

(2003) 10 MP CK 0026

Madhya Pradesh High Court (Gwalior Bench)

Case No: Letters Patent Appeal No. 17/99

Balram Nayak

APPELLANT

Vs

Janpad Panchayat and Others

RESPONDENT

Date of Decision: Oct. 20, 2003

Acts Referred:

- Madhya Pradesh Janpad Panchayat Employees (Qualification, Recruitment and Conditions of Service) Rules, 1976 - Rule 16, 26, 27

Citation: (2003) 4 MPHT 538 : (2004) 1 MPLJ 42

Hon'ble Judges: Shravan Shanker Jha, J; S.M. Samvatsar, J

Bench: Division Bench

Advocate: H.D. Gupta, for the Appellant; Yogesh Chaturvedi and R.D. Jain and D.P.S. Bhadoriya, Adv, for the Respondent

Final Decision: Allowed

Judgement

S.S. Jha, J.

This judgment shall also govern the disposal of Letters Patent Appeal No. 9/99.

Both appeals arise out of common order passed in Writ Petition No. 530/1996, decided on 16-12-1998.

Respondent No. 2 Sunil Singh Vaishya (petitioner before the Writ Court) had filed a writ petition before the Single Bench claiming himself to be senior to appellant Balram Nayak and appellant Balram Nayak being junior to him on the post of lower division clerk has wrongly been promoted as upper division clerk ignoring his right of promotion. Another appeal (L.P.A. No. 9/99) has been filed by Janpad Panchayat, Isagarh challenging the order passed by the Single Bench in W.P. No. 530/1996.

Brief facts of the case are that Sunil Singh Vaishya was appointed as lower division clerk vide order dated 22-2-1990 at Janpad Panchayat, Chachoda whereas Balram Nayak was appointed as lower division clerk vide order dated 25-3-1992 at Janpad

Panchayat, Isagarh. Petitioner in the writ petition was transferred from Janpad Panchayat, Chachoda to Janpad Panchayat, Isagarh on his request. He claimed that after he was posted at Chachoda he was senior to Balram Nayak and he had right of promotion to the post of upper division clerk. Post of upper division clerk had fallen vacant at Janpad Panchayat, Isagarh. Single Bench allowed the petition holding therein that since petitioner was appointed earlier his claim for promotion could not be ignored as he was senior to Balram Nayak; after his transfer from Janpad Panchayat, Chachoda to Janpad Panchayat, Isagarh, he became employee of Janpad Panchayat, Isagarh and he had acquired seniority above appellant Balram Nayak.

Counsel for the appellant submitted that though it is permissible to transfer employees from one Janpad Panchayat to another but their seniority is retained at their respective Janpad Panchayat in which employees are posted. Seniority of the petitioner in writ petition is maintained at Janpad Panchayat Chachoda and as and when vacancy of upper division clerk will arise, petitioner if eligible shall be considered for promotion. Petitioner can not claim promotion at Janpad Panchayat, Isagarh. Since the petitioner is an employee of Janpad Panchayat, Chachoda, so long as his services are not absorbed by Janpad Panchayat, Isagarh, he has no right to claim promotion on the post of upper division clerk at Isagarh.

Counsel for the respondent Sunil Singh Vaishya submitted that though he was transferred on his own request, and he was senior to appellant Balram Nayak at Janpad Panchayat, Isagarh, therefore he has right of promotion.

Counsel for the appellant Janpad Panchayat submitted that the petitioner in the writ petition is not a recruitee of the Janpad Panchayat, Isagarh; he was recruited at Janpad Panchayat, Chachoda. Lien of the petitioner is with Janpad Panchayat, Chachoda and his case can not be considered for the vacancy occurred at Janpad Panchayat, Isagarh.

It is not in dispute that petitioner in the writ petition was appointed at Janpad Panchayat, Chachoda and lateron, on his request he was transferred to Janpad Panchayat, Isagarh. Petitioner's services were not absorbed in Janpad Panchayat, Isagarh and he continued to remain an employee of Janpad Panchayat, Chachoda.

Under Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam (hereinafter, referred to as the "Adhiniyam") Gram Panchayats, Janpad Panchayats and Zila Panchayats are bodies cooperate having perpetual succession and a common seal and can sue or to be sued in its name. Section 69 of the Adhiniyam confers powers upon the State Government or prescribed authority for appointment of Secretary for Gram Panchayat and Chief Executive Officer for Janpad Panchayat and Zila Panchayat. Section 70 of the Adhiniyam provides that subject to provisions of Section 69 every Panchayat may with previous approval of the prescribed authority appoint such other officers and servants as it considers necessary for efficient discharge of its duties. Qualification, method of recruitment, salary, leave allowance

and other conditions of service including disciplinary matters of such officers and servants shall be such as may be prescribed. Thus, every Panchayat is conferred with the power to make appointment of such other officers and servants as it considers necessary for efficient discharge of its duties. At the relevant time, Madhya Pradesh Janpad Panchayat Employees (Qualification, Recruitment and Conditions of Service) Rules, 1976. These rules have been under the Madhya Pradesh Panchayats Act, 1962. "Janpad Panchayat Employee" means a person to be appointed or borne on the cadre of the Janpad Panchayat and he is an employee of the concerned Janpad Panchayat. Rule 13 provides for probation and confirmation of an employee. Rule 16 relates to seniority which provides that seniority of a direct recruit or a promoted employee appointed on probation shall be counted during his probation from the date of his appointment to the post. Rule 26 provides for control and discipline. It provides that all the Janpad employees shall be under the administrative control of the Janpad Panchayat through its Chief Executive Officer. Power to impose penalty is provided under Rule 27. Rule 31 provides for disciplinary action against the person who is on deputation to a Janpad Panchayat. It further provides that for suspension or imposing major penalties, matter should be referred to the Department from where his services have been taken on deputation. Thus, at the relevant time, respondent No. 2 Sunil Singh Vaishya (petitioner before the Writ Court) was on deputation at Janpad Panchayat, Isagarh and was not an employee of Janpad Panchayat, Isagarh.

Division Bench of this Court in the case of [Janpad Panchayat Tatha Zila Panchayat Kramchari Sangh and Others Vs. State of M.P. and Others](#), has considered the question regarding entitlement of Panchayat employees to pension and gratuity in accordance with law. This judgment relates to sanction and grant of pension to the Secretaries of Gram Panchayat. It was held that employees working in the Panchayat right from 1962 onwards have been the employees of Panchayats and can not be treated as employees of the State Government. Considering the scope of 73rd amendment in the Constitution it was held that employees of the Panchayats are not the employees of the State and they will be employees of Panchayats and Rules of 1976 will be applicable for payment of pension.

Other cases referred to relate to seniority in the cadre, but in the present case, petitioner in the writ petition is an employee of Janpad Panchayat, Chachoda whereas appellant Balram Nayak is an employee of Janpad Panchayat, Isagarh. Therefore, as and when vacancy at Isagarh will occur it will be filled up by the employee recruited by the Janpad Panchayat, Isagarh. Respondent though posted at Isagarh retains his lien at Chachoda and will have no right of promotion. Therefore, we hold that petitioner in the writ petition has no right of promotion at Janpad Panchayat, Isagarh. He will be eligible for promotion in his parent Janpad Panchayat as and when vacancy occur. Reasoning of the learned Single. Bench that petitioner in the writ petition was appointed earlier at different Janpad Panchayat will be entitled for promotion at Janpad Panchayat, Isagarh is not proper and is set aside.

Judgment and order of the Single Bench is set aside and it is held that petitioner in the writ petition was not entitled to be considered for promotion on the post of upper division clerk at Janpad Panchayat, Isagarh. He was rightly not considered for promotion by Janpad Panchayat, Isagarh.

In the result, appeal succeeds and is allowed. Writ petition filed by respondent Sunil Singh Vaishya is dismissed. There shall be no order as to costs.