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Rakesh Kumar Upadhyay Vs State of M.P. and Others

Writ Petition No. 5796 of 2001

Court: Madhya Pradesh High Court

Date of Decision: Jan. 28, 2004

Acts Referred:
Madhya Pradesh Municipality Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1998 â€" Rule 5(7)

Citation: (2004) 4 MPHT 383

Hon'ble Judges: A.K. Mishra, J

Bench: Single Bench

Advocate: S. Mishra, for the Appellant; J. Nikhra, Government Advocate for the Respondent Nos. 1 and 2, K.K. Trivedi, for the Respondent No. 3 and Rajneesh Gupta, for the Respondent No. 4, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Arun Mishra, J.
Petitioner in this writ petition has prayed for quashment of an order (P-4), dated 10-9-2001 passed by the Collector by

issuance of writ oicertiorari.

2. It is averfed in the writ petition that petitioner was one of the applicant for the post of Shikshakarmi Grade I in Mathematics. He was called for

interview, was declared successful in the selection, and appointed as per order (P-l). The appointment was challenged by respondent No. 4 by

filing an appeal before Collector, Mandla. In appeal the petitioner was impleaded as party which was decided by the Collector as per order (P-2),

dated 22-9-1998. Appeal filed was allowed and appointment of petitioner was cancelled. Collector observed that and Shri Sudeep Kumar and

Shri Rajeev Bilaiya shall also be called for interview by the selection committee and selection proceeding shall be held afresh. A Writ Petition No.

1654/1999 was filed before this Court. An order (P-3) was passed by this Court on 2-7-1999. Writ petition was dismissed in limine by this Court

with observation that the order of Collector may not be constituted to mean that the case of petitioner is not to be considered. In pursuance to the

direction of the Collector and the observation made by this Court, fresh interviews were conducted. It is alleged that petitioner was once again

declared selected by the selection committee, selection of the petitioner was again challenged by respondent No. 4 by filing an appeal before the

Collector. It was alleged by respondent No. 4 in appeal that petitioner ought not to have been called for interview neither his case could have been

considered as there was only one post of Shikshakarmi Grade I in Mathematics, therefore, as per recruitment rules, only three persons ought to

have been called for interview. The candidates in ratio of 1:3 could have been called for interview. Collector has cancelled the selection as per

order (P-4) and has directed for reconsideration of the matter in accordance with the rules. It is averred in the writ petition that observations made

by this Court have been violated. Petitioner was found most suitable as such there is no justification for cancelling the appointment.

3. A return has been filed by respondent No. 3. It is contended in the return that appointment of shikshakarmi has to be made as per the rules

called Shikshakarmis (Recruitment & Condition of Service) Rules, 1998. Candidates three times of number of the vacancies have to be called. The

person who was placed at Sr. No. 1 had obtained 72.6% marks, respondent No. 4 had obtained 64% marks and the petitioner had obtained only

59.1% marks. Since only three candidates were to be called as per rules and because the candidature of respondent No. 4 was earlier rejected for

he reason that mark-sheet of M.Sc. examination was not found along with the application form the petitioner along with two others was called for

interview. It is further averred that Collector has passed an order (P-2) allowing the appeal on 22-9-1998. It was categorically directed that

respondent No. 4 may be interviewed and case be considered with Shri Sudeep Kumar and Shri Rajiv Bilaiya. It was further observed that since

Sudeep Kumar and Rajiv Bilaiya have already been interviewed earlier, as such bnly respondent No. 4 be called for interview and the proceedings

be completed within a period of 15 days. Petitioner has previously filed a writ petition before this Court which was dismissed with the observation

that the order of Collector may not be construed to mean that the case of the petitioner is not to be considered. When the matter was reconsidered

by the Municipal Council the claims were considered and since only respondent No. 4 was not interviewed she too was called for interview and

considered. After preparing merit list of four candidates again since the petitioner was found to be at Sr. No. 1 it was proposed that he be

appointed as Shikshakarmi Grade I. Against the selection made, respondent No. 4 filed an appeal before the Collector which has been decided as

per order (P-4), dated 10-9-2001. The opinion of the Collector is supported by the rule that only three candidates as against one vacancy could

have been called for interview. As per the rules, only the candidates at Sr. Nos. 1,2 and 3 as per merit could have been considered not the case of

petitioner.

4. Respondent Nos. 1 and 2 have also filed their return. It is contended in the return that in all four applications were received. As per merit list first

three candidates could have been called for interview. Petitioner was lowest in order of merit. Only the respondent No. 4, Shri Sudip Tiwari and

Shri Rajiv Bilaiya were entitled and eligible to be called for interview in view of Rule 5 (7) of the rules. Selection of the petitioner being contrary to

the rule has been rightly cancelled by the Collector.

5. A return has also been filed by respondent No. 4. It is contended in the return that order of Collector is proper and no interference is called for

in this writ petition.

6. I have heard the learned Counsel for parties at length and have also perused the order (P-3) passed by this Court.

7. Following observation in order. (P-3) passed by this Court in W.P. No. 1654/99 has been relied upon by the petitioner :-

Another grievance raised by Shri Mishra is that while passing the impugned order Collector has excluded the case of the petitioner for

consideration. It is made clear that the order of the Collector may not be construed to mean that the case of the petitioner is not to be considered.

As directed by the Collector, case of respondent No. 5 and other persons eligible shall be considered while preparing the merit list.

Writ petition stands dismissed in limine with the aforesaid modification.

8. Meaning of the observation in order (P-3) is clear that consideration has to be made in accordance with the rules. This Court has nowhere

observed in the above order that consideration has to be made dehors of the rules. The order has to construed to mean that case of petitioner has

to be considered in accordance with the rules. When Rule 5 (7) of the Rules is taken into consideration, it is clear that as against one vacancy only

three candidates could have been called, thus, case of petitioner, if considered in accordance with the rules, as observed by this Court, was clearly

out of purview of zone of consideration and petitioner can not be said to be entitled for appointment in accordance with the rules when his case is

considered in accordance with law. The observation has been rightly construed by the Collector in that spirit and the direction which has been

issued is to proceed in accordance with the rules. It can not be said to be illegal or arbitrary in any manner.

9. In view of above discussion, I find no merit in this writ petition. Same is dismissed. No order as to cost.

10. C.C. as per rules.