
(2015) 04 MP CK 0096

In the Madhya Pradesh High Court

Case No : Writ Petition No. 625 of 2015

Ambika Prasad Pandey

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Constitution of India, 1950 — Article 243(Q)

Madhya Pradesh Municipalities Act, 1961 — Section 86, 87, 89, 90, 92

Citation : (2015) 04 MP CK 0096

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : V.K. Shukla, Learned Counsel, for the Appellant; Sanjay Dwivedi, Learned Dy. Advocate General, Advocates for the Respondent

Final Decision : Disposed off

Judgement

K.K. Trivedi, J.—Though the writ petition is listed for orders on various applications but looking to the statutory requirement of the M.P. Municipalities Act, 1961 (hereinafter referred to as "Act") and the Constitution of the M.P. State Municipal Service (Executive) by making the Rules known as M.P. Municipal Service (Executive) Rules, 1973 (hereinafter referred to as "Rules") in regard to the posting of the Chief Municipal Officer, and the fact that the State Government has utterly failed to discharge its duty regarding posting of the Chief Municipal Officer in respective Municipal Council in the past and keeping in view the specific provisions made under Article 243(Q) of the Constitution of India, the object of making such provisions and the constitutional discharge of duties by such Municipal Council, the petition is heard finally.

2. It is specifically provided under Section 86 of the Act to constitute the State Municipal Service namely executive, health and engineering. Sub-section (2) of Section 86 confers power on the State Government to make Rules in respect of recruitment, qualification, appointment, promotion, leave, scale of pay, all allowances by whatever name called loans, pension, gratuity, annuity,

compassionate fund, provident Fund, dismissal, removal, conduct, departmental punishment, appeals and other service conditions of the members of the State Municipal Services. The Rules referred to hereinabove are made by the State Government in exercise of this power. Section 87 of the Act prescribes appointment of Chief Municipal Officer which reads thus:-

"87. Chief Municipal Officer (1) There shall be a Chief Municipal Officer to every Council who shall be the principal executive officer of the Council and all other officers and servants of the Council shall be subordinate to him.

(2) The Chief Municipal Officer of a Council shall be a member of the State Municipal Service (Executive) and shall be appointed by the State Government."

3. As is clear from this provision, the Chief Municipal Officer is the principal executive officer of the Municipal Council and all other officers and servants of the Council are subordinate to him. The appointment to the State Municipal Service pending constitution thereof is provided under Section 89 of the Act, which reads thus:-

"89. Appointment to State Municipal Service pending constitution thereof etc. -

(1) Pending the constitution of the State Municipal Service under sub-section (1) of Section 86 or when no member of such service is available for appointment as Chief Municipal Officer, Health Officer or Engineer, as the case may be, the State Government may depute an officer of Government or appoint any person qualified to be a member of such service to act as Chief Municipal Officer, Health Officer or Engineer, as the case may be.

[(1-A) The State Government shall have powers of control over the persons appointed under sub-section (1) and may transfer any person appointed thereunder from one council to another.]

(2) The State Government may, on its own motion or if at a special meeting of the Council more than one-half of the [elected Councillors] vote in favour of a resolution to that effect withdraw the service of the Chief Municipal Officer, Health Officer or Engineer, as the case may be, who is an officer of the State Government and has been deputed to the Council under sub-section (1)."

The Section 90 of the Act gives power to the State Government to make arrangement of postings of Chief Municipal Officers on certain circumstances in the following manner:-

"90. Arrangement during leave of absence of Chief Municipal Officer. - (1) The State Government may grant leave of absence to the Chief Municipal Officer.

(2) During any absence on leave of the Chief Municipal Officer for a period exceeding thirty days at a time the State Government may appoint a person to act as the Chief Municipal Officer.

(3) During any absence on leave of the Chief Municipal Officer for a period not exceeding thirty days at a time, the State Government may make such local

arrangement for carrying on the duties and functions of the Chief Municipal Officer as may be necessary.

(4) Every person appoint under sub-section (2) or (3) shall exercise all powers conferred, and perform the duties imposed on the Chief Municipal Officer by or under this Act or by or under any enactment for the time being in force and shall be subject to the same liabilities, restrictions and conditions to which the Chief Municipal Officer is liable."

4. The Act also provide duties and functions of Chief Municipal Officers in Section 92 and 93 of the Act which reads thus:-

"92. Special functions of Chief Municipal Officer. - (1) The Chief Municipal Officer shall-

(a) Subject to the general control of the President, watch over the financial and executive administration of the Council and perform all the duties and exercise all the powers specially imposed or conferred upon him, by or delegated to him, under this Act.

(b) give effect to the decisions taken, in accordance with the provisions of this Act and the rules or bye-laws made thereunder by the Council and submit periodical reports, if the Council so directs regarding the progress made in respect thereto.

(2) Any of the powers, duties or functions conferred or imposed upon or vested in the Chief Municipal Officer by this Act may be exercised, performed, or discharged under the Chief Municipal Officer's control and subject to his superintendence to such conditions and limitations, if any, as he may think fit to prescribe, by any Municipal Officer may generally whom the Chief Municipal Officer may generally or specially empower, in writing in this behalf.

93. Council may require Chief Municipal Officer to produce documents.--(1) The Council may, at any time, require the Chief Municipal Officer:--

(a) to produce, any record, correspondence, plan or other document which is in his possession or under his control as Chief Municipal Officer or which is recorded or filed in his office or in the office of any Municipal Officer or servant subordinate to him:

Provided that if the Chief Municipal Officer is of the opinion that the production of any correspondence will not be in the public interest or in the interest of the municipal administration, he shall forward the requisition alongwith his opinion to the prescribed authority and the decision of the prescribed authority thereon shall be final.

(b) to furnish any return, plan, estimate, statement, account or statistics, concerning or connected with any matter appertaining to the administration of this Act or the Municipal Government.

(c) to furnish a report by himself, or to obtain from the head of a department subordinate to him and furnish, with his own remarks thereon, a report upon any subject concerning or connected with the administration of this Act or the Municipal Government.

(2) Every such requisition shall be complied with by the Chief Municipal Officer without unreasonable delay and it shall be incumbent on every Municipal Officer and servant to obey any order made by the Chief Municipal Officer in pursuance of any such requisition."

5. Looking to the aforesaid scheme of the Act, which is in fact, is in consonance to the fulfillment of the constitutional mandate as referred to hereinabove it is the statutory requirement of the State Government to make appointment/posting of Chief Municipal Officer in every Municipal Council from the date the State Municipal Service (Executive) was constituted by making the Rules.

6. The Rules prescribed the mode of recruitment of the Chief Municipal Officer in different grades of Municipal Council and Nagar Panchayat. Classification of Chief Municipal Officers is also made. For appointment on the lowest category of Chief Municipal Officer, the provision is made to fill in 50% post by direct recruitment and 50% post by promotion of the Municipal employees serving in different Municipal Councils. Since the Rules are made under the provisions of the Act, they have the force of law and their violation is not permissible. Since the Chief Municipal Officer is required to discharge the statutory duty, only the competent persons are required to be appointed by both modes i.e. by direct recruitment and promotion. The Full Bench of this Court in the case of Suresh Chandra Sharma and Others Vs. State of M.P. and Others, (2000) ILR (MP) 645 : (2000) 2 J LJ 268 : (2000) 4 MPHT 12 : (2000) 2 MPJR 449 : (2000) 2 MPLJ 530 , has held that the Chief Municipal Officers are the holder of the civil post of the State. Thus, this is onerous responsibility of the respondents-State to see that the posts of Chief Municipal Officer are manned by competent persons and in any case the adhocism may not be resorted in the matter of posting of Chief Municipal Officer.

7. It appears that the State Government has failed to discharge its statutory obligation of making appointment of regular Chief Municipal Officer by direct recruitment or by promotion of municipal employees and this has resulted in giving current charge of the post of Chief Municipal Officer to the subordinate municipal employees. It is seen by this Court on various occasion that such powers of the Chief Municipal Officer are given to some Municipal employees who are not even eligible to be promoted/appointed on the post of Chief Municipal Officer in terms of the scheme of the Act and the Rules.

8. On 13th March, 2014, an order was issued in respect of the petitioner giving him current charge of the post of Chief Municipal Officer of Nagar Parishad, Birsinghpur, District Satna, till the regular posting is made. According to that order, the petitioner assumed the charge. However, subsequent to this, an order was issued on 19th December, 2014 transferring and posting the respondent No.

3 in place of the petitioner treating him as Revenue Inspector whereas according to the petitioner he was only an Assistant Revenue Sub-Inspector that means the Moharir, in the hierarchy of the service. Since he was made Incharge Chief Municipal Officer by the aforesaid order, this order was called in question before this Court. An interim direction of maintaining the status quo was issued by this Court. In the meantime, reply was filed by the respondent No. 3 and it was stated that he has assumed the charge of the post and is functioning as Chief Municipal Officer. Keeping in view the disputed facts, the State Government was directed to submit information in that respect, which though has been submitted but is not sufficient to adjudicate the claim on merits. Suffice it to say the counter affidavit filed by the Divisional Deputy Director, Urban Administration and Development, Rewa and Shahdol Division is lacking in many respect as the issues which have been raised in the present petition are not answered properly nor the specific provisions of the statutory Rules have been looked into as no statement in that respect have been made.

9. It is to be seen that there is power available with the State Government under Section 89 of the Act to make posting of the Chief Municipal Officer till constitution of the M.P. State Municipal Service (Executive). Once the service is constituted by making the Rules, the statutory power under Section 89 is not to be exercised and everything is required to be done under the provisions of the Rules which have been framed in exercise of the statutory power. Therefore, even if such pleas of the respondents/State are accepted, it would be clear that the orders of posting of petitioner and respondent No. 3 both were dehors the statutory provisions of the Act and the Rules.

10. In view of the aforesaid, the order of posting of the petitioner as also the respondent No. 3 both cannot be sustained in eye of law. Both the orders stand quashed. The petitioner and respondent No. 3 would be posted on their substantive post in appropriate Municipal Council or Nagar Parishad as the case may be. The respondent No. 1 will issue an order of giving current charge of the post of Chief Municipal Officer of Nagar Parishad, Birshingpur, District Satna, to the senior most Municipal employee, who is in the zone of consideration to be appointed on the post of Chief Municipal Officer, who will continue to function as such till the regular Chief Municipal Officer in terms of the statutory Rules is appointed and posted in the said place.

11. Let this order be brought to the notice of the Chief Secretary of the State Government who will direct the concerned Secretary of the department to issue instructions in that respect and to withdraw the current charge of the post of Chief Municipal Officer from ineligible persons who are functioning as Incharge Chief Municipal Officer and will assign the charge of the said post to the concerned senior most Municipal employee, who is in the zone of consideration to be appointed on the post of Chief Municipal Officer. The State Government will ensure making of regular posting of the Chief Municipal Officer in every Municipal Council and Nagar Parishad within a period of six months from today.

12. The action taken against the petitioner for his alleged suspension will also come to an end, on the posting of the petitioner on his substantive post.

13. This order be complied with strictly and a report to that effect be submitted before the Registrar General for information to the Court.

14. A copy of this order be sent to Chief Secretary of the State and also to the Principal Secretary Government of M.P. Urban Administration and Development Department, Mantralaya, Bhopal, by E-mail/Fax by the Registry, for compliance.

The writ petition is accordingly disposed of.