

(1978) 11 MP CK 0001

Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Petition No. 79 of 1972

Madhav Keshav Rao Chamlikar

APPELLANT

Vs

State of Madhya Pradesh and
others

RESPONDENT

Date of Decision: Nov. 20, 1978

Acts Referred:

- Constitution of India, 1950 - Article 226, 309

Citation: (1981) JLJ 91

Hon'ble Judges: K.K. Dube, J; H.G. Mishra, J

Bench: Division Bench

Advocate: J.P. Sharma, for the Appellant; S.N. Tandon, Dy. Govt. Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.K. Dube, J.

By this petition under Article 226 of the Constitution, the petitioner seeks a mandamus directing the respondents to promote him with retrospective effect.

2. The petitioner joined his services in the erstwhile State of Madhya Bharat on 16-2-1952. He was promoted as an Upper Division Clerk with effect from 1-3-1953. He was confirmed on that post with effect from 1-9-1955. On the eve of States reorganisation on 31-10-1956, the petitioner was an Upper Division Clerk in the District Treasury, Guna. After the formation of the new State of Madhya Pradesh, the petitioner was absorbed as treasurer. The State Government, however, found that the absorption as treasurer was wrong as there were other persons senior to him. By an order dated 9-11-1957, the absorption of the petitioner as treasurer was cancelled and he was finally absorbed as Upper Division Clerk.

3. The State Government then created a new cadre of Madhya Pradesh Subordinate Accounts Service. In exercise of powers conferred by proviso to Article 309 of the Constitution of India, the Governor of Madhya Pradesh made rules called "The Madhya Pradesh Subordinate Accounts Service (Recruitment and Conditions of Service) Rules, 1965". The new service was to consist of the following persons:

- (1) Persons who belonged to the cadre of Head Accountants constituted in the erstwhile State of Vindhya Pradesh;
- (2) Persons recruited to the service according to the provisions of rule 7; and
- (3) Persons recruited to the service in accordance with the provisions of rule 8.

Rule 7 contemplated the personnel at the initial constitution of the service and this comprised of (i) persons who belonged to the cadre of Head Accountants constituted in the erstwhile State of Vindhya Pradesh, (ii) by transfer of Naib-Tahsildars, not exceeding 15 in number, as had experience of sub-treasury work and were recommended by Collectors concerned; and (iii) by filling up to 50% of the posts remaining vacant, by selection to be made by a Selection Committee, consisting of the Chairman, M. P. Public Service Commission or his nominee as Chairman, Finance Secretary or his nominee, and the Director of Treasuries and Accounts, Madhya Pradesh, from amongst the following who had not completed 48 years of age on 1st April, 1964, namely--

- (a) Graduate U. D. C. Grade I/Accounts Examiners, who had put in at least five years continuous service in the grade.
- (b) Non-graduate U. D. C. Grade I/Accounts Examiners, who had put in at least six years continuous service in the grade.
- (c) Graduate Accounts/Auditors who had put in at least 3 years continuous service in the grade.
- (d) Graduate U. D. C. Grade II, who had been working in the grade for a minimum period of 7 years continuously.

4. For the purpose of selecting persons as required by Rule 7 (3), the Director of Treasuries and Accounts, Madhya Pradesh, Bhopal requisitioned names of persons from all departments of the Government, the President, Board of Revenue, all Commissioners of Division, all Heads of Departments and all Collectors in Madhya Pradesh. Rule 7 (5) (a) of the Madhya Pradesh Subordinate Accounts Service (Recruitment and Conditions of Service) Rules, 1965 reads as under:

7(5) (a)--The names of such persons for selection from amongst the persons mentioned in clause (3) as are willing to be absorbed in the service shall on the requisition by the Director be forwarded to him before the date specified by the Government in the Finance Department by the Heads of Department along with their option in Form I, character rolls and other particulars in Form II. The names of

the candidates shall be arranged both in order of seniority and in order of merit.

It was necessary to obtain the willingness of the persons to be absorbed in the service before a particular date specified by the Government. The options for the above service was to be exercised by 14-8-1964 and to reach Bhopal not later than 31-8-1965.

5. The petitioner was eligible for the new Service under Rule 7 (3) (d). He had a knowledge of the Circular by which he had to intimate his option if he wanted to opt for the new Service. The petitioner, however, submitted his option on 20-11-1965. This option was placed before the Selection Committee under Rule 7 (5) (b) but as the option had been exercised belatedly, the Committee did not accept it. The petitioner, therefore, did not become a member of the new Service as contemplated by Rule 7 (3) of the Madhya Pradesh Subordinate Accounts Service (Recruitment and Conditions of Service) Rules, 1965.

6. It is easy to see that this is not a case of promotion but was a matter of selection to a new Service and the petitioner not having opted in time his case could not be considered by the Selection Committee. In such a case, if his juniors who had opted for the Service and who were selected by the Selection Committee became members of the service and thus became entitled to the new scale of pay provided for the cadre. The petitioner made representation against the rejection of his name by the Committee but the same was rejected and he was informed of this on 1-4-1967. Having regard to the language of Rule 7 (5) (a), the option which the petitioner was required to make and communicate, ought to have been done before the specified date and for failure to do so the Selection Committee was justified in not considering his name. The grievance of the petitioner as far as selection under Rule 7 is concerned is wholly mis-placed and need not be considered any further. We may proceed to consider his case under Rule 8 of the Madhya Pradesh Subordinate Accounts Service (Recruitment and Conditions of Service) Rules, 1965

7. Rule 8 provides for method of recruitment to the Service after the initial constitution of the service by the following methods, namely:

- (a) by competitive examination;
- (b) by selection of persons possessing special qualifications and experience required to man the service from time to time;
- (c) by promotion of persons belonging to the Treasury Clerical Service who have passed the Subordinate Accounts Service departmental examination conducted by the Director;

Provided that the recruitment by a competitive examination and promotion shall be made in the proportion 1:1.

Undoubtedly, the petitioner was belonging to the Treasury Clerical Service and if that was the only criterion, he ought to have been promoted. However, sub-rule (c) required that such person should have also passed the Subordinate Accounts Service departmental examination conducted by the Director, to be eligible for being promoted. Now, the petitioner appeared in the examinations in June 1967 and 1968 but failed on both the occasions. He could not, therefore, be taken into service under Rule 8.

8. The petitioner's for promotion indeed depended upon his passing the departmental examination. In the return, it is made clear that if he passes the departmental examination, he would be considered for promotion under Rule 8. Till the time of filing of the petition in 1972, it appears, he had not passed the departmental examination. However, he seems to have cleared the examination and thereafter, earned his promotion. According to averments in paragraph 12 (A) of the petition, he started drawing the pay in the scale of 246-460 since 16-2-1974. The petitioner's grievance is that on passing the examination he became entitled to the promotion with effect from 21-5-1966 looking to his seniority and qualifications. We do not think that there is any force in this contention. It is clearly a case of absorption into another cadre and no such retrospective effect could be given as claimed by the petitioner by passing the departmental examination. There is nothing in the rules as would entitle him the benefit retrospectively on attaining the requisite eligibility by passing the departmental examination. Rule 8 clearly deals with recruitment after the initial constitution of the service. If he had failed to become the member of the service initially, his absorption in the new Service was nothing but a recruitment by promotion and it could take effect prospectively from the date of such recruitment. We, therefore, see no substance in either of the contentions raised by the petitioner.

9. The petition is accordingly dismissed. In the circumstances of the case, without any order as to costs. The outstanding amount of security shall be refunded to the petitioner.