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Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Petition No. 246 of 1976

Satyanarain Tripathi	APPELLANT
Vs	
Nagar Palika Bhind and others	RESPONDENT

Date of Decision: Dec. 11, 1978

Citation: (1980) JLJ 156 : (1979) MPLJ 687

Hon'ble Judges: S.J. Surana, J; K.K. Dube, J

Bench: Division Bench

Advocate: A.B. Mishra, for the Appellant; K.S. Shrivastava for Respondent No. 1 and B.G. Apte, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.K. Dube, J.

This petition is directed against the appointment of respondent No. 3 on the post of Revenue Inspector, Municipal Committee, Bhind. The petitioner who is himself a candidate for the post seeks to challenge the appointment of respondent No. 3 on the ground that it violates the statutory law.

Briefly, the facts giving rise to this petition are these: The petitioner was appointed on 31-12-1958 as a Nakedar in the services of Nagar-Palika, Bhind. The post of Nakedar is in the revenue section of the Municipal Committee. By a resolution of the Standing Committee, dated 29-6-1966, he was appointed as Tax-Collector. Thereafter, under Resolution No 64, dated 5-1-1968, of the Standing Committee, the petitioner was ordered to officiate as a clerk in the General Administration section. The President of the Municipal Committee felt that the transfer of the petitioner"s service to the administrative wing of the Municipal Committee was not regular and, therefore, sent him back to his original post of the Tax-Collector. The President of the Municipal Committee seems to

rely on the communication of the Secretariat dated 28-5-1968 wherein it was indicated that for the purposes of promotion, the administrative wing and the revenue wing must be considered to be separate and seniority of their officers for the purposes of promotion must be taken as they obtain in the respective wing of the Municipality. The communication adverted to, it would be observed, discouraged promotion from revenue department to administrative department. By a resolution dated 5-12-1968, the petitioner was appointed to officiate as revenue Sub-Inspector. Thereafter, on 4-12-1969, the Municipal Committee was dissolved and an Officer-in-Charge appointed u/s 328 of the Municipalities Act. The Officer-in-Charge kept the petitioner on the post of Revenue Sub-Inspector vide, his order dated 25-6-1970 temporarily for two years. The Officer-in-Charge subsequently by his order dated 6-5-1972 confirmed the petitioner on the post of Revenue Sub-Inspector.

It appears that one Shri Benkat Singh an employee of Mehgaon Municipal Committee complained to Collector, Bhind alleging that the appointment of petitioner on the post of Revenue Sub-Inspector was done irregularly. The Collector, exercising his powers of superintendence and control, cancelled the confirmation of the petitioner, though he was not reverted from the post of the Revenue Sub-Inspector. Thereafter, there had been a selection by the Selection Committee for the post of Revenue Inspector of the Municipal Committee. The Selection Committee recommended the appointment of Kammodsingh respondent No. 3 and by an order dated 8-10-1974, he was appointed on the post.

The petitioner now challenges this appointment contending that he has not been fairly dealt with. He being the senior most and most qualified ought to have been selected to the post of Revenue Inspector. Above all, he had been functioning as a Revenue Sub-Inspector since 5-12-1968. He is also seeking aid of the Secretariat communication wherein it was directed that while promoting, only the officiation in the Revenue department for the purposes of judging seniority ought to be considered for higher post in the Revenue Department and that the officiation in the Administrative Department should not be counted for judging seniority when the promotion is to the post in the Revenue Department. The petitioner submitted his representation against this appointment before the District Collector but it had not been decided. Subsequently, a post of Revenue Inspector fell vacant and respondent No. 3 applied for the post. The matter was again referred to Selection Committee for selection of a suitable candidate to the post. The Selection Committee selected respondent No. 3 for the post and consequently, the respondent No. 3 was appointed as Revenue Inspector with effect from 3-10-1974.

The petitioner has raised two contentions. In the first place, it is -urged that the Collector acted illegally in reverting him from the post of Revenue Sub-Inspector on which post he had been confirmed by the Officer-in-Charge of the Municipality. And secondly, he, being the senior-most Revenue Sub-Inspector, should have been selected for the post of Revenue Inspector. It has also been contended that the Selection Committee overlooked the policy decision of the Government that while computing seniority, officiation in the Revenue Department alone should have been considered. We would, therefore, refer to

the relevant rules to see if the petitioner"s contentions are borne out by the recruitment rules.

The appointment of staff of the Municipalities is governed by sections 94 and 95 of the M. P. Municipalities Act, 1961. Under sub-section (2) of section 94, subject to rules framed u/s 95, a Municipal Council shall appoint a Sanitary Inspector, an Overseer, a Revenue Inspector and an Accountant and may appoint such other officers and servants as may be necessary and proper for efficient discharge of its duties. Under sub-section (4), the appointment of Revenue Officer, Accounts Officer, Sanitary Inspector, Overseer and Accountant shall be subject to confirmation by the State Government and no such post or the post of any other officer or servant as may be specified by the State Government in this behalf shall be created or abolished and no alteration in the emoluments thereof, shall be made without the previous approval of the State Government and every appointment to and dismissal from such post shall be subject to like approval. Under sub-section (8), the State Government may prescribe the classes or grades of officers and servants who shall have the right to appeal from the decision of the Chief Municipal Officer, the Standing Committee, the prescribed authority or any other authority empowered in this behalf inflicting any departmental punishment other than censor. u/s 95, the State Government may make rules in respect of qualification, recruitment, appointment and other service conditions for the municipal employees other than a member of the State Municipal service.

The Madhya Pradesh Municipal Employees Recruitment and Conditions of Service Rules, 1968 framed in exercise of the powers conferred by sub-section (1) of section 355 read with section 95 of the Madhya Pradesh Municipalities Act, 1961, came into force on 31-5-1968, Rule 4 indicates the methods of recruitment which are laid down as (a) by direct recruitment; (b) by a promotion of a person employed in the Council; and lastly, (c) by transfer or deputation of a person serving in connection with the affairs of any local authority or of the State. Rule 11 provides for vacancies to be filled by direct recruitment. We are concerned with Rule 12 which provides for recruitment by promotion. Rule 12 runs as under:

12. Recruitment by Promotion.--(1) Recruitment by promotion shall be made on consideration of merits, seniority being taken into account where merits are equal.

(2). In selecting candidates for promotion regard shall be had to--

(i) tact and energy;

(ii) intelligence and ability;

(iii) integrity; and

(iv) previous record of service.

(3) In the case of post carrying a maximum monthly salary not exceeding Rs. 95 the Chief Municipal Officer and in other cases the District Selection Committee shall consider the cases of all the eligible candidates and may in his or its discretion interview any of the candidates.

(4) The Chief Municipal Officer or the District Selection Committee as the case may be will select candidates and will arrange their names in the order of preference. Where the Chief Municipal Officer is the competent authority for making appointments, the orders will be issued by him. In other cases the District Selection Committee shall recommend the names of the candidates found suitable for promotion to the Standing Committee. The Standing Committee will then make a final selection.

Rule 12, it would be observed, emphasises on merits as the criterion for promotion and seniority has to be taken into account where merits are equal. Sub-rule (3) enjoins that in case of posts carrying a maximum monthly salary not exceeding Rs. 95 the Chief Municipal Officer and in other cases, the District Selection Committee shall consider the cases of all eligible candidates. It would at once be seen that the petitioner was not selected as a Revenue Sub-Inspector by the District Selection Committee. His appointment on the post of a Revenue Sub-Inspector was, therefore, clearly in violation of Rule 12. The appointment was inherently bad and, therefore, the Collector was justified in cancelling the confirmation of the petitioner. We do not think that the order dated 6-12-1974 by which the petitioner was reverted to the post of Tax Collector could be said to be illegal. That being so, his officiation during the period till he had not been reverted could not legitimately be taken into consideration by the Selection Committee. When the Selection Committee met to select the Revenue Inspector, they found respondent No. 3 as the most meritorious amongst the candidates before them. The claim of the petitioner that he was senior and he had the longest officiation as Revenue Sub-Inspector could not also legitimately be pressed into service for advancing his claim, his appointment on that post not having been done in accordance with Rule 12.

Lastly, there was no hurdle which had to be cleared for selecting the respondent No. 3. A person from other department and from the other wing of the Municipality could be considered for promotion to the post as indicated by Rule 4. The Secretariat memo adverted to by the petitioner appears to have lost its force after coming into force of the rules and the Selection Committee was wholly justified in ignoring such contentions. We, therefore, do not see any ground on which the appointment of respondent No. 3 could be challenged or it could be said that the claims of petitioner were ignored by the Selection Committee or the Municipal authorities.

The petition fails and is dismissed.

In the circumstances of the case, there shall be no order as to costs. The outstanding amount of security deposit shall be refunded to the petitioner.