

IN THE HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

21778
W.P. No...../2022 (5)

Petitioner :

Ramkrishna Pustake S/o Late Shri
Dattatray Pustake, Aged 58 Years,
Occupation- Pump Driver, R/o Khasgi
bazar, mote ganeshji mandir ke pass,
lashkar, Gwalior (M.P)

V/s

Respondents:

1. State of Madhya Pradesh through the
Principle Secretary, Public Health
Engineering Department, Vallabh
Bhavan, Bhopal (M.P)
2. Chief Engineer, Public Health
Engineering Department, Near Water
Tank, Morar, Gwalior (M.P)
3. Executive Engineer, Public Health
Engineering Department,
Maintenance Division no. 1, Lashkar,
Gwalior (M.P)

कार्यालय महाशिवता, ग्वालियर
अग्रिम प्रति
पृष्ठ क्र. 01 के 53
दिनांक 21/09/22
स्वाक्षर ड. नाथ

(Writ Petition under Article 226 of the Constitution of India)

1. PARTICULARS OF THE CAUSE/ORDER AGAINST WHICH PETITION
IS MADE:

1. Date of order/Notification/circular/policy/decision etc.:
2. Passed in. 05/08/2022
3. Passed by. Respondent no. 3
4. Subject in brief :

The petitioner is aggrieved by the action/order of the
respondent no. 3 vide order dated 05/08/2022 Annexure P/1.
By which, he was not given the minimum pay scale from the
date of his classification. The petitioner was reverted from
permanent classification to Stayee Karmi Pump Driver. The
impugned order is prima facie illegal, arbitrary, in violation of



ललित शर्मा
श्री 76/09/2022
म.प्र. उच्च न्यायालय, ग्वालियर

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the Standard Standing Orders, Which are framed under Section 21 of M.P. Industrial Employment (Standing Orders) Act, 1961, in which no such classification as a permanent daily wage employee exists. Once an employee is classified as permanent, he acquires the right of all benefits available to a permanent post as this Hon'ble Court has held way back in 1989 in the case of State of M.P. PHED V/s Ramprakash Sharma, 1989 JLU 36. The petitioner has been working in the respondent's department for 30 years. The action of the respondent is clearly against the Public Policy and contrary to the Provisions of Standard standing orders and Articles of 14 and 16 of the constitution of India and the law declared by the Apex Court, hence, this Petition.

2. **A DECLARATION THAT NO PROCEEDING ON THE SAME SUBJECT MATTER HAS BEEN PREVIOUSLY INSTITUTED IN ANY COURT, AUTHORITY OR TRIBUNAL. IF INSTITUTED, THE STATUS OR RESULT THEREOF, ALONG WITH COPY OF THE ORDER :**

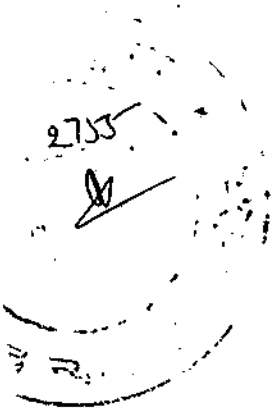
The Petitioner declares that the previously he has filled W.P/13298/2022 in the Hon'ble High Court. Which was disposed of by this Court vide order dt. 27/06/2022.

3. **DETAILS OF REMIDIES EXHAUSTED :**

The petitioner declares that he has not left with any other efficacious alternative remedy than approaching this Hon'ble Court. The Petitioner submitted representation, but with no effect.

4. **DELAY, IF ANY, IN FILLING THE PETITION AND EXPLANATION THEREFOR:**

The petitioner declares that there is no delay on the part of the Petitioner in filing petition. The petitioner is getting recurring loss of not giving all benefits as a permanent classified employee after verdict of the Hon'ble Apex Court. The petitioner will suffer financial loss day to day, therefore, petitioner pray relief is recurring nature, hence, matter is of recurring cause and there is not delay filling of this petition. It is also a case where ratio laid down by the Hon'ble Supreme Court holding that similarly situated employee be entitled to consequential benefits as laid down in following case by the



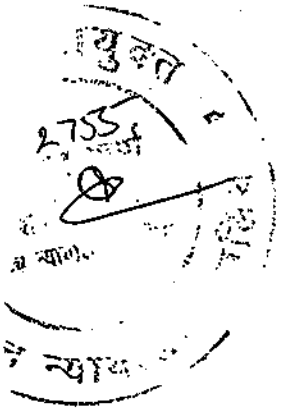
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Hon'ble Supreme Court 1985 (2) SCC 648 *Inder Pal Yadav Vs. Union of India and Ors.* It is well settled in law that where a recurring loss of monetary benefits and service benefits, delay cannot be a ground to take away the legal accrued in favour on a employees.

5. FACTS OF THE CASE :

Brief facts giving rise to the present petition are as under;

- 5.1 That, the petitioner was appointed as a daily wage employee to the post of Pump Driver in the respondent's department on 01/06/1989. The petitioner has been discharging his duties with honesty and sincerity.
- 5.2 That, the Engineer-in-Chief issued an order क्रमांक/1139, dated 03.02.2003 to Chief Engineer of Zones, PHED for classification of daily wage employees, thereafter, an order no. 9603 dated 17/12/2003 was issued for daily wage employees on the permanent post and in pursuance to the aforesaid orders, and after considering his length of service work performance and the entire record, the concerned Executive Engineer issued an official order dated 27/11/2004 and classified so many employees including the petitioner. The petitioner has been declared as a classified permanent employee on the post of Pump Driver by the order of respondent no. 3 vide order क्रमांक. dt. 27/11/2004 after working 240 days satisfactorily w.e.f. 27/01/1990 at S.N 210 of the order. The respondents have made arrears of salary from the classification order date to so many employees of this order dt 27/11/04. Copy of the order of List of classification order dated 27/11/2004, is contained, enclosed herewith and marked as **Annexure P/2**.
- 5.3 That, the petitioner filed W.P/1124/2015 before this Hon'ble Court. The Hon'ble Court disposed of writ petition in the light of Kaluram Narwariya (Supra) vide order dt. 09/09/2015.
- 5.4 That, it is admitted fact that the provision of M.P.Industrial Employment (Standing Order) Act, 1961 and Rules, 1963 is applicable on the respondent department and the order of classification has been issued in pursuance to the provisions of the Standard Standing Order. M.P Industrial Employment (Standing Order) Rule, 1963 framed under section 21 of



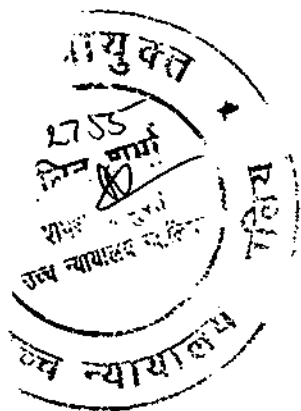
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M.P. Industrial Employment (Standing Order) Act, 1961. For application of this Act, the assent of the President of India received on 8th July, 1961 and thereafter the assent of this Act, of 1961 was published in the Madhya Pradesh Gazette on the 28th July, 1961. It has already been decided by the full bench of this Hon'ble Court in the case of **Superintending Engineer Vs. Dev Prakash Shrivastava** 1999 (1) MPJR 1 that the terms and conditions of the daily rated employees' services are governed by Standard Standing Orders. A Full Bench of this Hon'ble Court in **Superintending Engineer, PWD and another Vs. Dev Prakash Shrivastava**, 1999 (1) JLU 391 has held as under:

"In the case of State of M.P. and other Vs. Ram Prakash Sharma and others (1989 JLU 36), this Court examined the provisions of the Industrial Employment (Standing Orders) Act, 1961, read with the rules of 1963 and held that the service conditions which have been incorporated as Annexure shall apply. Though another aspect was also considered whether a direct petition is maintainable or not without going to the Industrial Court. That aspect was discussed in greater detail. Specifically the applicability of sub-section (2) of Section 2 did not arise in that case. Be that as it may, the fact remains that in view of our present opinion that Annexure which is Standard Standing Order will definitely govern the present Department also till a proper notification is issued under sub-section (2) of Section 2 of Act of 1961.".....

As a result of the above discussion, we hold that by virtue of sub-section (2) of section 2, unless the Government notifies that particular rules which are applicable to that Department will exempt the application of the provisions of the M.P. Industrial Employment (Standing Order) Act, 1961, till that time the provisions of the Act, Rules and Orders issued thereunder will govern that Department. The references are accordingly answered/."

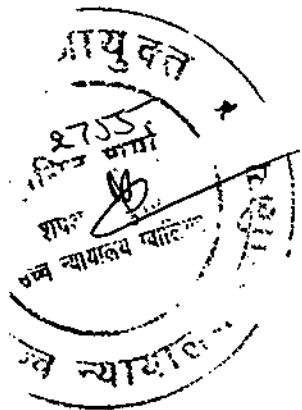
Although the respondents rely upon some Judgements of Hon'ble Apex Court wherein it was observed that such



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daily wages cannot claim for regularization as a matter of right since they were not regularly recruited according of the Hon'ble Supreme Court were with regard to general principals of regularization of daily wagers who have put in long service and there were no statutory provision like Standard Standing orders involved in these decisions. The present case is governed under the provision the act of 1961, Rules, of 1963 and the statutory Standing Orders framed under the provisions of the Act. Therefore, the general ratio laid down by the Apex Court relied by the respondents will not govern the present case. The full bench of this Hon'ble Court in Dev Prakash's case has held- "Since the present department has not been exempted by issuing a notification in accordance with sub section (2) of Section 2 of the Act of 1961, the Act of 1961 read with Rules of 1963, the Standard Standing Orders shall govern the Department."

- 5.5 That, further in the case Writ Appeal 110/2011, it has been held that " Whether an employee comes by way of normal recruitment process or through the process of classification, the fact remains that both i.e. the normally recruited employee and a classified employee work on the same post and perform the same duties. It cannot be held that the classification has any less effect or force as compared to the normal process of appointment, because the classification is also based upon the law in the form of standing orders and as such both employee who have been brought into service through either of the two processes permitted by law, as permanent employees against a particular post, should be entitled to the same benefits. Taking a contrary view would mean that the employees inducted through the classification process would be saddled with an undesirable disability throughout their service, as compared to other employees, which may tantamount to violation of the principle of "equal pay for equal work". Our view finds support from another Division Bench decision of this Court report in the case of State of M.P. Vs. Ram Prakash (1989 JLU 36). This view of this Hon'ble Court has been confirmed by the Hon'ble Supreme



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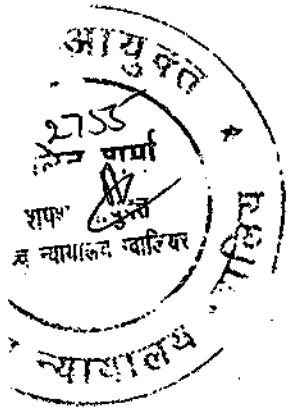
Court by dismissing the S.L.P Civil 20025/2011 in the case of Sultan Singh Narwaria, filed by the State Government against this order vide dated 21/01/2015. The Hon'ble Court has observed that " We direct the State Government to implement the order (S) passed by the High Court within eight month' time from today. If for any reason, the Petitioner State does not implement the orders (S) passed by the High Court, the respondents are at liberty to approach this Court by way of filling contempt Petition (S)".

- 5.6 That, earlier, the many employees filed cases for the regular pay scale and arrears of salary from the date of classification in the Hon'ble Court in 2011. The department cancelled the classification order of so many employees and this PHE divisions, Gwalior vide order dt. 15/07/2011, 21/07/2011.
- 5.7 That, the Union of Rajya Nirman Vibhag Karmachari Sangh gwalior filed W.P/5023/2011 against the impugned order dt. 15.07.2011, 21.07.2011 of the respondent in this Hon'ble Court. This Hon'ble Court vide order dt. 14.12.2011 order passed that in Writ Petition No. 6037/2011 Vijay Kumar Jain Vs State of M.P and Ors. shall govern the disposal of this case as well. In the case of W.P/6037/2011, This Hon'ble Court passed order vide dt. 14.12.2011. The operative part of the order contained is reiterated as below :

In the result impugned order to the extent it deals with petitioner is quashed and set aside. Needless to mention that liberty is reserved to the respondents to proceed afresh if permissible in law, after following the principle of nature of justice. With the aforesaid, petition stands disposed of.

- 5.8 That, Mr. Vijay Kumar jain filed the W.A/42/2012 against the order dt. 14.12.2011 in this Hon'ble Court. This Hon'ble Division Court disposed of the petition vide order dt. 30.01.2012 with direction.

In view of the above, the writ appeal is disposed of with a direction that if in pursuance to the direction issued by the learned Single Judge the respondents come to the conclusion that the appellant is eligible for classification, then he would be entitled to get the benefit of regular pay-



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scale of the post on which he would be classified. No order as to costs. Thereafter, the department filed R.P/179/2012 against the order dt. 31.01.2012 in the Hon'ble Division Bench. The Hon'ble Division disposed of the R.P vide order dt. 13.07.2012.

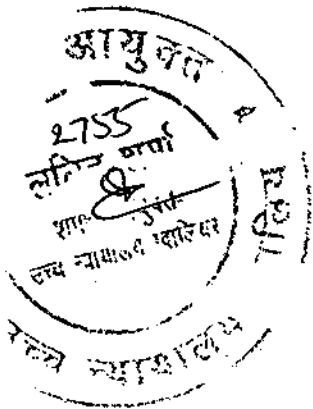
It is informed by learned Government Advocate that similar matters are pending before the Hon'ble Supreme Court for adjudication. Copies of the orders passed by the Hon'ble Supreme Court in S.L.P.Nos 8473/2012, 3256/2012, 17998/2010, 17875/2011 and 13278/2011 have also been filed by the state along with the Review Petition. Hence, execution of the order of Division Bench would be subject to the order that may be passed by the Hon'ble Supreme Court in similar cases. The Review petition is disposed of accordingly.

5.9 That, the petitioner is member of Union of Rajya Nirman Vibhag Karmachari Sangh Gwalior.

5.10 That, the law regard to classification case has been settled by the decision of the Hon'ble Supreme Court of India in the case of Ram Naresh Rawat Vs Shri Ashwani Rai and Ors., (2017) 3 SCC 436, classified employees are entitled from minimum pay scale from the date of classification. The Hon'ble Indore Bench has decided the bunch of writ appeal/693/2018 connected other writ appeal, R.P, vide order daed 05/07/2018.

17. The law on the subject is well settled in the case of Ram Naresh Rawat Vs. Ashwini Ray & Ors.(Supra). The respondents have been classified as permanent employees on 13/08/2004 and, therefore, now at this stage, after a period of 14 years we cannot grant liberty to the appellant/State to consider as to whether they have been classified as per policy framed by the State Government or whether they have been entitled for classification as permanent employees under the Rules.

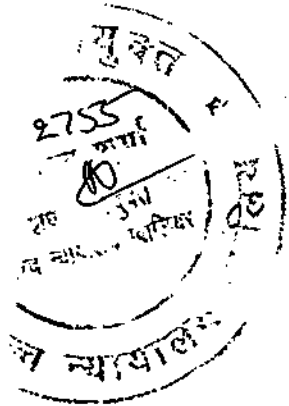
18. Considering the fact that the permanent status was conferred upon employees in the Year 2004, we set aside the impugned order in part and directed the appellant to grant minimum regular pay-scale to them from the date of their classification as directed by the Hon'ble Supreme Court in Para – 23 of Ram Naresh Rawat Vs. Ashwini Ray & Ors.(Supra).





Thereafter, the state filed S.L.P/8126/2019 against the order of writ appeal in the Hon'ble Apex court. The Hon'ble Supreme Court has dismissed the SLP of the state vide order dt. 05/04/2019.

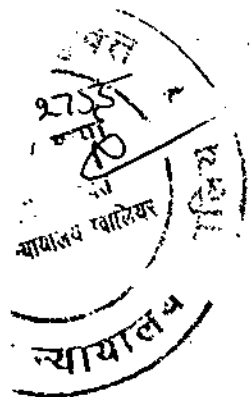
- 5.11 That, the General Administration Department issued the circular for कार्यरत दैनिक वेतन भोगी श्रमिकों के लिए स्थायी कर्मियों को विनियमित करने की योजना vide order dt. 07/10/2016. This circular was framed for daily wages employees in the state. But, the petitioner is classified permanent employee.
- 5.12 That, the petitioner filed W.P/13298/2022 before this Hon'ble Court. The Hon'ble Court disposed of writ petition in the light of Ramnaresh Rawat (Supra) vide order dt. 27/06/2022. A copy of the order of this Hon'ble Court is contained, enclosed herewith and marked as Annexure P/3.
- 5.13 That, the Hon'ble Court allowed the bunch with connection writ petition/4018/2020 (s) (Kamta Prasad Vs. State of M.P and Ors.) vide order dt. 26/08/2021. The Hon'ble court quashed impugned order of the state Shayee karmi and cancellation of classification order, and directed to give minimum pay scale from the date of their classification in the light of judgment Ram Naresh Rawat (Supra).
- 5.14 That, the Hon'ble Court allowed the writ petition/26321/2021 (Puran Singh Bhadoriya Vs. State of M.P and Ors.) vide order dt. 09/12/2021 in the identical matter. The Hon'ble court call in respondents in court in this case. Mr. Sanjay Singh Solanki, Executive Engineer, PHED Maintenance division no. 1 Gwalior came this Hon'ble court and gave undertaking behalf of respondents that state is ready to make compliance in identical matter, because impugned classification order of 2011 has already cancelled by this Hon'ble Court, than why, respondents always show this impugned order. The law has been settled in the case of Kamta Prasad (Supra). Now, Mr. Sanjay singh solanki and respondents took "U" tern. A copy of the order of this Hon'ble Court and order of respondents is contained, enclosed herewith and marked as Annexure P/4., Annexure P/5.

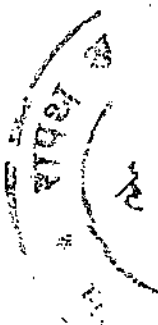




5.15 That, the officer/clerk of the department chooses employees to make payment of minimum pay scale. In the name of verification of classification, respondent no. 2, 3 choose employee, thereafter, they are made payment of arrears. It happen many cases. Mr. Pradeep Garg filed writ petition before this Hon'ble Court. Hon'ble ordered to verify to classification order of Mr. Garg. The respondent no. 2 verifies the classification order of Mr. Pradeep Garg, filed compliance report before this Hon'ble court 31/03/2021 in pending contempt case/625/2021 (Pradeep Garg Vs. State of M.P and ors.). Representation of Mr. Garg was rejected. But, Mr. Pradeep Garg made contract the office of respondent no. 2 and compliance was changed by respondent no.2 and payment was done to mr. Predeep Garg. The respondent no 2 changed compliance report, wherein, the respondents submitted in first compliance report that order of classification has been cancelled vide order dt. 21/07/2021. In second case, in the name of classification verification in same division, payment was made to mr. Santosh Kumar Shama. A copy of the order of this respondents is contained, enclosed herewith and marked as **Annexure P/6., Annexure P/7, Annexure P/8.** The Hon'ble Court mansion picks and chooses words of employees to make payment by department in para no. 43 of order dt. 26/08/2021 in W.P/4018/2020 (Kamta Prasad Vs. State of M.P and Ors.)

43. As in large number of cases, the benefit of classified employee is extended to the similarly placed employees and the State Govt. is adopting pick and choose method and are extending the benefit of the policy to those who are approaching this court in contempt proceedings and burdening this court by unnecessary litigation despite of observations being made by this court on various occasions, this court deems it appropriate to impose cost of Rs.10,000/- (Ten thousand), (for each of the petitioners) on the State Government which is to be paid in addition to the benefit of classification. Aforesaid cost be deposited within one month before Principal Registrar of this court. Out of which, 50% of the same will be given to the petitioners and 50% will be utilized for the benefit of needy who are facing hardship during this Covid 19 Pandemic scenario.



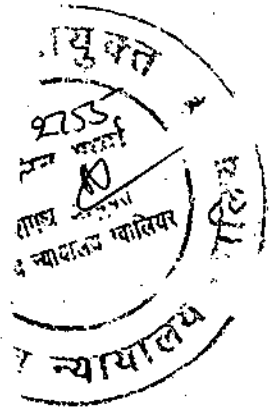


5.16 That, the impugned order in Annexure P/1 is defective, one and deserve to be declared as illegal and the same may kindly be quashed. The respondents arbitrary deliberately want to implement General Administration Department Circular dt. 07/10/2016 on the petitioner. Now, the respondents are trying to nullify the whole judicial pronouncements of the Hon'ble Writ Court, Such action is clearly impermissible in law.

5.17 That, it is surprising that the many employees of the department, including this division, which was classified in the common order of the respondents vide order dt. 27/11/2004. Thereafter, they have travelled up to the Hon'ble Supreme Court. The State filed the S.L.Ps in the Hon'ble Apex Court. The Hon'ble Apex Court has dismissed the S.L.Ps of the State Government vide dt. 21/01/2015. The legal position has been settled by the Hon'ble Apex Court. The respondents are model employer and they should not discriminate in the matter of regular pay scale and arrears of salary and regularization of service of daily wage employees. Similarly situated persons have to be treated similarly and any division would be contrary to the equality clause given in Article 14 of the Constitution of India. The Hon'ble Supreme Court in case of **State of U.P Vs. Arvind Kumar Shrivastava 2015 (1) SCC 347** para 13 has held that "Service Jurisprudence evolved by this court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently".

In another judgement, the Hon'ble Apex Court held, In view of this ratio, a model employer/welfare State should extend the similar benefits to all similarly situated persons. We are not oblivious of the fact that a sizable number of poor employees. Who are in a lower echelon of the State Government service, are required to knock the doors of the Court for seeking similar relief. This kind of litigation can be avoided, if the government extends the benefits to all similarly situated persons.

Once the Government's SLPs are dismissed and the legal position has attained finality, in all fairness, the respondents





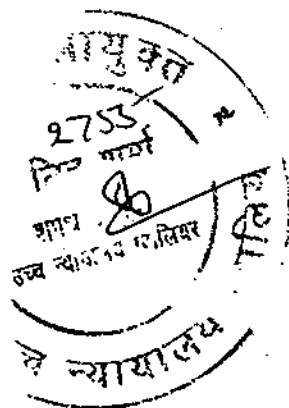
should extend the benefits of the said principal to all similarly situated employees. In (1985) 2 SCC 648 (Inder Pal Yadav and others vs. Union of India and others), the Apex Court opined as under;-

“Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated. They are entitled to similar treatment, if not by anyone else at the hands of this Court.”

- 5.18 That, the action of the respondents, are not giving the benefits of classification to the petitioner is illegal, arbitrary and against the law laid down by this Hon'ble Court & Hon'ble Supreme Court, Hence, this Petition on the following ground.

6. GROUNDS URGED :

- 6.1 That, the respondents are model employer and they should not discriminate in the matter of payment of wages on account of permanent classification. Similarly, any deviation would be contrary to the equality clause given in Article 14, 16 Constitution of India. Because there are several employees who obtained orders from the court, are paid pay scale, the arrears of salary from the classification date and other benefits of the permanent classified post.
- 6.2 That, the “Rule of Law” should not be violated in a democratic Country. The petitioner has been victimized by respondents after cancel his classification order. Thus, the action of the respondents is bad in law.
- 6.3 That, the impugned order of the respondents vide order dt. 05.08.2022 (Annexure P/1) is also otherwise erroneous, if allowed to stand, it would cause prejudice to the petitioner, hence, the same is liable to be quashed.
- 6.4 That, the respondents are duty bound to act in conformity with the constitutional provisions and under standard standing orders Act and rules. They are also duty bound to comply with the directions and orders of Hon'ble Supreme Court and Hon'ble High Court. The action of the respondents in not fixing the pay of petitioner in the pay scale and arrears of salary from



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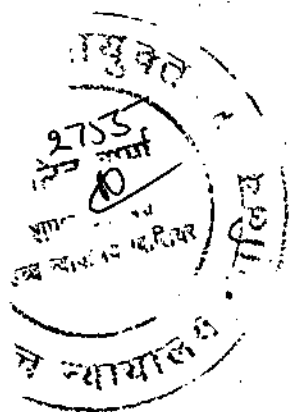
the date of classification is clearly an arbitrary, discriminatory and illegal act as the similarly situated classified persons vis-à-vis the Petitioner has been granted these benefits.

- 6.5 That, the petitioner has been classified long back 30 years by the respondents Now, the respondents trying to nullify the whole judicial pronouncements of this Hon'ble Writ Court and Hon'ble Supreme Court. Such action is clearly impermissible in the law. This a sheer discrimination has been meted out to the petitioner hitting the Articles 14 and 16 in the Constitution of India, Thus, the petition deserves to be allowed
- 6.6 That, other ground would be urged at the time of arguments with the permission of this Hon'ble Court.
- 6.7 That, the petitioner craves liberty to amend, alter and add to the ground at the time of the hearing.

7. RELIEF PRAYED FOR :

On the basis of the facts and grounds stated hereinabove, the petitioner most humbly prays for following reliefs:-

- 7.1 That, the impugned action and order of respondents dt. 05/08/2022 **Annexure P/1** may kindly be declared as illegal and the same may kindly be quashed.
- 7.2 That, a direction may kindly be given to the respondents to give the service benefit and minimum pay scale of the post of the permanent classified Pump Driver from the date of his classification as permanent employee to the petitioner. And pay the arrears of salary on fixation of pay along with all consequence benefits with interest from the date of his Classification.
- 7.3 That, the respondents may further be directed to treat the petitioner at par with their similarly placed co-employees with seniority and consequential benefits on the post of Pump Driver from the date of his Classification.
- 7.4 That, any other relief, which this Hon'ble Court may deem fit and proper may also be given to the petitioner along with costs.





8. INTERIM ORDER/WRIT, IF PRAYED FOR :

Nil.

9. DOCUMENTS RELIED ON, BUT NOT IN POSSESSION OF THE PETITIONER:

Nil.

10. CAVEAT :


There in no notice of lodging a caveat by the opposite party is received.

DECLARATION- " The Copies as required by rule 25 of Chapter X of the High Court of Madhya Pradesh Rules, 2008, have been served upon concerned Advocate General's Office, Gwalior at time 10.30 Am on the /09/2022 Place Gwalior M.P"

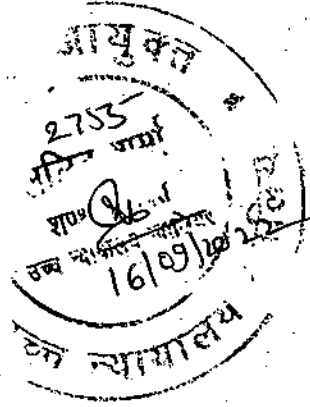
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
Date : 16 /09/2022

Humble Petitioner
Ramkrishna Pustake
Through Counsel


Devesh Sharma

(Advocate)




ललित शर्मा
शिव आयुक्त
न्यायालय ग्वालियर

