
(2014) 11 MP CK 0022
In the Madhya Pradesh High Court
Case No : WP. 2842/14

Ashok Gurjar

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 11 MP CK 0022

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Chetan Kanungo, Advocate for the Appellant; R.P. Rathi, G.A,
Advocate for the Respondent

Judgement

Sujoy Paul, J.—Heard.

2. The petitioners have assailed the orders whereby their appointment orders were cancelled. Shri Chetan Kanungo fairly submits that the petitioners have passed the relevant examination after the cut off date, i.e., 7.7.2008. He submits that before the cut off date aforesaid, the petitioners appeared in the examination but result was declared after the cut off date and, therefore, their appointments were in accordance with law. In addition, it is submitted that the petitioners had not suppressed any material fact. The respondents appointed them with open eyes. They are bound by the promissory and equitable estoppel and couldn't have terminated the services after considerable long period. Reliance is placed on Rakesh Kumar Ram Kishan Pradhan Vs. State of M.P. and Others, . He further submits that the Advocate General gave an opinion that the candidature of such persons can be accepted and they can be treated as eligible. Attention is drawn on Clause 6(3) of his opinion (page 85). Lastly, he placed reliance on Annexure P-5. Shri Kanungo submits that the question of promissory estoppel was left open by Supreme Court in Central Airmen Selection Board and Another Vs. Surender Kumar Das, . It is also submitted that similarly situated persons are still working in other districts and therefore petitioners are entitled

for parity. No other point is pressed by learned counsel.

3. Prayer is opposed by the other side.

4. The question of cut off date is dealt by the Division Bench of this Court in W.P.No.2871/2010 (s) (Ajay Pratap Singh Parihar and others Vs. State of M.P. & Others). The Division Bench opined that the subsequent circular dated 27.7.2009 and 26.8.2009 do not extend the cut off date for acquiring the eligibility or educational qualification (emphasis supplied). In terms of the opinion of Division Bench, the said W.P. was decided on 8.4.2011. The single bench followed the opinion of The Division Bench and opined that the cut off date is 7.7.2008.

5. I do not find any merit in the contention that merely because petitioners have appeared in the examination before the cut off date, they should be treated as eligible. A candidate acquires eligibility only when he actually possess the qualification before the cut off date. Merely writing the examination does not make him eligible.

6. Since the Division Bench has clearly laid down the law with regard to cut off date, no estoppel whether promissory or equitable can be claimed by petitioners. This is trite that no estoppel operates against law. Plainly there can be no estoppel against the law. The claim raised before us is a claim based on the legal effect of a provision of law and, therefore, this contention must be rejected. (See Elson Machines Pvt. Ltd. Vs. Collector of Central Excise, .

7. In Maharshi Dayanand University Vs. Surjeet Kaur, , the Apex Court held as under:-

?There can be no estoppel /promissory estoppel against the legislature in the exercise of the legislative function nor can the Government or public authority be debarred from enforcing a statutory prohibition. Promissory estoppel being an equitable doctrine, must yield when the equity so requires. (Vide H.S. Rikhy (Dr.) v. New Delhi Municipal Committee, M.I. Builders (P) Ltd. v. Radhey Shyam Sahu, Shish Ram v. State of Haryana, Chandra Prakash Tiwari v. Shakuntala Shukla, ITC Ltd. v. Agricultural Market Committee, State of U.P. v. U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti and Sneh Gupta v. Devi Sarup).?

8. Apart from this, it cannot be forgotten that eligibility of a candidate is fundamental for the purpose of his consideration. In other words, unless a candidate is eligible, he does not get any legal, vested, statutory or fundamental right for consideration. If ineligible person is appointed for any reason, no right to continue is accrued in his favour. In view of above Apex Court judgments, the order of Rakesh Kumar (supra) is of no help to petitioner.

9. In the opinion of this Court, no opinion of any authority contrary to aforesaid legal position can be a ground to entertain this petition. Even if certain similarly situated persons despite their ineligibility were appointed and are continuing, such appointment cannot be a reason to claim parity. The petitioners cannot be permitted to enjoy negative equality. This view is taken by Supreme Court in the

case reported in State of West Bengal and Others Vs. Debasish Mukherjee and Others, The Apex Court opined that guarantee of equality before law is a positive concept and cannot be enforced in a negative manner. If an illegality or an irregularity has been committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of Courts to require the State to commit the same irregularity or illegality in their favour on the reasoning that they have been denied the benefits which have been illegally or arbitrarily extended to others.

10. In State of Orissa and Another Vs. Mamata Mohanty, , the Apex Court opined as under:-

?It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Admn. vs. Jagjit Singh, Yogesh Kumar v. Govt. of NCT of Delhi, Anand Buttons Ltd. v. State of Haryana, K.K. Bhalla v. State of M.P., Krishna Bhatt v. State of J&K, Upendra Narayan Singh and Union of India v. Kartick Chandra Mondal).?

11. In a service matter in State of U.P. and Others Vs. Rajkumar Sharma and Others, the Apex Court held as under:-

?Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See Sneh Prabha v. State of U.P., Secy. Jaipur Development Authority v. Daulat Mal Jain, State of Haryana v. Ram Kumar Mann, Faridabad C.T. Scan Centre v. D.G., Health Services, Jalandhar Improvement Trust v. Sampuran Singh, State of Punjab v. Dr. Rajeev Sarwal, Yogesh Kumar v. Govt. of NCT, Delhi, Union of India v. International Trading Co. and Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit v. President, Indore Development Authority).?

12. Whenever an ineligible person occupies a post, he necessarily deprives an eligible person. In this backdrop, I find no reason to entertain this petition. No fault can be found in the orders impugned.

13. Petition fails and is hereby dismissed.