Medical Social Worker from 16.10.2005 and fixed him in the pay-scale of Rs.4500 – 7000 and calculated the excess amount paid to the petitioner. Vide order dated 25.04.2023, the respondents have directed the petitioner to deposit the amount of Rs.7,60,040/- as an excess payment and interest of Rs.4,13,834/-. Hence, the present petition is before this Court. By way of this petition, the petitioner seeking quashment of orders dated 06.12.2022 & 25.04.2023 as well as claiming pension as per Rule 57 of the M.P. Civil Services (Pension) Rules, 1976.

03. The respondents filed a reply by submitting that the petitioner was initially appointed in the respondents' department on 08.08.2005 to the post of Medical Social Worker in light of the Circular dated 29.03.1993. She was fixed in the pay scale of Rs.1600 – 2340 and revised pay-scale of Rs.4500 – 7000. She was to be fixed in the minimum pay-scale of Rs.4500, but fixed in the pay-scale of Rs.5375, which has been corrected at the time of retirement, hence, recovery is justified. The excess amount paid to the petitioner because of the wrong fixation till the date of her retirement is liable to be recovered from the

petitioner.

04. The petitioner filed the rejoinder by submitting that she was regularized in the M.P. Work Charge & Contingency Paid Establishment as per the Pay Revision Rules, 1998 and fixed in the pay-scale of Rs.4500 – 7000 vide order dated 15.10.1998. The aforesaid entry was made in the service book, thus prior to the absorption in the Health Department, she had been regularized in the regular pay-scale, therefore, the pay-scale of Rs.4500 – 7000/- with pay of Rs.5375/- has rightly been fixed by the respondents. It is further submitted that the entire services of the petitioner are liable to be counted from 10.09.1987 till the date of retirement i.e. 30.06.2023 for pensionary benefits. It is further submitted that the respondents are wrongly treating the petitioner as appointed on 08.08.2005, whereas as per the order of SAT, she was merged/absorbed in the services of the Health Department. It is further submitted that the NPS Account of the petitioner was never opened as she was not made a member of NPS, therefore, after rendering services from the the year 1987, she is not getting a pension. Similarly placed employees namely; Smt. Brijlata Chourasiya and Shri Dinesh Kumar Tiwari appointed with the petitioner in the Gas Relief Department are getting regular pensions.

05. The respondents filed an additional reply by submitting that the petitioner was initially appointed to the post of Medical Social Worker at the Collectorate rate in the Health Services, Gas Relief and such appointment was purely a temporary appointment. As per Circular dated 29.03.1993, six posts of Medical Social Worker were created in the pay-scale of Rs.1400 – 2340 and the petitioner was appointed to the newly created post. Therefore, her past services under M.P. Work Charge & Contingency Paid Establishment are not liable to be counted. As per orders dated 02.04.2005 & 13.04.2005, New Pension Scheme, 2005

shall apply to those employees, who were appointed after 2005 and the provisions of M.P. Civil Services (Pension) Rules apply to those employees who were appointed before 2005. So far as Smt. Brijlata Chourasiya and Shri Dinesh Kumar Tiwari are concerned, they are getting salaries from Bhopal Gas Tragedy Relief & Rehabilitation Department and not from the Health Department.

06. I have heard the learned counsel for the parties at length and perused the record.

07. The main controversy between the parties is whether the appointment of the petitioner in services of the Health Department vide order dated 08.08.2005 is treated to be a fresh appointment or absorption/merger from one department to another department.

08. The petitioner was initially appointed vide order dated 01.09.1987 in Health Services Gas Relief which is also a wing of the Health Department of State of Madhya Pradesh. This Bhopal Gas Relief & Rehabilitation Department was created looking to the emergent need after the MIC Gas tragedy in Bhopal city. The appointment of the petitioner was made on the recommendation of the Departmental Selection Committee, therefore, proper procedure was followed even before the appointment on a contract basis on the pay of Rs.1,212/-. As per photocopy of the service book (Annexure-P/16), vide order dated 15.10.1998, the pay-scale of Rs.4500 – 7000/- was sanctioned under the Madhya Pradesh Work Charge & Contingency Services Pay Revision Rules, 1998 and with the same pay-scale, the petitioner was appointed in the Health Services as Medical Social Worker.

09. Vide letter dated 29.03.1993, the General Administration Department communicated the decision dated 02.01.1993 that the Class – III & Class – IV employees working in Bhopal Gas Relief &

Rehabilitation Department are liable to be included in the surplus employee for the purpose of regularization and the list of employees was forwarded along with the aforesaid letter. In the Department of Health Services, six posts of Medical Social Workers were created to be filled by surplus employees. When the aforesaid benefit was not given to the petitioner, she approached the SAT. The learned Tribunal found that the petitioner is liable to absorb against the vacant posts and accordingly, directed the respondents either to regularize the services of the applicant or appoint against the equivalent post available in other departments as per the GAD Circular dated 29.03.1993. The petitioner was appointed in the same department i.e. Directorate of Health Services, therefore, this is to be treated as regularization. As per the Tribunal's order, either she was liable to be regularized or appointed against the equivalent post available in the other department. The petitioner was initially appointed as a Medical Social Worker in Bhopal Gas Relief & Rehabilitation Department and thereafter, in the same Health Services Department, she was appointed as Medical Social Worker, therefore, her entire services are liable to be counted from the date of initial appointment and pay-scale was also to be fixed as Rs.4500 – 7000 with pay of Rs.5375/-, which was fixed in the year, 1998 by way of Pay Revision Rules, 1998.

10. Even otherwise, the services under the Work Charge & Contingency Paid Establishment are also pensionable and after appointment in the Health Department, earlier services are liable to be counted for the purpose of pension and other benefits. The petitioner is entitled to continuity of services. Hence, the impugned orders dated 06.12.2022 (Annexure-P/1) & 25.04.2023 (Annexure-P/14) are hereby quashed. The respondents are directed to count the services of the petitioner from 10.09.1987 till the date of retirement i.e. 30.06.2023 in

the health department and grant the benefit of pension under M.P. Civil Services (Pension) Rules, 1976 with all consequential benefits. Any amount already recovered from the petitioner be returned to him. All compliance be made within 90 days from today .

11. With the aforesaid, Writ Petition stands allowed.

(VIVEK RUSIA)
J U D G E

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