

(1999) 08 MP CK 0044

Madhya Pradesh High Court (Gwalior Bench)

Case No: L.P.A. No. 100 of 1999

Sanjay Kumar Bhairav
Lal Verma

APPELLANT

Vs

State of M.P. and
Another

RESPONDENT

Date of Decision: Aug. 17, 1999

Citation: (1999) 2 MPLJ 629

Hon'ble Judges: S.P. Shrivastava, J; N.G. Karamdelkar, J

Bench: Division Bench

Advocate: Jitendra Maheshwari, for the Appellant;

Final Decision: Dismissed

Judgement

S.P. Srivastava, J.

Heard the learned counsel for the appellant.

Perused the record.

Feeling aggrieved by an order passed by the learned Single Judge dismissing his writ petition seeking a Mandamus requiring the respondents to implement the policy of reservation for Other Backward Classes and declaring him to be entitled to regularisation in the reservation quota for them and further requiring the respondents to pay him the difference of wages on account of less payment made as daily rated employee, the petitioner/appellant has now come up in Letters Patent Appeal seeking reversal of the order passed by the learned single Judge.

It may be noticed that while dismissing the writ petition, the learned single Judge had made it clear that as and when a post falls vacant and the petitioner/appellant applies as against the said post, it shall be considered according to law along with the other eligible candidates for recruitment.

The facts in brief, shorn of details and necessary for the disposal of this appeal lie in a narrow compass. The petitioner had alleged that he had to his credit a Diploma in Civil Engineering from the Madhya Pradesh Board of Technical Education and had also passed the Intermediate Grade Drawing Examination from the Government of Maharashtra. He had been given a time bound appointment purely on temporary basis on the post of Assistant Draftsman for a period of 89 days on daily wage basis at fixed rates. Subsequently, he had been put on a muster roll as Assistant Draftsman. The petitioner claimed regularisation against the vacancy in the post of Sub-Engineer by giving the benefits of reservation extended to the Other Backward Classes.

The aforesaid writ petition was contested denying the claim of the petitioner and asserting that he had been working in the Drawing Section of the answering respondent as Assistant Draftsman in the preparation of lay-out plan and sanction of maps pointing out that he was not qualified for the appointment as against the post of Sub-Engineer. It was also clearly asserted that the petitioner was not performing the duties of a Sub-Engineer. The respondents claimed that the petitioner who was working as a daily rated employee had good claim to be appointed on the post of Assistant Draftsman and not on the post of Sub-Engineer. It was also stated that there was no vacancy in neither of the cadres and the question of regularisation did not arise.

It may be noticed that the State Government had issued a circular dated 19-1-1990 providing that the cases of those Sub-Engineers who were continuing in their appointments on daily rated basis or ad hoc basis may be considered for regularisation of their appointments as against the regular vacancies and in case the posts were not available, steps to be taken to create the same prohibiting the filling up vacancies in the post of Sub-Engineers occurring in future by taking recourse to the method of direct recruitment so long as the Sub-Engineers appointed on daily rate basis or on ad hoc basis were not regularised.

It may further be noticed that this Court in its decision in the case of Devendra Kumar Gupta and two others v. Gwalior Development Authority, Gwalior and five others, Writ Petition No. 351 of 1996 decided on 13-8-1997, had upheld the validity of the Madhya Pradesh Development Authority Services (Officers and Servants) Recruitment Rules, 1987, which regulated the procedure for appointment as against the sanctioned posts in the cadre of Sub-Engineers either by way of direct recruitment or by way of promotion.

In the aforesaid decision, it was indicated that the recruitment rules had been challenged in Misc. Petition No. 1905/92 before the High Court and the said petition had been dismissed by the Division Bench. It was emphasised that once the petition challenging the rules had been dismissed, the recruitment could only be made as provided under the rules.

The learned single Judge under the impugned order has found that the petitioner did not have any right to be appointed as Sub-Engineer contrary to the provisions of the recruitment rules. It was also observed that he had been appointed on muster rolls and was not appointed against any regular post. In this view of the matter, it was clarified that as and when any post falls vacant and the petitioner applies for appointment as against that post, his application shall be considered according to law along with the other eligible candidates for recruitment.

It has not been disputed by the learned counsel for the appellant that a separate cadre of Assistant Draftsman and Draftsman stands sanctioned. It was further not disputed that the petitioner/appellant had not filed any application seeking appointment against any post of Sub-Engineer.

In the counter-affidavit/return, the contesting respondent had clearly asserted that no applications had been invited for appointment of either Assistant Draftsman or Sub-Engineer. It had been so asserted in paragraph 3.3 of the return filed on behalf of the contesting respondent No. 2 in the writ petition.

The learned counsel for the appellant has strenuously urged that since the petitioner satisfied the requisite eligibility criteria for appointment against the post of Sub-Engineer, his services ought to have been regularised by absorbing him against the newly created posts by extending to him the benefits of reservation which stands extended to the Other Backward Classes.

We have given our anxious consideration to the aforesaid submission.

It is well settled by now that there can be no regularisation de hors the statutory rules regulating the appointments to a duly sanctioned post either by way of direct recruitment or by way of promotion.

So far as the availability of the benefits of reservation which are claimed to have been extended to the Other Backward Classes is concerned, the learned counsel for the appellant has not been able to point out any provision in the statutory rules providing for such benefit. Once the statutory rules have been framed, it must be emphasised that the recruitment has to be governed strictly in accordance with such rules. Unless provided under the rules, no variation in the procedure for recruitment including the reservation to a particular class is permissible simply on the strength of an administrative order/instructions as the statutory rules cannot either be modified or supplanted by any administrative order unless there is a provision to that effect in the statutory rule itself.

The learned single Judge on a perusal of the relevant materials has come to the conclusion that in fact there was no vacancy in the post of Sub-Engineer. This is the additional reason for negating the claim of the petitioner/appellant so far as the relief of regularisation was concerned. The finding in this regard returned against the petitioner/appellant does not appear to suffer from any such legal infirmity

which may justify any interference therein.

Taking into consideration the totality of the circumstances as brought on record, we are of the considered opinion that no justifiable ground can be said to have been made out for any interference in the impugned order.

This appeal lacks merit which deserves to be and is hereby dismissed in limine.