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Madhya Pradesh High Court

Case No: Writ Petition No. 17039 of 2003

Murari Lal and Others		APPELLANT
	Vs	
State of M.P. and Others		RESPONDENT

Date of Decision: July 22, 2004

Citation: (2004) 4 MPHT 379

Hon'ble Judges: Dipak Misra, J

Bench: Single Bench

Advocate: V.K. Shukla, for the Appellant; Rahul Jain, Panel Lawyer, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dipak Misra, J.

The petitioners, 37 in number, were registered in the office of Employment Exchange, Seoni. In the said district the Department of Excise decided to run the country/foreign made liquor shops departmentally with effect from 1-4-1993 and the same was practised in number of districts. The State Government framed a new liquor policy in regard to the liquor shops situated in predominantly in the tribal areas and the object of the said policy was to augment collection of the revenue and also protection of rights and interest of tribal people. As per the said policy the State Government decided to run about 250 shops of country made liquor in 18 revenue districts of Madhya Pradesh and for the purpose of smooth running of the shops the State Government sanctioned several posts including that of Salesman and Ghowkidars. In pursuance of the said policy 513 posts of salesman in the pay-scale of Rs. 950-1530 were sanctioned. Two salesman were required to be appointed in each shop with licence fee upto Rs. 20 lacs and alongwith them the Chowkidar was also required to be appointed under the terms of the policy.

2. According to the writ petitioners, the names of the petitioners were sponsored by the employment exchange for the appointment and they were selected by the

Selection Committee which were duly constituted. In the appointment letter it was mentioned that the appointment was temporary and for a period of 89 days subject to terms and conditions mentioned therein. However, as pleaded the petitioners continued in the said posts without even break of single day. It is urged that the advertisement was issued for regular appointment yet the orders of appointment were issued for a fixed period. As setforth, the petitioners were not in a position to raise their protest and hence, accepted the order of appointment and started working. The petitioners complied with the terms and conditions of the order of appointment and continued working to the satisfaction of the authorities. It is putforth that their appointments were made against clear vacant and sanctioned posts and, therefore, in this backdrop their appointments can not be regarded as irregular. It has been set out in the petition that the employees who were working as Salesman and Chowkidar in the year 1991 have been absorbed and regularised in different departments under the scheme framed by the State Government. The petitioners were given revised pay scale of Rs. 3050-4590 and their cases were recommended for regularisation in the year but nothing has been done. The grievance as agitated is that the regular work is being abstracted from the petitioners but they are given the fixed pay scale. A reference has been made to the order of M.P. Administrative Tribunal passed in O.A. No. 1006/90 on 30-7-1990 whereby the Tribunal directed the State Government to absorb and regularise the salesmen and chowkidars working in a different shops which were being run departmental. It is contended that the said order of the Tribunal was assailed in SLP No. 16190/90 and the Supreme Court while deciding the matter alongwith other matters directed the Government to frame a scheme and absorb the persons with certain stipulations. It is putforth that in view of the aforesaid directions the State Government framed a scheme and absorbed 700 persons in suitable posts. In this backdrop the prayer has been made for framing of a scheme to absorb the petitioners as there is apprehension of handing over of the shops to the contractors.

3. A counter affidavit has been filed contending, inter alia that persons who were the beneficiaries of the earlier order of the Tribunal were appointed prior to 31-12-1988 whereas the present petitioners were engaged after 31-12-1988 and that too for 89 days which was subsequently ended. It has been setforth that the respondents have evolved a policy decision in 2001 that liquor shops in tribal areas would be disposed off by auction and hence, services of the salesmen and chowkidars can not be further renewed. It is urged that the petitioners have no right to the posts as they were appointed temporarily for 89 days which were extended from time to time and as there has been change in policy there has to be extinction of their services. With regard to grant of wages it has been stated that the petitioners were paid minimum wages as the same could not have been reduced while fixing the pay-scale. Emphasis has been laid on the changed policy contained in Annexure R-1. It is highlighted that as a policy decision has been taken by the State Government for putting the shops into auction and there is no need for salesmen and chowkidar and

hence, the services of the petitioners have to be dispensed with and for that reason they can not claim regularisation.

4. I have heard Mr. V.K. Shukla, learned Counsel for the petitioners and Mr. Rahul Jain, learned Counsel for the State.

5. It is relevant to state here that when the matter was listed before the M.P. Administrative Tribunal (for short "the Tribunal"), at the time of admission the Tribunal directed services of the petitioners would not be terminated and status quo be maintained with regard to their service conditions. On a perusal.of the order-sheet it transpires that the said order has not been vacated.

6. It is submitted by Mr. Shukla that the order passed by the Tribunal on earlier occasion and the order of the Supreme Court should be made applicable to the case at hand. Mr. Rahul Jain, learned Counsel for the State, per contra, has submitted that there is a change in policy and the petitioners can not claim as a matter of right to continue.

7. It is pertinent to mention here that when the question of absorption arose in the backdrop of the change policy this Court while dealing with the same in Writ Petition No. 16988/03 directed as under :-

"7. Having heard the learned Counsel for the parties I am of the considered opinion that the petitioners can not straight away be ; directed to be regularised as their services do come under the circular and that apart the stand of the State Government is that no posts are available. However, it is noticeable that the petitioners have rendered more than eight years of unblemished service. It is not clear whether they are still serving or not. Be that as it may, the respondents shall consider their cases for engagement in some other scheme or project, if available. In a welfare State a model employer, the State, should not try to exploit a situation. When the petitioners had harboured hope and joined in the work they had never thought that one day such a situation would crop up. True it is, they have been appointed on periodical base and they were well aware that their services could be terminated and they had no right to the post. The abolition of the system can not be found fault with, but, a pregnant one, certain concrete steps are to be taken to see that the petitioners do not suffer. Accordingly, it is directed that the State shall consider the case of the petitioner by Screening Committee to adjudge their suitability and, if possible, to adjust them in any other project or scheme."

8. The aforesaid directions shall apply in full force to the case at hand. In addition, as the order of stay is continuing in favour of the petitioners, I am inclined to extend the period of stay for a further period of six months from today as it can be expected that the State Government would be able to do the needful as indicated hereinabove within the said period. I may hasten to clarify that if for some reason the State Government takes more time to comply with the directions mentioned above, it would not be necessarily mean that the order of stay would continue.

Present protection has been given keeping in view the long continuous of stay.

9. With the aforesaid observations and directions the writ petition stands disposed of without any order as to costs.