courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 07/11/2025

(1988) 07 MP CK 0012

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Petition No. 963 of 1983

Panchayat Karmachari Sangh and another	APPELLANT
Vs	
State of Madhya Pradesh	RESPONDENT

Date of Decision: July 30, 1988

Acts Referred:

- Constitution of India, 1950 - Article 226
- Madhya Pradesh Panchayat Act, 1981 - Section 30

Citation: (1988) JLJ 475 : (1988) MPLJ 690

Hon'ble Judges: P.D. Mulye, J; K.L. Shrivastava, J

Bench: Division Bench

Advocate: C.M. Mehta, for the Appellant; S. Kulshrestha, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.D. Mulye, J.

This petition is filed under Article 226 of the Constitution of India by the petitioners in their representative capacity as Panchayat Secretary, with a prayer for a declaration that the petitioner No. 2 and all those Secretaries working and discharging their functions of Secretary in the respective Gram Panchayats of erstwhile State of Madhya Bharat at Bhopal and Sironj regions are entitled to be treated as Government servants, from the time of their initial appointment in the respective Gram Panchayat and that they are entitled to the same pay scale, service conditions and emoluments as the Secretaries of Gram Panchayats of erstwhile Mahakoshal and Vindhya Pradesh Regions are getting. It is further prayed that all the Secretaries of Gram Panchayats of the State of M.P. may be

brought at par in regard to pay scales, emoluments, service conditions and other benefits of pension, promotion, etc.

The facts giving rise to this petition may be stated, in brief, thus: Before the promulgation of Madhya Pradesh Panchayat Act 1962 (Act No. 7 of 1962) in the erstwhile State of Madhya Bharat, M.B. Panchayat Act (Act No. 58 of 1949) was operative. Section 30 of the said Act contains the provision for the appointment of the employees of the Gram Panchayats and other Panchayats. It is also provided that the control of these employees in regard to their appointments, emoluments, salary, leave, discipline and removal etc. was to be" governed by the Government Rules regarding Government employees. Under the said Act No. 58 of 1949 Rules known as Madhya Bharat Panchayat Niyam, Samvat 2008 were framed which were published in the M.B. Government Gazette dated 17-11-1951.

In Rule 138, three categories of employees were created and in category No. 1 Panchayat Mantri (Secretary) was included. Rule 141 made a provision for the appointing authority of the employees of the concerned Panchayat. The Development Commissioner was the appointing authority, but the powers of appointment were conferred on the Collector. Rule 143 provides for the duties of the Secretary. The Secretaries were appointed by the Collector of the concerned District.

In the Madhya Pradesh Panchayat Act (Act No. 7 of 1962) the provision for the appointment of Panchayat Secretary is contained in Section 72. Section 390 of the said Act is a saving clause for the appointment of Gram Panchayat etc. which provided that the Panchayats which have been mentioned in Section 388, its employees will be deemed to be the employees of the Gram Panchayats constituted under this Act.

After the promulgation of the said Act the Rules which were framed, under the Madhya Bharat Panchayat Act were applicable for the appointment, service conditions and emoluments etc. as no Rules were framed under the Act of 1962. The Madhya Pradesh Panchayat Act of 1962 was repealed by the M.P. Panchayat Adhiniyam, 1981.

The grievances of the petitioners have been that before the formation of the State of Madhya Pradesh, the Secretaries of Panchayats of Mahakoshal and Vindhya Pradesh Regions were the employees of the Government. On the formation of Madhya Pradesh State, the Secretaries working in the Panchayat of Mahakoshal and Vindhya Pradesh regions were absorbed as employees of the State of M.P. and their emoluments, service conditions etc were at par with the Government employees, though they were and they are still discharging their duties of Panchayat Secretary.

However, despite making various representations from time to time, the Panchayat Secretaries appointed earlier in Madhya Bharat, Bhopal and Sironj regions, though continued in service, were not given equal treatment in service conditions, emoluments etc. at par with the employees of the other Gram Panchayats of the Mahakoshal and

Vindhya Pradesh regions in the New State of Madhya Pradesh.

The State Government by an order dated 25-1-1982 passed an order treating the Panchayat Secretaries appointed in the Madhya Bharat, Sironj and Bhopal regions as Govt, servants from 1-2-1982 with certain conditions (Annexure-2). According to the petitioners this order caused a great loss to the Secretaries of the Gram Panchayats appointed initially as Secretaries of the Gram Panchayats in the erstwhile State of M.B., Bhopal and Sironj regions in respect of their emoluments, service conditions, promotions, pension etc. Therefore, the Government ought to have counted the services of those secretaries from their initial appointments and ought to have given the benefits regarding that post. Further according to the petitioners as the status of all Gram Panchayats working in the State of M.P. is the same, the Secretaries discharging functions in their respective Gram Panchayats and working as Secretaries of that Gram Panchayat, no discrimination could be made between Secretaries of Gram Panchayats of erstwhile Mahakoshal and Vindhya Pradesh regions and those secretaries of Gram Panchayats of Madhya Bharat, Bhopal and Sironj regions. Thus, the principle of equal pay for equal work has been violated and because of the discrimination made by the State Government in relation to the Panchayat Secretaries appointed in the erstwhile State of Madhya Bharat, Bhopal and Sironj regions there has been a contravention of Article 14 and Article 16 of the Constitution of India. Hence this petition.

At this stage it may be noted that initially despite service of notice the respondent State Govt. did not file any returns with die result that the learned Single Judge who heard this petition by his order dated 14-3-1985 allowed the same. Against the said order the respondent State went in appeal before the Supreme Court of India, which by its order dated 5th May, 1986 allowed the same on the ground that nothing would have been lost if the High Court had adjourned the hearing and given the State Government a last chance to file a return as the judgment of the High Court is likely to involve the Government with serious financial implications, the Government having accorded sanction to the creation of 2100 posts of Gram Sahayaks and the Panchayat Secretaries drawn from the integrated regions of Madhya Bharat and Bhopal, do not have the requisite qualifications for holding the newly created posts of Gram Sahayaks, and directed the High Court to decide the writ petition afresh after affording a reasonable opportunity to the State Government of filing a return.

The respondents in their returns filed on 16-6-1986 have contended that the petition deserves to be dismissed on the short ground that all Gram Panchayats have not been made party in this petition nor the Gram Sahayaks (Panchayat Secretaries) working in Mahakoshal and Vindhya Pradesh regions have been made parties since the matter relates to the determination of questions regarding integration of services and determination of inter se seniority of Panchayat Secretaries, who are Govt. servants vis-a-vis Panchayat Secretaries of autonomous bodies.

Further according to the respondent prior to the formation of the New State of Madhya Pradesh, in Mahakoshal and Vindhya Pradesh regions, Gram Sahayaks were appointed by the Government in various panchayats. These gram sahayaks were government servants, while in the Madhya Bharat, Bhopal and Sironj regions, the Panchayat Secretaries appointed by the Collector under the Madhya Bharat Panchayat Act, 1949 were the servants of the autonomous body i.e. Gram Panchayat. Thus, there existed a basic distinction between the two classes of employees appointed as Gram Sahayak by the Government and the Panchayat Secretaries appointed by the Collector in the autonomous bodies, in which category petitioner No. 2 falls. Besides mere application of the Rules governing the service conditions of the Government employees to the Panchayat Secretaries did not, in any way, confer on them the status of Government servants. It is submitted that various autonomous bodies adopt the rules governing the service conditions of the Government employees, but the status of the employees does not charge merely on account of the fact that the Rules and service conditions of the Government employees have been in terms applied to their services. Further according to the respondents the distinction between the Gram Sahayaks appointed by the Government and the Panchayat Secretaries appointed by the Collectors is real and continued even after the formation of the New State of M.P. While the Gram Sahayaks continued as Government Servants the Panchayat Secretaries of the autonomous body (Gram Panchayat) in the regions of Madhya Bharat add Bhopal employed in accordance with Madhya Bharat Panchayat Vidhan, 1949 continued to be the servants of the autonomous bodies and retained the attributes of non-government servants.

The Government of Madhya Pradesh, on humanitarian grounds took over the services of 2100 Panchayat Secretaries working in Madhya Bharat, Bhopal and Sironj regions as Gram Sahayaks. These Gram Sahayaks were given the job of Secretary of Gram Panchayats. Their final absorption in Government service on the post of Gram Sahayaks was subject to certain conditions and for that purpose the Director, Panchayats, Madhya Pradesh submitted his proposals to the Government, vide his letter dated 1-2-1962 (Annexure-1) and on that basis the State Govt, by its order dated 12-8-1987 has fixed the service conditions of the Panchayat Secretaries working in Madhya Bharat and Bhopal regions, whose services were absorbed with effect from 1-2-1982. The respondents have, therefore, denied that there has been any violation of the provisions of Article 14 or Article 16 of the Constitution of India as also the principle of equal pay for equal work.

The controversy, therefore, rests on the short question as to whether the Panchayat Secretaries appointed in the erstwhile State of Madhya Bharat Bhopal and Sironj regions, after their absorption since 1-2-1982 are deemed to have acquired the status of a Government servant right from their initial appointment and consequently whether they are entitled to enjoy all the benefits which a Government servant is entitled to. In support of this submission the learned counsel for the petitioners placed reliance on the decisions reported in K.C. Joshi Vs. Union of India (UOI) and Others, , Om Prakash Sharma and Others Vs. Union of India (UOI) and Others, ; Om Prakash Sharma vs. Union of India;

1986 JLJ 280, National Textile Corporation (MP) Limited, T.R. Kapur and Others Vs. State of Haryana and Others, , State of Gujarat and Others Vs. Raman Lal Keshav Lal and Others, , Mathuradas vs. S.D. Munshaw and an unreported decision in M.P. 1985 decided on 22-2-1986 by a learned Single Judge of this Court.

The learned counsel for the petitioner submitted that the Panchayat Secretaries appointed in the erstwhile Madhya Bharat, Bhopal and Sironj regions were doing similar work as was done by Gram Sahayaks (Panchayat Secretaries) in the Mahakoshal region and there was lot of similarity between the service conditions of both. Besides, the Panchayat Secretaries of the Madhya Bharat, Bhopal and Sironj regions were also given the benefit of Pande Pay Commission and later Choudhury Pay Commission and consequently the petitioner No. 2 and all such petitioners who were appointed in the erstwhile State of Madhya Bharat Bhopal and Sironj regions could not be discriminated and even though they have been absorbed in service in the new State of M.P. subject to certain terms and conditions as mentioned in the subsequent Government order dated 12-8-1987, their past services prior to 1-2-1982, since the time of their appointment, could not be ignored for purpose of all the benefits which are enjoyed by a Government servant, including pension etc.

The learned counsel for the petitioners also submitted that even on the principle of equal pay for equal work, the petitioners could not be denied the fruits thereof. Therefore, there has been a violation of the provisions of Article 14 and Article 16 of the Constitution of India.

On the other hand the learned Government Advocate Shri Kulshreshta submitted that in Mahakoshal and Vindhya Pradesh Regions, Panchayat Secretaries known as Gram Sahayaks were right from the beginning appointed by the. State Government as Government servants, whereas in Madhya Bharat, Bhopal, and Sironj regions they were servants of the Local Bodies i.e. the Panchayats. The learned Government Advocate also submitted that the salary of the Panchayat Secretaries in the Madhya Bharat, Bhopal and Sironj regions was paid from the funds of the Panchayats and the Panchayats were free to revise their grades depending upon the availability of funds. The learned counsel, therefore, submitted that there being such a broad distinction in the Gram Sahayaks appointed in the Mahakoshal and Vindhya Pradesh regions by the State Government and those Panchayat Secretaries appointed in Madhya Bharat, Bhopal and Sironj regions, the petitioners cannot claim the relief that their appointments right from the beginning should be retrospectively considered and treated as appointment by the State Government or that on that basis they could be deemed to be Government servants right from the inception.

The learned Government Advocate further submitted that in view of this difference, the State Government decided to absorb 2100 Panchayat Secretaries in Govt, service as Government servants from 1-2-1982 subject to their satisfying the qualifications, terms and conditions mentioned therein and consequently from the date of their absorption

there has been no discrimination between Gram Sahayaks and Panchayat Secretaries. The learned counsel further submitted that merely because the Collector was the appointing authority of Panchayat Secretaries under the delegated powers under the Madhya Bharat Act and even though the Panchayats were following the Rules applicable to the State Government employees, only on that basis the Panchayat Secretaries cannot claim to have the status of Government servants right from the time of their initial appointment as Panchayat Secretaries. The learned counsel also submitted that the authorities cited by the learned counsel for the petitioner are distinguishable on facts and the principle of equal pay for equal work does not arise in the present case. He, therefore, submitted that the petition deserves to be dismissed.

In the decision reported in AIR 1981 SC 53 (supra) on which the learned counsel for the petitioner has placed reliance, it has been held therein that --

The true test for determination of the question whether a person is holding a civil post or is a member of the civil service is the existence of a relationship of master and servant between the State and the person holding a post under it and that the existence of such relationship was dependent upon the right of the State to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages and remuneration.

This case arose out of the provisions of Gujarat Panchayats Act wherein Section 203(1) of the said Panchayat Act has provided that there shall be constituted a Panchayat Service in connection with the affairs of Panchayats, i.e. gram and nagar panchayats, taluka panchayat and district panchayat for the purpose of bringing about uniform scales of pay and uniform conditions of service of the persons employed in the discharge of functions and duties of panchayats. Therefore, in our opinion, this decision does not help the petitioners, the same being distinguishable.

In the decision reported in AIR 1985 SC 1406 (supra) it has been held therein that even though Oil and Natural Gas Commission is an instrumentality of State, its employees are not entitled to protection under Article 311 being not members of the civil services though they are entitled to protection of fundamental rights under Articles 14 and 16 of the Constitution. That was a case of removal of an active worker of Trade Union from service and, therefore, in our opinion, this authority also does not help the case of the petitioners.

In the decision reported in AIR 1985 SC 1276 (supra) it has been held that --

Where staff employed in different units under the administrative control of one higher officer are borne on a common seniority list, when because of trifurcation reamalgamation all are brought back on the common seniority list their position ante must be reflected in the seniority list. Original seniority must prevail otherwise any other view would be denial of equality of opportunity in the matter of public employment guaranteed under Article 16 of the Constitution.

Therefore, this authority, in our opinion, has no bearing on the facts of the present case.

Similarly the decision reported in T.R. Kapur and Others Vs. State of Haryana and Others, has also no bearing on the facts of the present case as the facts of that case were that a notification was issued by the State Government under Article 309 purporting to amend Rule 6(b) with retrospective effect making degree in Engineering essential for promotion which rendered diploma holder members of Class II service ineligible for promotion and it is this notification which has been declared ultra vires the State Government being contrary to Section 82(6) of Punjab Reorganisation Act.

Similarly the decision reported in 1985 JLJ 609 (supra) as also the Single Bench decision in M.P. 806 of 85 decided on 22-2-1986 also being distinguishable, in our opinion, do not help the petitioners in the present case.

So far as the question of equal pay for equal work is concerned, in the decision reported in Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, , Federation of All India Customs and Central Excise Stenographers and others vs. Union of India and others it has been held that:

Equal pay for equal work is a concomitant of Article 14 but equal pay for unequal work will be a negation of that right. Equal pay must depend upon the nature of the work done; it cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less -- it varies from nature and culture of employment

In the present case admittedly the petitioners have been given the benefit of the Pande Pay Commission and Choudhury Pay Commission. Therefore, the submission of the learned counsel for the petitioner on this point has to be rejected.

A Division Bench of this Court in the decision reported in Roop Singh Devi Singh Vs. Sanchalak Panchayat and Samaj Sewa and Another, , Roopsingh Devisingh vs. Sanchalak, Panchayat and Samaj Seva, M.P., Indore, on which the learned Government Advocate has placed reliance, in para 11 held as under:

The test is not the appointment of the member, but of his service or actual post. For our instant purpose, we may ignore the reference to the service wider the Union or the All India Service. The petitioner was really the servant of the panchayat of Makdone, though, in accordance with the statute, his appointment was made by the head of a department of Government. He drew his pay from the funds of the Panchayat and was doing the work of the Panchayat The appointment was for the panchayat, and the mere fact of its being made by a department or an officer of the State Government does not make him the member of the civil service of the State or holder of a civil post under the State.

In our opinion, this case supports the submission made by the learned Government Advocate that the petitioners or the like Panchayat Secretaries are not, therefore, entitled to the relief sought for in this petition.

Consequently we see no merit in this petition, which is dismissed with no order as to costs. The amount of security deposit, on verification, be returned to the petitioners in person.