

(1991) 06 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 629 of 1991

Badan Singh and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 24-06-1991

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(1), 15, 15(1), 15(2), 15(3)
Constitution of India, 1950 — Article 226, 309, 311
Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 19, 33, 7
Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 — Rule 2, 3, 4, 4(1)

Citation : (1991) J LJ 662

Hon'ble Judges : S.K. Dubey, J; K.K. Varma, J

Bench : Division Bench

Advocate : R.D. Jain, for the Appellant; M.G. Khedkar, A.G.A., for the Respondent

Judgement

K.K. Varma, J.—This order shall dispose of the question whether M.P. No. 629/1991 and M.P. No. 736/91 are to be admitted for hearing parties in the High Court under Article 226, or whether the Petitioners can be so heard only before the State Administrative Tribunal, constituted for the State of Madhya Pradesh.

2. The Petitioners challenge the orders dated 2.1.1991 (Annexure P-I) passed by the Joint Director, Panchayat and Social Welfare, Gwalior Division, Gwalior, retiring them on superannuation from the Government Service (on their attaining the age of 58 years) on the dates designated in the order. Their contention is that their age of superannuation is 60 years under Sub-rule (2) of Rule 154 framed under Madhya Bharat Panchayat Vidhan Samvat 2006 (Annexure P-4).

3. In compliance of the order No. 255 dated 15.1.1959 of the Collector, Bhind, the Secretary of the Mandal Panchayat Bhind, passed an order on 15.1.1959 giving temporary appointments to the Petitioners as Gram Panchayat secretaries on a consolidated salary of Rs. 50/- per month (vide Annexure P-2).

4. On 5.2.1982, the Dy. Director of the Department of the Panchayat and Social Welfare, Gwalior Division, Gwalior appointed the Petitioners (then working as Gram Sahayaks) with effect from 1.2.1982 on the time-scale pay of Rs. 155...180-EB-252. Thereafter, the Petitioners discharged their duties as the Gram Sahayaks. On the date of the passing of the impugned order dated 2.1.91 (Annexure P-I) the Petitioners were working on the establishment of the office of the Deputy Director, Panchayat, Bhind.

5. The Petitioners' learned Counsel Shri R.D. Jain has submitted that the Petitioners had been initially appointed as Gram Panchayat employees and there being no notification by the State Government under Sub-section (2) of Section 15 of the Administrative Tribunals Act, 1985, the provisions of Sub-section (3) of Section 15 of the said Act are not attracted to the petition of the Petitioners in question. In order to appreciate the contentions raised in the aforementioned submissions, it will be necessary to set out the preamble and the relevant provisions of the Act. The preamble to the Administrative Tribunals Act, 1985 (Act No. 13 of 1985) (as amended in 1986) runs as follows:

An Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of "any corporation or society owned or controlled by the Government in pursuance of Article 323A of the Constitution" and for matters connected therewith or incidental thereto.

6. Section 3(q) of the Act defines "service matters" as follows:

Service matters" in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects:

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, revision, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever;

7. Section 15 of the Act runs as follows:

15, Jurisdiction, powers and authority of State Administrative Tribunals.-

(1) save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction,

powers and authority exercisable immediately before the day by all Courts (except the Supreme Court) ""(....)" in relation to:

(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any Civil post under the State;

(b) all service matters concerning a person (not being a person referred to in Clause (c) of this sub-section or a member, person or civilian referred to in Clause (b) of Sub-section (1) of Section 14) appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the control of the State Government or of any corporation (or society) owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in Clause (b), being a person whose services have been placed by any such local or other authority or corporation (or society) or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment.

(2) The State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of Sub-section (3) to local or other authorities and corporations (or societies) controlled or owned by the State Government; provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations (or societies).

(3) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation (or society), all the jurisdiction, powers and authority exercisable immediately before that date by all Courts except the Supreme Court""(....)" in relation to:

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation (or society); and

(b) all service matter concerning a person (other than a person referred to in Clause (b) of Sub-section (1) of this section or a member, person or civilian referred to in Clause (b) of Sub-section (1) of Section 14) appointed to any service or post in connection with the affairs of such local or other authority or corporation (or society) and pertaining to the service of such person in connection with such affairs.

(4) For the removal of doubts, it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to, or be exercisable in relation to, any matter in relation to which the jurisdiction, powers

and authority of the Central Administrative Tribunal extends or is exercisable.

8. Seen in the context of the aforementioned provisions of the Act, the submission of the learned Counsel for the Petitioners comes to this: that the subject matter of the instant petitions is in respect of person holding the post pertaining to their service in connection with the affairs of a local authority, namely, the Gram Panchayat; and as the State Government of Madhya Pradesh has not issued any notification under Sub-section (2) of Section 15 making the provisions of Sub-section (3) of Section 15 applicable to the Gram Panchayats in the State, the petitions lie before the High Court under Article 226 of the Constitution and not before the State Administrative Tribunal under Sub-section (1) of Section 15 of the Act.

9. The learned Counsel has relied on *Roop Singh v. Sanchalak Panchayat, etc.* Indore 1962 J LJ 80.

10. Under Article 309 of the Constitution, the Madhya Pradesh Civil Services (General Conditions of Services) Rules, 1961 were framed. They came into force on 4.8.1961, vide notification No. 1783-1585. I (ii) 60 published in M.P. Rajpatra, part IV(Ga), dated 4.8.1961 (at page 513).

11. The following definitions clauses in Rule 2 are relevant:

(a) "Approximate authority" in respect of a service of post means the Government or such authority to whom the power of appointment to that service or post has been, or may hereafter be, delegated by Government;

(b) "Government" means the Government of Madhya Pradesh; (c) A "Post" means a whole-time employment under Government but does not include any employment where the employee is paid from contingencies;

(f) "Prescribed" means prescribed by other rules framed under the Constitution of India relating to the services in connection with the affairs of the State, or by general or special executive instructions issued by the Government in that behalf;

(g) A "service" means a service of group of posts in connection with the affairs of the State other than the Indian Administrative Service and the Indian Police Service, organised as such by Government;

(h) The "State" means the State of Madhya Pradesh.

12. Rule 3 of the said Rules runs as follows:

3. Scope of application.- The rule shall apply to every person who holds a post or is a member of a service in the State, except:

(a) Person whose appointment and conditions of employment are regulated by the special provisions of any law for the time being in force;

(b) Persons in respect of whose appointment and conditions of service special provisions have been made, or may be made hereafter by agreement;

(c) Persons appointed to the Madhya Pradesh Judicial Service: Provided that in respect of any matter not covered by the special

Provisions relating to them, their services or their posts, these Rules shall apply to the persons mentioned in Clauses (a), (b) and (c) above.

(Emphasis supplied).

13. Rule 4(1) directs the classification of public services of the State as follows:

(i) The Madhya Pradesh Civil Service Class 1;

(ii) The Madhya Pradesh Civil Service Class II;

(iii) (a) The Madhya Pradesh Civil Services

Class-III (Non-Ministerial);

(b) The Madhya Pradesh Civil Services Class IV.

14. The Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1965 came into force on 20.8.1965, vide notification No. 1713-2269-1 (iii)-64 published in M.P. Rajpatra part IV(Ga) dated 20.8.1965 (page 799).

15. Rule 7 of the aforementioned Rules 1965 runs as follows:

7. Constitution of State Civil Services:

The State Civil Services, Classes I, II, III and IV shall consist of the services, grades of services and civil posts under the Suite specified in the Schedule and such other services, grades of posts as may be notified by the State Government from time to time.

16. In the Schedules framed under the Rules 7 and 19 of the Rules, 1965, the post of Village Assistant (Gram Sahayak) finds a place in the Social Welfare Department Services. The relevant entry extracted are as follows:

				Description
Appointing Authority	competent to impose penalties of post authority which it may impose (with reference to item Nos. in rule)	Authority	Penalty	Appellate
Authority				
(1)	(2)	(3)	(4)	(5)
				SOCIAL
WELFARE DEPARTMENT (Class-III (Ministerial) Village Collector				Collector All State
Govt.		Assistants		D.P.S.W.

17. The aforementioned Schedules continued to be in force under the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 by virtue of Rule 33 thereof which runs as follows:

33. Transitory provisions.- On and from the commencement of these rules until

the publication of the Schedules under these rules, the Schedules to the M.P. Civil Services (Classification, Control and Appeal) Rules, 1965 as amended from time to time, shall be deemed to be the Schedules relating to the respective categories of Government servants to whom they are immediately before the commencement of these rules, applicable and such Schedule shall be deemed to be the Schedules referred to in the corresponding provisions of these rules."

(Emphasis supplied.)

18. Now, admittedly, the Petitioners have been working in the posts of the Gram Sahayaks (Village Assistants) right from 1.2.1982 by virtue of the appointment order dated 5.2.82 (Annexure P.4).

19. It is plain that Rule 4 of the M.P. Civil Services (General Conditions of Services) Rules, 1961 read with Rule 7 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1965 and the Schedules to the Rules made under Rules 7 and 19 and still in force, read together, establish that at the date of the filing of the petitions the Petitioners were occupying the posts of Gram Sahayaks in the Class-III(Ministerial) Grade of Service in the Panchayat and Social Welfare Department of the State of M.P. after having been appointed to the State civil service with effect from 1.2.82. It is also clear that at the date of the petitions, the services of the Petitioners were entwined with the affairs of the State of M.P.

20. Now, the Petitioners are aggrieved in the matter of their retirement on superannuation. This subject comes within the definition of "service matters" in Sub-clause (ii) of Clause (q) of Section 2 of the Administrative Tribunals Act, 1985 (as amended in 1990.). As such Clause (b) of Sub-section (1) of Section 15 of the said Act is applicable. The question of issuance of any notification by the State Government under sub-section (2) of Section 15 is not a relevant consideration because activation of Sub-section (3) of Section 15 was not required in this case.

21. In *Roop Singh v. Sanchalak Panchayat, etc.* Indore 1962 J LJ 80 the Petitioner who had been temporarily appointed by an authority prescribed under the Madhya Bharat Panchayat Vidhan Samvat 2006 as a secretary of a Kendra Panchayat was removed from service by the order of the Director, Panchayat and Samaj Sewa on 19.10.87. He challenged the order of removal invoking Article 311 of the Constitution. The Petitioner had not been appointed by the State Government to a post included in the regular civil service of the State Government. As much, the ruling, in which it has been held that Article 311 of the Constitution does not apply, was given on clearly distinguishable facts.

22. In fact, at page 296 of the erudite commentary on the M.P. Panchayat 1981, the learned author Shir R.D. Jain, who is appearing for the Petitioners before us, has observed as follows:

Status of servants of Panchayats: The true test for determination of the question whether a person is holding a civil post or is a member of the service in the

existence of a relationship of master and servant between the Suite and the person holding a post under it and that the existence of such relationship is dependent upon the right of the State to select and appoint the holder of the post, and its right to suspend and dismiss, him. If these factors are present, the persons may be treated as holding the civil service. In the present case, the power of appointment being vested in the Government, the Secretary of the Chief Executive Officer is a person holding the civil post, and in that regard the panchayat employee is also in the State service, with the State as the master, Each and every Officer appointed is an employee of the State. The panchayat employees are, therefore, entitled to all the benefits which are available to the State employees. A person appointed as secretary though holds the civil post but Article 311 is not applicable to such employees since a person in the employment of the State can be allocated to the Government it shows that the Panchayat servants are State servants.

The learned author has relied on R.K. Soni v. The State AIR 1977 Gujarat 76, State of Gujarat and Others Vs. Raman Lal Keshav Lal and Others, , Ranchhodhai Deasibhai Patel Vs. Collector of Panchamahals and Another, and State of Gujarat v. Raman Lal 1983 CCLJ (SC) 160.

23. In State of Gujarat v. Raman Lal 1983 CCLJ (SC) 160 it was laid down:

Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employees, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not.

24. It is the aforementioned law that is binding on us. It is applicable to the facts of the case before this Court.

25. In the result, it is held that the Petitioners held the posts in the Civil Service of the State of M.P. at the date of the filing of the petitions. Their grievance is in respect of a service matter as defined in Section 3(q)(ii) of the Administrative Tribunals Act, 1985 and as such, the State Administrative Tribunal, Madhya Pradesh has exclusive jurisdiction to entertain and dispose of the petitions on the merits.

It is clear that the main petitions do not lie before this Court under Article 226.