

(2007) 02 MP CK 0030

Madhya Pradesh High Court (Gwalior Bench)

Case No: None

Shiv Narayan Saxena
and Others

APPELLANT

Vs

State of Madhya
Pradesh and Others

RESPONDENT

Date of Decision: Feb. 8, 2007

Acts Referred:

- Madhya Pradesh Municipal Corporation Act, 1956 - Section 433, 58
- Madhya Pradesh Municipalities Act, 1961 - Section 355, 95

Citation: (2007) 2 MPLJ 352

Hon'ble Judges: S.K. Gangele, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.K. Gangele, J.

The petitioners have filed this petition with regard to payment of salary from 1-8-2003 and also other reliefs in the interest of justice.

Petitioner Nos. 2 and 8 have been working as Shiksha Karmis Grade II and rests of the petitioner Nos. 1 to 8 have been working as Shiksha Karmis Grade III. Municipal Council, Ganj Basoda, respondent No. 4 issued an advertisement dated 2-9-1998 with regard to appointments and selection of Shiksha Karmis Grade I, II and III in the daily News Paper, Dainik Bhaskar, dated 10-9-1998. In pursuance to the aforesaid advertisement the petitioners and other persons applied for appointment as Shiksha Karmis Grade II and III. As per the Rules, which were applicable at that time, named as Madhya Pradesh Municipality Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1998, hereinafter called "the Rules of 1998". A select list

was prepared and the persons were called for interview including the petitioners. Thereafter, the petitioners were interviewed by the Selection Committee constituting three members of Education Committee and Chief Municipal Officer. The interview was held on 8th and 9th April, 1999 and the Selection Committee prepared a merit list of the candidates and it was sent for approval to the Deputy Director of Education, Vidisha and Block Education Officer, Vidisha. The Block Education Officer vide his letter dated 24-9-1999 approved the merit list. Municipal Council decided to send the said select list for approval to the PIC. In the mean time elections of the Municipal Council were declared and due to enforcement of the model code of conduct the selection list could not be approved and after the election of body of the Municipal Council was constituted and the matter was placed before the Chairman on 1-1-2000. In the meanwhile the Government imposed a ban on appointment of Shiksha Karmis. Finally, the Education Committee of the Municipal Council on 25-7-2000 approved the selection of the petitioners and other Shiksha Karmis and sent the same to PIC. The PIC on 16-4-2001 approved the select list, thereafter, the Chief Municipal Officer wrote to the Collector on 17-4-2001 with regard to the approval of the select list and vide order dated 23-4-2001 the Chief Municipal Officer issued the appointment orders of the petitioners. It is mentioned in the order of appointment that the appointments have been made in anticipation of the approval from the Government. A letter was also sent to the Government and Collector for approval. The Collector vide letter dated 2-11-2002 addressed to Principal Secretary, Urban Administration recommended the case of the petitioners and other Shiksha Karmis with regard to approval of appointments. The Secretary vide letter 3-9-2003 informed the Collector that there was no provision for approval of the Government with regard to appointments of Shiksha Karmis and the local body of the Municipal Council was competent to appoint the Shiksha Karmis. It appears that thereafter salary of the petitioners have not been paid by the Government on the ground that the appointments of the petitioners were contrary to Rules, power and authority of the Municipal Council, hence the Municipal Council had to pay the salary to the petitioners.

The Municipal Council - respondent No. 4 in its return stated that it selected and appointed the Shiksha Karmis as per the provisions of Rules of 1988 and after the appointment of the Shiksha Karmis they have been posted in various schools run by the Government under respondent No. 5, District Education Officer and they have been working their. Subsequently, additional documents have been filed by the Municipal Council various circulars of the State Government. As per the aforesaid circulars the Government has to pay the salary of Shiksha Karmis to the Municipal Council. Hence, the respondent No. 5 stated that Government has to pay the salary to the petitioners.

The respondent Nos. 1, 3 and 5 in their separate return have submitted that respondent No. 4 issued the appointment orders without power and authority and without approval of the State Government. The District Education Officer informed

the Municipal Council vide letter dated 14-4-2001 that as per the new Rules the appointments had to be made on the basis of new rules and there was a ban on appointments hence the Municipal Council could not issue appointment orders on the basis of earlier selection. A copy of the new rules which were notified in Extra Ordinary Gazette, dated 12th March, 2001 have also been filed named as "M.P. Municipal Council School Education Contract Teachers (Appointment and Conditions of Service) Rules, 2000" hereinafter called as "Rules of 2000". The respondents have taken the stand that the appointments are illegal, hence the State Government is not liable to pay the salary to the petitioners.

Earned Counsel for the petitioners has submitted that the petitioners have been appointed in accordance with the Recruitment Rules of 1998 by a validly constituted Selection Committee. However, due to the elections appointment orders cannot be issued within time and subsequently they have been issued, hence the appointments of the petitioners are as per law and they are entitled salary and other benefits. In support of his contention earned Counsel for the petitioners relied upon the following judgments:

- (1) Shiv Singh v. State of M.P. 1988 (I) MPWN 24;
- (2) M.P. Electricity Board and Anr. v. Virendra Kumar Sharma 1998(1)JLJ 49;
- (3) Rajendra Singh v. State of M.P. 2005(I) MPWN 109; and
- (4) Secretary, A.P. Public Service Commission v. B. Swapna (2005) 4 SCC 154.

Contrary to this, earned Counsel for respondent Nos. 1,3 and 5 has submitted that the State Government is not responsible with regard to payment of salary of the petitioners because the appointments are per se illegal, against the Rules of 2000. In support of his contention earned Counsel relied upon the judgments of the Hon'ble Supreme Court in [State of U.P. and Another Vs. Om Prakash and Others](#), Union of India and Ors. v. Narendra Nath Roy Choudhury (2003)(XII) SCC 49; [State of West Bengal and Another Vs. Alpana Roy and Others](#), ; and National Fertilizers v. Union of India SCC 493.

From the facts stated above, it is clear that the Municipal Council issued an advertisement on 10-9-1998 with regard to selection and appointments of Shiksha Karmis Grade I, II and III. In pursuance to the aforesaid advertisement the petitioners applied for the post of Shiksha Karmis Grade II and III and after selection by a Selection Committee their appointment orders have been issued. The advertisement for appointment is dated 2-9-1998 and the Selection Committee conducted the interview on 8th and 9th of April, 1999 and submitted merit list for approval to the Deputy Director of Education and Block Education Officer who on 24-9-1999 approved the list and the Municipal Council in its resolution dated 21-10-1999 approved the appointment and sent for approval to PIC. However, because of the election of the Municipal Council was declared in the meanwhile hence the approval could not be accorded by the PIC and thereafter a newly elected

body of the Municipal Council was constituted after the election and it approved the selection of the petitioners on 16-4-2001 and thereafter vide an order dated 23-4-2001 the appointment orders of the petitioners have been issued by the Chief Municipal Officer, Ganj Basoda and they were posted in different Government institutions run under the control of respondent No. 5, District Education Officer and since then the petitioners have been working on their posts.

The State Government has framed the Recruitment Rules mentioned earlier named as Rules of 1998 in exercise of powers conferred to it by Section 433 read with Section 58 of the Madhya Pradesh Municipal Corporation Act, 1956 and Section 355 read with Section 95 of the Madhya Pradesh Municipalities Act, 1961. As per the aforesaid Rules the Municipal Council is the Appointing Authority with regard to Shiksha Karmis. Rule 2(c) also defines "committee" with regard to selection and appointment or promotion of Shiksha Karmis as per Schedule II and IV. The method of selection has been prescribed in Rule 5. Schedule II prescribes the constitution of the Selection Committee and minimum qualifications. It is clear from the proceedings and the pleadings of the parties that the Selection Committee which selected the petitioners was constituted as per the Rules of 1998 and there was no illegality or irregularities in the selection process. However, due to the elections of the Municipal Council the list could not be approved and ultimately it was approved by the Municipal Council. As per the Recruitment Rules of 1998 there is no provisions with regard to approval of appointments or selections by the Government after selection by the Committee. Rule 5 prescribes the method of selection and recruitment and Rule 5(9)(i)(e) and (ii) prescribes preparation of selection list and Rule 5(10) prescribes appointment from the select list and as per the aforesaid Rules the appointment shall be made in accordance with the select list. There is only rider in the rule that the post of Shiksha Karmis have to be approved by the Government. In view of the aforesaid provisions, it cannot be said that the appointment of the petitioners was illegal or contrary to Rules.

Much emphasis has been given by the learned Counsel for the State on Rule 5(9)(i)(e) and (ii) with regard to period of waiting list. The Rule is as under:

(ii) Select List of each category shall be prepared on the basis of the above assessment in order of merit and shall include 5 names or 20% names whichever is more in the waiting list which shall be valid for nine months. The integrated selection list for appointment equal to the total number of vacancies shall be prepared in such a manner that the name of the candidate securing highest marks shall be placed at the top and other names shall be written in descending order, first equal to the number of vacancies of general category. The names of the candidates of reserved category included therein shall not be counted against that reserved category. Thereafter names of the candidates of reserved categories shall be included in descending order upto the total number of vacant posts in different categories. In addition 5 names or 20% names shall also be kept in the integrated

Waiting List following this criterion.

In my opinion the list of the petitioners cannot be said to be a waiting list because it is clear from the facts that in accordance with the aforesaid Rules the final select list was prepared when it was approved by the PIC on 16-4-2001 and thereafter the order of appointment has been issued on 23-4-2001. If there was any delay in finalizing the select list it was due to notification of the election of the Municipal Council. In these circumstances the list cannot be held to be expired.

Another argument put forth by the learned Government Advocate in the return that the appointment of the petitioners were illegal because after the enforcement of Rules of 2000 which came into force w.e.f. 12th March, 2001 the Municipal Council was not authorised to issue the order of appointment of the petitioners who were selected in accordance with Rules of 1988 cannot be accepted because it is clear from the facts that the Municipal Council appointed the petitioners in accordance with Rules of 1998 on the recommendations of a duly constituted committee in accordance with the aforesaid Rules and that right cannot be taken away by subsequent change in Rules w.e.f. 12th March, 2001 in accordance of Rules of 2000.

The Hon'ble Supreme Court in [Secretary, A.P. Public Service Commission Vs. B. Swapna and Others](#), has held as under with regard to affect of change in Rules during the selection process:

The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned Counsel for respondent No. 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g., minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only. See [P. Mahendran and others Vs. State of Karnataka and others](#), and [Gopal Krushna Rath Vs. M.A.A. Baig \(Dead\) by Lrs. and Others](#).

The Hon'ble Supreme in [Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu](#), has held as under with regard to issuance of appointment to a person who is selected:

The question whether he was a desirable person to be appointed in Government service was not the subject-matter of adjudication and the Tribunal was not justified

in recording any finding in that regard. Whether a person is fit to be appointed or not is a matter within the special domain of the Government. For denying somebody appointment after he is selected, though he has no right to be appointed, has to be governed by some statutory provisions. That was not the issue which was to be adjudicated in the present case. The only issue related to suppression of facts or misdeclaration.

On the basis of the above discussion and following the principles of law laid down by Hon"ble the Supreme Court I hold that the appointments of the petitioners are valid. The State Government has taken a responsibility to pay the salary to the Shiksha Karmis and the said salary has to be reimbursed to the Municipal Council. Hence, the State Government is entitled to pay the salary to the petitioners.

Before parting with the case, it is unfortunate that in spite of the stay order passed by this Court on 9-11-2005 and the circulars of the Government, the Government has not paid salary to the petitioners.

Consequently, the petition of the petitioners is allowed. The respondent Nos. 1, 2, 3 and 5 are hereby directed to pay the salary of the petitioners and the Municipal Council. Respondent No. 4 shall distribute the salary to the petitioners immediately and in future also the respondents shall pay the salary to the petitioners regularly.

Looking to the facts of the case and looking to the fact that in spite of the order of stay passed by this Court the respondent Nos. 1, 2, 3 and 5 have-not paid salary to the petitioners. In my opinion, the petitioners are entitled to get a cost of Rs. 10,000/- (Rupees Ten Thousand only), which shall be payable by respondent Nos. 1 and 2. This order be complied with within a period of one month from the date of receipt of a certified copy of the order.