

Tahsildar Yadav Vs State of Madhya Pradesh and Others

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: July 15, 1992

Acts Referred: Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 " Section 30

Citation: (1992) 2 MPJR 242 : (1993) 38 MPLJ 87 : (1993) MPLJ 87

Hon'ble Judges: K.M. Pandey, J; K.K. Verma, J

Bench: Division Bench

Advocate: R.D. Jain, for the Appellant; K.K. Lahoti and M.G. Khedkar, A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.M. Pandey, J.

This Writ Petition under Articles 226 and 227 of the Constitution of India has been filed alleging that the non-petitioner Krishi Upaj Mandi Samiti,

Bhind, is a body corporate constituted under the Krishi Upaj Mandi Adhiniyam, 1972 (hereinafter called the Act). u/s 30 of the Act every market

committee may appoint such officers and servants as may be necessary for the efficient discharge of its duties. Sub-section (2) of this section says

that the market committee may make byelaws for regulating the appointment, pay, leave, allowances, pensions, gratuities, contribution to provident

fund and other conditions of service of officers and servants appointed under Sub-section (1) and for providing for the delegation of power, duties

and functions.

The non-petitioner committee issued a notice inviting applications for the post of Chowkidar on 13-8-1981 (Annexure P-2). The said committee

appointed an selection committee for making selection of persons for the post of Chowkidar. The selection committee interviewed several persons

and recommended the names of two persons including the petitioners (Annexure P-3). The petitioners were appointed as Chowkidar on 21-12-

1981 by the respondent committee. The appointment orders are Annexures P-4 to P-6. It is said that after the issuance of above appointment

letters the Deputy Director, Agriculture, Bhind, issued a letter on 26-12 1981 to the Mandi Committee at the instance of the Collector, Bhind for

not appointing the persons selected earlier (Annexure P-7). Thereafter the Deputy Director, Agriculture did not decide the matter relating to the

appointment of the petitioners for several months. The Mandi Committee issued a letter on 23-5-1982 requesting the Deputy Director for seeking

clarification from the Collector, Bhind. It is not known what transpired between them but it is learnt that a resolution was passed by the Mandi

Committee on 25-7-1982 whereby all the appointments made by the selection committee on different posts were cancelled. Aggrieved by the said

resolution of the Mandi Committee the present writ petition has been filed under Articles 226 and 227 for quashing the resolution.

Respondents Nos. 1 and 3 contested the petition alleging that the writ petition is misconceived. It has been made on the assumption that the

petitioners were appointed on the post by the Mandi Samiti. The fact is that no appointments were made. The correct facts are that the Mandi

Samiti in order to make up a few appointments appointed a sub-committee to make selection. The said selections were challenged as irregular

and the Mandi Samiti also in its meeting found selections to be not worthy of being acted upon. Consequently, the selections made by the sub-

committee were not accepted. The petitioners were never appointed on any of the said posts. Mere selection does not amount to appointment.

The point for determination, therefore, is firstly, as to whether the petitioners have been appointed on the said posts or not and, secondly, whether

on the strength of the Annexures P-4 to P-6, they have a right to be appointed on the said posts. I have gone through the letter dated 21-12-1981

issued to the petitioners from the office of the Krish Upaj Mandi Samiti, Bhind. It would be better to quote the said order as it is:

^mijksDr fo""k; esa lwfpr fd;k tkrk gS fd vkidks fnukad 20&11&1981 ds lk{kRdkj esa pkSdhnkj ds in ds fy;s p;u lfejr }kjk p;u dj fn;k x;k gSA

vr% vki viuk esfMdy fQVusl izek.ki= "kkldh; fpdfRIky; ds flfoy ltZu ls ,oa e- iz- fuoklh gksus dk izek.ki= ykdj "kh/kz is"k djsa rkfd vkns"k tkjh

fd;k tk ldsA**

The above order leaves no room for doubt that no appointment order was given, vide Annexures P-4 to P-6. It was only an intimation that the

applicants were selected for the post of Chowkidar and in order to issue an appointment letter they were required to submit medical certificate

regarding their fitness and also the certificate about their domicile on the basis of which appointment letters were to be issued. The aforesaid fact,

therefore, goes to show that the matter was at the procedural stage. The question is whether mere selection on a post by a committee or an

authority will give a right of appointment. The answer has to be "No". If a person is found fit and selected for appointment on any post then the

entire circle is not complete. Unless the appointment order is issued or made and the person receives it, a right to claim appointment does not arise.

In the present case the appointments were stayed by the Deputy Director, Agriculture. The order dated 26-12-1981 (Annexure P-7) shows that a

direction was issued by the Deputy Director that the appointments be not made on the basis of the interviews for selection taken on 19-11-1981

and 20-11-1981. Annexure P-9 further shows that a decision was taken on 25-7-1982 that the entire selection was cancelled and a decision was

taken that fresh selections were to be made.

Mere selection on a post does not give any right for appointment. There may be mistake at some stage, at the selection stage or it may come to the

notice of the authority concerned that some irregularity or illegality has been committed or something more remains to be done before the

appointment is made then the authorities concerned are not barred from taking such a decision. If something is wanting in the appointment or the

selection itself, then certainly the appointing authority can take it into consideration and refuse to make appointment. Mere selection does not give

any right for appointment. In the present case, appointment not having been made finally, the petitioners have no right to claim the relief of

mandatory injunction.

As said earlier, no appointments were made final. The selection was found to be defective or incompetent. Merely on the basis of a selection a

right to be appointed does not arise. The appointing authority concerned has a right to see that appointments are made on the basis of proper

recommendation and proper procedure is followed.

We are supported in our view by a decision of the Supreme Court reported in *Jatinder Kumar and Others Vs. State of Punjab and Others*,

Jatindra Kumar and Ors. v. State of Punjab and Ors. In that case the Hon^{ble} Supreme Court has held the recommendations of Service Selection

Board/P.S.C. are directory. Persons selected and recommended by the Board or Commission for appointment to a post have no right to be

appointed. Where number of vacancies reduced after selection the unabsorbed selected candidates have no right to be appointed which can be

enforced by mandamus. Recommendation of selection body though directory must be strictly followed if accepted.

Again in 7979 MPLJ SN 1, *Dhyansingh v. Director of Agriculture (Mandi)*, M. P. it was held in a case governing M. P. *Krishi Upaj Mandi*

Adhiniyam, 1972, that the Market Committee framing bye-law governing appointment of superior servants by Rule 38(4) of 1960 Act, the

petitioner was appointed as a clerk was not approved by the Director and it was held that the appointment is invalid.

In view of what has been said above, the writ petition does not lie and is rejected.