

The State of Madhya Pradesh Vs. Kadeer Khan

The State of Madhya Pradesh Vs. Kadeer Khan

SooperKanoon Citation : sooperkanoon.com/1089772

Court : Madhya Pradesh

Decided On : Sep-30-2013

Appellant : The State of Madhya Pradesh

Respondent : Kadeer Khan

Advocate for Def. : Shri. S.P.Khare

Judgement :

1 WA No.845/13 & WA No.850/13 30.09.2013.

Shri Kumaresh Pathak, learned Deputy AG for the appellants/State.

Shri S.P.Khare, learned counsel for the respondents.

This order shall dispose of WA No.850/13 and WA No.845/13.

IA No.12066/13 & IA No.12105/13 , for condonation of delay.

For the reasons stated in the applications supported by affidavits, prayer made in the applications are allowed.

Delay in filing this appeals are condoned.

Heard on admission.

These appeals are directed against Orders dated 25.07.12 and 09.05.13 passed in WP No.9842/12 (s) and WP No.8663/13 respectively by which writ Court allowed the writ petitions and benefit of 2nd Kramonnati was extended to the respondents.

It is submitted by the appellants that identical matter has been decided by a Division Bench, and similar directions may be issued in the present cases as SLP against leading case in Writ Appeal No.282/10 (State of M.P.and ORS.versus Vajra Sen Jain) decided on 9.2.11 is pending before the Apex Court.

Prayer made by Shri Pathak is not opposed by Shri S.P.Khare, Advocate appearing for the respondents.

In WA No.55/13 (State of M.P.and others versus L.P.Dubey) decided on 14.05.13, a copy of which is available as Annexure A/8 in WA No.845/13 and Annexure A/9 in WA No.850/13, a Division Bench of this Court considering the similar controverRs.has held thus :- The writ petition preferred by the respondent for grant of benefit of Kramonnati (upgradation) was 2 allowed by the writ Court.

The Single Bench directed to revise the pay scale of the respondent by taking into account the date of fiRs.up gradation granted to the respondent and also for considering the case of the respondent for Second Time Bound Upgradation under the Scheme.

The appellants herein were directed to fix the salary of the respondent notionally and thereafter to pay pension, gratuity and other terminal dues to the respondent.

This order is under challenge in this appeal.

Learned counsel appearing for the respondent submitted that the controverRs.is squarely covered by a Division Bench decision of this Court passed in W.A.No.282 of 2010 [State of M.P.and ors versus Vajra Sen Jain].decided on 9.2.2011 by the Gwalior Bench against which an S.L.P.bearing No.C.C.20698 of 2011 was heard and dismissed by the Apex Court on 2.1.2012.

It is submitted that on the basis of the judgment of the Division Bench, all the appeals may be dismissed.

In Varja Sen (supra).the Division Bench of this Court considered the controversy, held thus :- The respondent was appointed as Stockman on 20th August,1963 in Veterinary Department.

Thereafter the post was redesignated as Veterinary Field Assistant.

The respondent was granted revised pay scale of Rs.1200-1800 w.e.f 01.01.1986 and in the year 1989 he was granted Kraminnati in the pay scale of Rs,2400-1640.

He was granted second Kramonnati w.e.f.01.01.1999 in the pay scale of Rs.5000-8000/-.

The respondent retired from services after attaining the age of superannuation on 30.6.2002.

The learned Single Judge after appreciation of facts of the case has held that the respondent was granted higher pay scale on completion of 12 years of service w.e.f.01.01.1986 and second upgradation was granted to the respondent w.e.f.01.01.1999 after completion of 24 years of service was not in accordance of law.

However, the pay of the respondent which was fixed on account of second upgradation and arrears paid to the respondent could not be recovered from the respondent on the principle of law laid down by the Hon.

Supreme Court in the case of Sahib Ram versus 3 State of Haryana and otheRs.1995 (Suppl.)(1) SCC18 Learned Single Judge further held that the respondent was entitled to be considered for grant of benefit of second upgradation in accordance with the Scheme dated 13.07.1999 and 19.04.1999 and he was further eligible for consequential revision of pay.

The learned Single Judge issued the following direction in this regard :- 7.

Resultantly, the writ petition is allowed.

The respondents are directed to revise the pay scale of the petitioner by taking into account the fiRs.upgradation granted to the petitioner vide order dated

25.9.1984 with effect from 01.04.1981 and also after considering the case of the petitioner for Second Time Bound Upgradation under the Time Bound Upgradation Scheme dated 13.7.1999 and 19.4.1999, the respondents shall fix the salary of the petitioner notionally and shall thereafter pay pension, gratuity and other terminal dues to the petitioner.

The aforesaid exercise shall be concluded positively within a period of three months from the date of receipt of a certified copy of this order.

8.

In the present case, the petitioner has attained the age of superannuation on 30.6.2002 and till date, the pension has not been paid to the petitioner and, therefore, this Court is of the considered opinion that the petitioner is entitled for interest at the rate of 6% (six percent) per annum on the delayed payment.

9.

With the aforesaid, the writ petition stands allowed.

No order as to costs. 3.

After perusal of the order impugned, in our opinion, the order passed by the learned Single Judge is in accordance with law.

The learned Single Judge has considered all the aspects of the case.

Hence, we do not find any illegality or irregularity in the order impugned. At this stage, Shri Kumresh Pathak, learned Dy.

A.G.submitted that though the S.L.P.preferred by the State against the Division Bench decision in Vajra Sen, was dismissed by the Apex Court but question of law was kept open and thereafter another S.L.P.has been entertained by the Apex Court on the question of law and in case the order is reversed or modified or some other directions are issued by the Apex Court, then those directions may be made effective in the matter.

4 Though the prayer is opposed by the counsel for the respondent but considering the factual position that the Apex Court have already entertained the S.L.P.on the question of law, it is directed that in case the Apex Court decides the question of law otherwise, the aforesaid judgment shall be made applicable in the matter of respondent.

With the aforesaid directions, all the writ appeals are disposed of in the light of the judgment passed in Vajra Sen (supra).There shall be no order as to costs. As the identical matter has already been decided by this Court, these appeals are also finally disposed of with the directions as are quoted hereinabove in the case of L.P.Dubey (supra).The aforesaid directions shall be applicable in the present cases as far as they are applicable.

No orders as to cost.

(Krishn Kumar Lahoti) (Subhash Kakade) Acting Chief Justice Judge.

Jk.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com