

Tularam Patel Vs Kishori @ Kissu & Ors.

Court: MADHYA PRADESH HIGH COURT

Date of Decision: April 21, 2017

Acts Referred: [Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court

Hon'ble Judges: Subodh Abhyankar

Bench: Division Bench

Advocate: Sanjay Kumar Patel, R.K.Patel, Anubhav Jain, V.P.Singh

Judgement

1. The petitioner before this Court, who was appointed as Gram Rojgar Sahayak in Gram Panchayat Mehka Pipariya, Janpad Panchayat Kesli

District Sagar, is aggrieved by the order dated 6.2.2014 (Annexure P-12) passed by the respondent No.2/Commissioner, M.P. State

Employment Guarantee Parishad, Bhopal arising out of order dated 14.8.2013 (Annexure P-5) passed by the Collector, Sagar whereby the

appointment of the petitioner has been cancelled and the respondent No.5 herein has been appointed in place of the petitioner.

2. In brief the facts of the case are that an advertisement was issued by the State Employment Guarantee Parishad with the Collector-cum-District

Programme Guarantee Parishad, Sagar for the post of Gram Rojgar Sahayak on 14.6.2012, and in response to this as many as 13 candidates

including the petitioner and the respondent No.5 submitted their forms. After due scrutiny, a provisional list was issued by the Janpad Panchayat

Kesli District Sagar and the objections were called till 27.7.2012. The respondent No.5 submitted his objections, which were decided by the

committee vide its decision dated 17.8.2012 vide Annexure P-2. In the objections, the grievance of the respondent No.5 was that he has not been

given the marks for computer certificate. The committee opined that the certificate of Diploma in Computer Application (for short ???DCA???)

submitted by the respondent No.5 is not valid, but still, the same was sent for verification to the concerned University. Without waiting for the

verification of the petitioner???s DCA, the final list of the selected candidates was issued wherein the petitioner secured first position on merit and

on the basis of which, the appointment order was issued to the petitioner by the Gram Panchayat Mahak Pipariya, Janpad Panchayat Kesli on

19.10.2012.

3. Being aggrieved by the appointment of the petitioner, the respondent No.5 preferred an appeal before the Collector on the ground that the

diploma certificate of DCA submitted by him is valid and therefore he is entitled for 50 marks for his diploma. The Collector vide its order dated

14.8.2013 (Annexure P-5) has allowed the appeal preferred by the respondent No.5 and has held that the respondent No.5 cannot be denied the

marks merely on the ground of suspicion in respect of his diploma. Thus, the Collector, after giving 50 marks for DCA diploma and adding them

with the percentage of his 12th examination, which was 56.6%, held that the respondent No.5 has secured 106.6 marks and thus replaced the

petitioner from the top of the list, as the petitioner had secured only 74.88% marks including computer as well as the percentage secured in 12th

examination. Being aggrieved with the order dated 14.8.2013 passed by the Collector, the petitioner preferred an appeal before the State, who

vide its order dated 6.2.2014 (Annexure P-12) has confirmed the order passed by the Collector.

4. The contention of the learned counsel for the petitioner is that the respondent No.5 had obtained the diploma of DCA from a private University

of Sikkim known as Eastern Institute for Integrated Learning in Management University, Jorethang, Sikkim (for short ???EIILM University???). It

is further submitted that the EIILM University was recognized only for one year i.e. for the year 2009-10 for conducting three programs through

distance, they were BA, BCA and MBA, but on account of illegal activities of the said University, an FIR was registered vide Crime No.51/2012

for commission of offence punishable under Sections 406, 420, 467, 120- B/34 of IPC, and against the registration of the aforesaid FIR, the

Registrar of EIILM University filed a petition under Section 482 of Cr.P.C. in the Court of Sikkim Gangtok, which was decided by the High Court

on 15.10.2014 whereby the petition filed for quashing the aforesaid FIR has been dismissed.

5. It is further submitted by the learned counsel for the petitioner that the Collector in its order dated 14.8.2013 has discussed the letter issued by

the EIILM University bearing No.EIILM/EXAMINATION/ENQ/272 wherein the name of the respondent No.5 appears at Sl.No.4, but the

aforesaid letter is forged and cannot be relied upon as the validity of the institution for the year 2009-10 was for BA, BCA and MBA only and not

for DCA, whereas the respondent No.5 had passed the examination of DCA in the year 2011. It is further contended by the petitioner that once

the committee had sent the matter for enquiry, then there was no justification for the Collector to award 50 marks to the respondent No.5 towards

DCA diploma, which itself was under cloud. It is further contended that the Collector is not the appointing authority for the post of Gram Rojgar

Sahayak, hence the Collector has exceeded its jurisdiction while passing the impugned order. The petitioner has also raised an objection regarding

the name of respondent No.5 in the voter list of Surkhi Constituency. Under these circumstances, it is prayed that the State has also erred in

confirming the order passed by the Collector and hence the petition may be allowed and the impugned orders may be quashed.

6. In the return filed by the respondents No.1 to 4, the respondents have supported the orders passed by the Collector as well as the State and

have submitted that no illegality has been committed by the Collector as well as State in passing the impugned orders.

7. So far as the respondent No.5 is concerned, it is submitted that the DCA certificate was issued to the respondent No.5 by the EILM

University on 17.9.2012, as the said University was duly recognized by the UGC, and as such no illegality has been committed by the Collector in

awarding 50 marks to the respondent No.5 towards DCA certificate. It is further submitted by the respondent No.5 that the contention raised by

the petitioner that the name of respondent No.5 does not appear in the voter list has no bearing on the appointment of the respondent No.5.

8. Heard the learned counsel for the parties and perused the record.

9. It is apparent that the District Level Committee vide its order dated 17.8.2012 had directed to verify the DCA certificate obtained by the

respondent No.5 from the concerned University to be verified, but the same was ignored by the Collector as well as by the State/apellate

authority and the appointment of the respondent No.5 has been made. If there was a doubt in the minds of the concerned authorities, then it should

have been cleared before making any appointment or before dismissing the appeal filed by the petitioner, as the verification of the DCA certificate

of the respondent No.5 was necessary, and it should have been easily done by sending it to the concerned University. In the advertisement also, in

Clause 10 it is provided that the objections are to be filed with the Programme Officer and the same are to be placed before the committee

comprising of various personnel. Thus, all the powers are vested in the Committee. In the present case, the Committee has passed the reasoned

order that the DCA certificate of the respondent No.5 shall be verified before proceeding further.

10. In the advertisement, it is provided that the eligibility or criteria for the said post would include a computer diploma from all the Universities

recognized by UGC, diploma from all Open Universities recognized by UGC and diploma level examination from DOEACC. In the advertisement,

it is also provided that the resolution of the dispute shall be done by the committee whose decision would be final.

11. Apart from the above, the respondent No.5 has not filed any document to demonstrate that EIILM University was recognized on the date

when the DCA diploma was issued to him. As per the Annexure P-10, admittedly the statement of marks of the certificate was issued on 3.8.2012

but till date no verification has been made by the concerned authorities to ascertain the veracity of the diploma issued by the EIILM University to

the respondent No.5. The petitioner has also filed a document (Annexure P-14) issued by the UGC, which includes the list of recognized

University as on 11.9.2016 and at Sl.No.178 of the aforesaid list, the name of the EIILM University is mentioned and date of its notification is

mentioned as 24.3.2006, and in the same document the recognized courses like BA, BCA & MBA are given at Sl.No.151 and duration of

recognition is 2009-10. Thus, there is nothing on record to show that the said EIILM University was competent to issue a certificate in Diploma in

Computer Applications and there appears to no recognition for the same by the UGC. In support of his contention, the petitioner has relied upon

the judgement of the Hon"ble Apex Court in the case of Mohd. Sartaj and another Vs. State of UP reported in AIR 2006 SC 3492 wherein the

Hon"ble Apex Court has held that qualification should have been seen which candidate possessed on the date of recruitment and not at a later

stage. Applying the aforesaid principle to the facts and circumstances of the present case, it is apparent that on the date of his recruitment, the

respondent No.5 had no valid certificate in respect of Diploma in Computer Applications issued by the EIILM University. As a matter of fact,

there is nothing on record to show that the EIILM University ever got recognition for the courses in Computer Applications, and surprisingly, the

appellate authorities, instead of hearing it from the horses mouth i.e. by calling a report from the university itself or from the UGC or from both, that

whether the certificate is valid or not, has taken upon themselves to decide the issue which was totally uncalled for.

12. In the facts and circumstances of the case, the impugned orders passed by the Collector as well as appellate authority cannot be sustained and

deserve to be quashed. Accordingly, the writ petition is hereby allowed and the impugned orders dated 14.8.2013 (Annexure P-5) passed by the

Collector and the order dated 6.2.2014 (Annexure P-12) passed by the State are hereby quashed.

13. This Court is also conscious of the fact that the verification of the Respondent No.5's DCA certificate is still pending at the District Level

Committee's end and the conclusions have been given only on the basis of conjectures and surmises. Hence, it is necessary to give specific

directions to the respondents to meet the ends of justice and it is hereby directed that:-

(i) The District Level Committee shall verify the DCA certificate issued to the respondent no.5 at the earliest, and on verification if it is found that

the DCA certificate was not valid, then, after inviting the respondent No.5's objections in this behalf and affording an opportunity of hearing to

the petitioner also, the Committee shall pass an appropriate order preferably within a period of 4 months from today.

(ii) On the other hand if it is found that the DCA certificate issued to the respondent No.5 is valid, in that case also, by following the principles of

natural justice, objections of the petitioner be invited and after hearing the respondent No.5 also, appropriate orders be passed within the same

period of 4 months.

(iii) In no case, the aforesaid time limit provided to the respondents be extended beyond a period of 5 months.

Accordingly, the petition is

disposed of with no order as to cost.