
(2014) 09 MP CK 0089
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 752/2014

Awadhesh Tiwari

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2014) 09 MP CK 0089

Hon'ble Judges : Rajendra Menon, J; Anil Sharma, J

Bench : Division Bench

Advocate : V.P. Kushwaha, learned counsel, Advocate for the Appellant; Rahul Jain, learned Dy. Advocate General, Advocate for the Respondent

Judgement

1. I.A. No.12390/2014 has been filed seeking condonation of delay in filing of the appeal.
2. Keeping in view the reasons indicated in the application, the delay in filing of this appeal is condoned.
3. Heard learned counsel for the parties on the question of admission.
4. Calling in question tenability of an order dated 14.7.2014 passed by the learned Writ Court in W.P. No.9921/2014, this appeal has been filed under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005.
5. Appellant herein was appointed as a Section Writer. As his services were not regularized, he along with many other employees approached this Court and sought for considering their cases for regularization. It is seen that as far as the present appellant is concerned in Writ Appeal No.1234/2010 the matter was considered by a Division Bench of this Court along with 20 other cases and by an order passed on 15.12.2010, the writ appeal was disposed of by directing the State Government to consider the case of the appellant for regularization in

accordance to the law laid down by the Constitutional Bench of Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . After consideration when the claim was rejected vide order dated 13.5.2014, matter again came back to the Writ Court in W.P. No.9921/2014 and the Writ Court having rejected the claim, the appellant is again before this Court.

6. It is pointed out by learned counsel for the appellant that initially the Madhya Pradesh State Administrative Tribunal in O.A. NO.389/1993 ? Ram Bahadur Sharma Vs. State of M.P. & Others decided on 13.5.1999 had directed for considering the case of Section Writers for regularization. Writ Appeals and SLP petition filed by the State Government having been dismissed, various employees have been regularized vide orders filed along with the petition as Annexure P/7. It is said that many of the employees have been regularized by these orders but rejecting the claim of the appellant alone is discriminatory in nature and on such consideration, the appeal is filed by saying that the Writ Court did not consider this aspect of the matter.

7. Shri Rahul Jain, learned Dy. Advocate General invites our attention to the order dated 15th December 2010 passed in a bunch of writ appeals including that of present appellant which was disposed of by a common order passed in W.A. No.1234/2010 to say that the principles of law laid down in the case of Ram Bahadur Sharma (supra) will not apply now in the light of subsequent judgment of the Supreme Court in the case of Uma Devi (supra). Shri Rahul Jain points out that this objection of the appellant was considered by the Division Bench while deciding W.A. No.1234/2010 and it has been rejected and now the claim for regularisation has be considered in the light of law laid down in the case of Uma Devi (supra). The matter having been considered and rejected, no indulgence into the matter is called for.

8. We have considered the submissions and we find that the only objection raised by the appellant in this writ appeal is already considered and rejected by a Coordinate Bench of this Court on 15.12.2010 when W.A. No.1234/2010 along with other Writ Appeals were decided. The matter was so considered by the Division Bench in the said case:-

?At this stage, it is relevant to mention that the order passed in Rambahadur Sharma's case by the Tribunal, which has been upheld by the Division Bench of this Court, was passed prior to the decision of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , wherein the Supreme Court has held that an irregular appointment can be regularised but not an illegal appointment. The question whether the respondents' appointments are illegal or irregular, requires adjudication of facts. We, therefore, deem it appropriate to modify the order passed by the learned Single Judge and to direct the appellants herein to consider the case of the respondents for appointment on the post of Lower Division Clerk on regular basis in accordance with law. It is further directed that in case respondents are found suitable for regularisation and the appointments of respondents are found not to be illegal on the post of Lower

Division Clerk, preference shall be given to them for appointment on regular basis, subject to availability of the vacancy. Needless to state that the appellants shall afford an opportunity of hearing to the employees before taking the final decision."

(Emphasis Supplied)

9. In the light of the aforesaid finding given now, now appellant is only entitled for consideration of his case for regularization in the light of law laid down in the case of Uma Devi (supra) and in the order passed on 13.5.2014 which is reproduced by the learned Writ Court. It is seen that consideration having been made in accordance to the policies and circulars formulated and finding the appointment of appellant to be illegal as appellant's claim has been considered and rejected, no further indulgence into the matter is called for.

10. Appeal is therefore, dismissed.