
(1991) 02 MP CK 0030

Madhya Pradesh High Court (Indore Bench)

Case No: M.P. No. 132 of 1988

Shelendra Kumar Pare

APPELLANT

Vs

President, M.P. Gandhi
Basti Nirmulan Mandal
and Others

RESPONDENT

Date of Decision: Feb. 28, 1991

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (1993) 38 MPLJ 397 : (1993) MPLJ 397

Hon'ble Judges: V.S. Kokje, J; V.D. Gyani, J

Bench: Division Bench

Advocate: S.H. Sen, for the Appellant; Amarsingh, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V.S. Kokje, J.

The petitioner in this case is an employee of M. P. Gandhi Basti Nirmulan Mandal (hereinafter called as "Mandal"). In the year 1982, posts of Anveshaks were advertised and the petitioner was also given an interview call letter for the same post. However, the petitioner was appointed as Nagar Sevak and not as Anveshak. The petitioner went on representing for being appointed as Anveshak but was not appointed so till 17-3-1988, when an order promoting the petitioner to the post of Anveshak was issued. The petitioner has submitted that he was discriminated in the matter of employment as he was superseded by two persons who were appointed as Nagar Sevaks after the petitioner was so appointed. The respondents Nos. 1 to 4 have filed a return explaining that the petitioner was appointed as Nagar Sevak only and respondents Nos. 5 and 6 were also appointed as such. On 19-2-1983, candidates were called for interview and amongst

them respondents Nos. 5 and 6 were there. The petitioner was not called because he has not applied for the post. It is also contended that no discrimination was practised against the petitioner respondents Nos. 5 and 6, he was not promoted then.

We have heard Shri S. H. Sen, learned counsel for the petitioner and Shri Amarsingh, learned counsel for the respondents.

Admittedly the Mandal has been established u/s 25 of the M. P. Gandhi Basti Kshetra (Sudhar Tatha Nirmulan) Adhiniyam, 1976 (referred to as "Act") and is a body corporate having perpetual succession. u/s 26, the Chairman and other Members are appointed by the State Government. Section 28 of the Act provides that the Secretary of the Board shall also be appointed by the State Government and he shall be the Chief Executive Officer of the Board. The other officers and servants are to be appointed by the "Mandal" and their conditions of service have to be prescribed by Rules. In the light of these provisions there is no doubt, that the Mandal is an instrumentality of the State and is covered by the expression State for the purposes of Article 12 of the Constitution of India. The "Mandal", therefore, cannot act in violation of fundamental rights of its employees who are citizens of India.

The petitioner's grievance that he was interviewed for the post of Anveshak but was appointed as Nagar Sevak cannot be entertained now because the petitioner had accepted the post and did not challenge his appointment order issued in the year 1982. The petitioner has filed this petition on 2-2-1988, i.e. 6 years after his original appointment. This grievance that he was appointed to a lower post cannot be entertained after such a long period.

However, the petitioner's case on the ground of discrimination is sound. In paragraph 5 of the petition the petitioner has clearly alleged that respondents Nos. 5 and 6 were junior to him, having been appointed on the post of Nagar Sevaks, 1 1/2 to 2 years after the petitioner. In reply to this the respondents have pleaded by filing additional affidavit that an interview session was held on 19-2-1983 in which respondents Nos. 5 and 6 were selected for the post of Anveshak. However, when the matter was put up before the Commissioner, he directed that respondents Nos. 5 and 6 be appointed to the post of Nagar Sevak. The petitioner was not called for interview on 19-2-1983 because he had not applied for the post. Respondents Nos. 5 and 6 were, Nos. 1 and 2 in the Select List. It is stated that in this background on 7-4-1984 the Commissioner permitted them to be posted as Anveshak.

In the aforesaid circumstances it is clear that the respondents Nos. 5 and 6 were appointed as Nagar Sevak in the year 1983. Whereas the petitioner has already been appointed on the same post in the year 1982. The respondents Nos. 5 and 6 were also called for interview for selection to the post of Anveshak but were not appointed as Anveshak and were appointed as Nagar Sevak only. This was the case with the petitioner also. There was, therefore, no distinguishing feature between the nature of the

employment of the petitioner and respondents Nos. 5 and 6. Admittedly the respondents Nos. 5 and 6 were about a year junior to the petitioner in the post of Nagar Sevak. The only ground on which the supersession is being supported is that the petitioner had not applied for the post of Anveshak in the year 1983, when interviews for that posts were taken on 19-2-1983. It has not been shown to us that applications were invited for the post of Anveshak in the year 1983 preceding interview dated 19-2-1983. It has also not been alleged that the petitioner has knowledge that the posts of Anveshak are to be filled in and interviews are to be taken. In the circumstances the petitioner cannot be blamed for not having applied for the post of Anveshak for which interviews were taken on 19-2-1983. When the respondents Nos. 1 to 4 appointed the respondents Nos. 5 and 6 as Nagar Sevak, their claim for the post of Anveshak was lost and their posting on the post of Anveshak could only be by way of promotion or by direct recruitment. In any case, the petitioner had a better claim for being considered for appointment to the post of Anveshak as he was senior to the respondents Nos. 5 and 6 in the post of Nagar Sevak. The order appointing the respondents Nos. 5 and 6 to the post of Anveshak superseding the claim of petitioner and without considering the petitioner is clearly arbitrary and violative of Articles 14 and 16 of the Constitution of India. It deserves to be quashed.

For the reasons above, this petition is allowed. During the pendency of this petition, the petitioner has already been promoted to the post of Anveshak vide order dated 17-3-1988. It is, therefore, ordered that he shall be deemed to have been promoted from the date on which respondents Nos. 5 and 6 were appointed, to the post of Anveshak and shall be deemed to be senior to respondents Nos. 5 and 6 in the post of Anveshak. The respondents Nos. 1 to 4 are also directed to pay to the petitioner the difference of salary of the post of Anveshak and the post of Nagar Sevak for the period from the date of appointment of the respondents Nos. 5 and 6 as Anveshak till the date the petitioner later on was posted as Anveshak. With the aforesaid directions, the petition is disposed of. There shall be no order as to costs. Security amount, if any, shall be refunded to the petitioner after verification.