

A STATE OF MADHYA PRADESH AND ANR.

v.

SHAKRI KHAN

APRIL 19, 1996

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

*Service Law :*

C *Advance Increments to Lower Division Clerks for passing Hindi Typewriting Test—Cut-off date—Fixing of—Those who had passed the test before the cut-off date alone entitled to advance increments—Those who passed the test thereafter not entitled to—Decision taken to appoint candidates with typewriting qualification—Need to give additional increments to new appointees does not arise.*

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7882 of 1996.

From the Judgment and Order dated 21.1.1994 of the Madhya Pradesh State Administrative Tribunal at Gwalior in O.A. No. 323 of 1993.

E K.N. Shukla, Prashant Kumar and S.K. Agnihotri for the Appellants.

B.S. Bhanthia for the Respondent.

The following Order of the Court was delivered :

Leave granted.

F We have heard learned counsel on both sides.

G This appeal by special leave arises from the order dated January 21, 1994 of the Madhya Pradesh Administrative Tribunal, Gwalior Bench in O.A. No. 323/93 and 173/93. The admitted facts are that the respondent was appointed prior to 1973. The Government had introduced the scheme of granting two advance increments for the Lower Division Clerks who passed the Hindi typewriting test. They prescribed the last date for passing the test as July 30, 1973 and those who passed the Hindi typewriting test prior to that date was declared eligible to get two advance increments. Since the respondent could not pass the test within that period but passed H the said test in December, 1979, he filed the O.A. claiming the said benefit

on the basis of certain instructions issued from time to time, viz. dated April 20, 1974, January 15, 1979 etc. which are marked as Annexure R-3 to the paper book. On that basis, it was contended that he is also entitled to the benefit of two advance increments. On principle, we agreed with the State that the Government having had the power to extend the benefit it also has the power to put a cut-off date. Consequently, the cut-off date, viz., July 30, 1973 for passing the test is a proper classification. All those who did not pass the test prior to that date, but appointed earlier to that date are not eligible to two advance increments on their passing the said test after the cut-off date.

It is contended that the said order is not insisted upon with regard to those candidates who passed the test after July 30, 1973. It is made clear by the respondent that the Government have issued orders for recruitment of LDCs with the qualification of passing the typewriting test with effect from that date. Therefore, they did not insist upon passing the test for advance increments nor such an employee is granted any advance increment. It is then contended by the counsel for the respondent that though those who were appointed after that date were not given incentive of two advance increments, by necessary implication those who are appointed earlier are entitled to two advance increments as incentive. We do not appreciate the contention as well-founded. Since the Government have taken a decision to appoint the candidates with typewriting examination as a qualification, the need to give additional increments to new appointees, after the appointment, does not arise. It would arise only in the case of candidates who were appointed prior to the introduction of typewriting test as a qualification which was not prescribed earlier but who were given time for passing the test. The cut-off date was accordingly fixed as July 20, 1973 and those passed the test prior to test date alone were made entitled to two advance increments and those who passed the test thereafter are not entitled to the said benefit.

Though this declaration has been given, since we are informed that the State has not filed appeals against same orders passed by the Tribunal in similar cases, the payments made to the respondent is directed not to be recovered. This law will be applicable to all pending cases or any candidate who approaches the court hereafter.

The appeal is disposed of in the above terms. No costs.

G.N.

Appeal disposed of.