

STATE OF M.P. AND ORS.

v.

SADASHIV ZAMINDAR

APRIL 18, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Service Law :*

*Promotion—Upper Division Teacher claiming the status as Lecturer—Request recognised—But decided that he was not entitled to the salary in the higher scale on the principle of "no work no pay" - Employee filing writ petition after his retirement claiming arrears—Writ petition dismissed—Review came to be allowed—On appeal, held, Tribunal to go into the matter afresh since it had not gone into merits by giving opportunity to the State on the question whether the employee was entitled to arrears of salary—Tribunal directed to dispose of the matter on merits within six months.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7845 of 1996.

From the Judgment and Order dated 7.5.93 of the Madhya Pradesh Administrative Tribunal, Indore in M.A. No. 7 of 1992.

G.C. Gupta, Sakesh Kumar, S.K. Agnihotri and Ms. Mridula Aggarwal for the Appellants.

M.N. Krishnamani, Madhusudan Babu, (P.K. Singh) for Sinha & Das for the Respondent.

The following Order of the Court was delivered :

Delay condoned.

Leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the order dated May 7, 1993 of the Administrative Tribunal of Madhya Pradesh made in M.A. No. 7/92. The admitted position is that while the respondent was working as Upper

- A Division Teacher, he claimed the status as a Lecturer. That request came to be recognised by proceedings dated March 3, 1962 but was decided therein that he was not entitled to the salary on the principle of "no work, no pay". After his retirement in 1983, after a considerable delay, the respondent had filed a writ petition in the High Court claiming all the arrears for the period from 1962 to the date of the order of notional promotion, viz., January 21, 1983. The writ petition was transferred to the Administrative Tribunal after its re-constitution. Initially, the Tribunal had dismissed the writ petition by order dated December 27, 1991 on the ground that the claim was belated. Subsequently, the above review petition came to be filed which was allowed on merits. Thus this appeal by special leave.

- In view of the fact that the claim was not adjudicated on merits in the first instance, it would appear that if the Tribunal found that the earlier order was not correct, then it would have gone into the merits by giving opportunity to the State on the questions whether the respondent was entitled to the arrears, as directed by it on consideration, whether he had discharged the same duties and whether other cases also would be applicable to the respondent. Since these questions were not addressed after hearing the appeal and in proper perspective, we think that the Tribunal has to go in the matter afresh. We do not propose to go into the matter nor express any opinion on merits.

The appeal is accordingly allowed. The order of the Tribunal stands set aside. The Tribunal is directed to dispose of the matter on merits within six months from the date of receipt of this order. No costs.

G.N.

Appeal allowed.