

(2013) 03 MP CK 0132
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2373 of 2003

Bahadur Singh

APPELLANT

Vs

District and Sessions Judge and Another

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 LLJ 778 : (2013) 3 MPLJ 58

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

Bench : Single Bench

Advocate : Mrigendra Singh, for the Appellant; P.R. Bhave, assisted by Bhanu Yadav, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—This petition under Article 226 of the Constitution of India is filed challenging the validity of order dated 4-9-2000, by which the services of the petitioner have been terminated without giving any show cause notice or conducting any enquiry. Brief facts giving rise to filing of this petition are that the petitioner was appointed on the post of a vehicle driver in the establishment of respondent No. 1 vide order dated 5-4-1999. The said order was issued after the selection of the petitioner as his name was sponsored by the employment exchange. After making selection, the select list was referred to the High Court and after obtaining approval from the High Court, the order of appointment was issued. However, the appointment of the petitioner was made for 89 days only. As the post was said to be regular, selection process was done only for the appointment on a regular post, on completion of 89 days service, an extension was granted to the petitioner vide order dated 28-7-1999. Before even completion of the extended period of 89 days, the order was issued by the respondent No. 1 on 15-9-1999 regularising the services of the petitioner by removing the condition of appointment for 89 days from the order of appointment. It appears that the vacancy on the post of driver occurred on

account of promotion of one Laik Mohd, who was promoted on the post of Assistant Grade-III (Lower Division Clerk) in the establishment of respondent No. 1. It is further contended that the High Court was on administrative side in fact examining the correctness of the order of promotion of said Laik Mohd. and vide order dated 14-7-1999 of registry, the said order of promotion of said Laik Mohd. was quashed as a result the said Laik Mohd. was required to be reverted. Ultimately, an order was issued on 26-8-2000 and the posting of Laik Mohd. was again done on the post of driver. In view of the order passed by respondent No. 1 in respect of reversion and posting of Laik Mohd. on 26-8-2000, the order impugned dated 4-9-2000 was issued terminating the services of the petitioner. The petitioner preferred a representation against the said order and brought to the notice of the appointing authority the fact that said Laik Mohd. was again considered for promotion on the post of Assistant Grade-III, was found fit for such promotion and vide order dated 5-1-2001 he was again promoted. That being so, there was no need to terminate the services of the petitioner who was selected against the regular vacancy. The representation of the petitioner was not considered. On the other hand, an advertisement was issued for calling the applications for taking part in selection for appointment on the post of driver by the respondent No. 1, therefore, a writ petition was filed by the petitioner before this Court being W.P. No. 1478/2001. The writ petition came up for hearing before this Court and while disposing of the writ petition on 10-2-2003, this Court directed that the case of the petitioner be considered for appointment on the post of driver in preference. However, no action was taken by the respondents for considering the claim of petitioner for his appointment on the post of driver, therefore, the present writ petition is required to be filed. The petitioner has claimed the following reliefs in the writ petition:--

(i) to issue a writ in the nature of certiorari for quashing of advertisement dated 10-4-2003 (P-1) published in local newspaper "Dainik Phaladi Kalam, for recruitment for the post of Driver lying vacant under respondent No. 1.

(ii) to issue a command to the respondents not to carry on the selection/ interview for the post of Driver and further reinstate the petitioner on the vacant post of Driver, which has occurred on account of promotion of Mr. Laik Mohd.

(iii) to issue a command to the respondents to reinstate the petitioner on the post of Driver and grant him seniority and arrears of salary along with consequential benefit w.e.f. 5-4-1999.

(iv) any other order or orders deemed fit and proper in the facts and circumstances of the case.

2. The writ petition was entertained and it was specifically directed by this Court on 8-5-2003 that till next date of hearing the respondent No. 1 will not appoint any person on the post of driver. However, this order was modified vide order dated 28-7-2003 and it was said that the District and Sessions Judge, Chhatarpur, the respondent No. 1 will make the appointment on the post of

driver which will be subject to the final decision of this writ petition and this condition be specifically mentioned in the said order of appointment.

3. A return has been filed by the respondents and it is contended that in fact the order was passed by this Court only when it was apprised that keeping the post vacant was not justified. The petitioner would not be entitled to be considered for appointment on the post as on the date mentioned in the advertisement the petitioner was over aged. However, in case a relaxation in age is granted, then only the claim of the petitioner can be considered for appointment as Driver. It is contended that in pursuance to such a memo sent by the respondent No. 1, the High Court granted the permission to fill in the post of Driver. Such a permission was granted on 17-3-2003. It is contended that till that time, there was no interim stay. However, nothing has been said by the respondents in their return whether any person was found fit for appointment or not and anybody was appointed or not. Again it was not clarified as to whether any age relaxation was granted to the petitioner or not and he was considered for appointment or not. Only this much is said in the return that the age relaxation was sought by the respondent No. 1 for the petitioner as the petitioner was found fit for appointment except the age. It is contended by the respondents in their return that the petition being based on wholly misconceived facts is liable to be dismissed.

4. Heard learned counsel for the parties at length and perused the record.

5. The matter relates to the appointment of a Class-IV employee in the establishment of respondent No. 1. As has been placed on record and is not disputed, way back when the vacancy was intimated to the employment exchange, the name of the petitioner was referred by the employment exchange to the respondent No. 1 for consideration of his candidature for appointment on the post of driver on 7-1-1999. Admittedly, the petitioner was well within the upper age limit at that time. He was found fit to be appointed and only after obtaining an approval from the High Court, the appointment order was issued in respect of the petitioner. The order dated 15-9-1999 further clarified it that services of the petitioner were found to be satisfactory and that is why the condition of 89 days appointment from his appointment order was removed and he was treated to be appointed on regular basis. Unfortunately, till that time, the respondent No. 1 never verified whether the promotion of the earlier Driver on Class-III post was fully approved or not by the High Court. It is not stated anywhere in the return by the respondents that any such promotion or appointment was to be made only after obtaining prior approval from the High Court. Why the order dated 14-7-1999 was not taken note of while issuing the order dated 15-9-1999 is not explained. In case the order dated 14-7-1999 would have been looked into by the respondent No. 1, the petitioner could have been terminated on completion of 89 days services and in that event, the petitioner would not have been entitled to claim any regularisation or continuance in the service as he had accepted the order of appointment for 89

days without any demur even when he was selected for appointment on a regular post. The order passed by the High Court on administrative side on 14-7-1999 was implemented only on 26-8-2000 i.e. about more than a year of appointment of petitioner and said Laik Mohd. was reverted. As a consequence of such a reversion order, the petitioner was removed from the post as it was treated as if he was appointed on a fortuitous vacancy which occurred on account of promotion of said Laik Mohd. Further, it is nowhere explained when the petitioner made a request for consideration of his continuance in service after promotion of said Laik Mohd. once again, why action was not taken in that respect and why the advertisement was issued only in the year 2003 which is sought to be challenged in the present writ petition. In fact, in all fairness, the respondent No. 1 should have seen the plight of the petitioner and should have asked for some clarification or approval for reinstatement of petitioner in service as the selection process was already completed in his respect way back in the year 1999, when he was appointed as a Driver. The petitioner could have been granted the age relaxation in that circumstances, but nothing was done in that respect.

6. This Court while disposing of the writ petition of the petitioner on 10-2-2003 has observed that the petitioner has the preferential right. The findings recorded by this Court in the said order makes no reservation that the consideration of the claim of the petitioner was to be done as a fresh candidate only. It would be profitable to reproduce the findings recorded by this Court in the said writ petition which read thus:--

From the perusal of the record filed by Shri Gupta, it appears that the initial appointment of the petitioner was made on the vacant post of driver, though the aforesaid appointment includes condition of 89 days. But, because of order Annx. P/8 dated 4-9-2000 petitioner was removed from service. Now Laik Mohd. has again promoted as L.D.C., and the post is available and lying vacant with respondent No. 1. In the circumstances, the petitioner has preferential right for appointment on the aforesaid post. In the circumstances, respondent No. 1 is directed to consider the case of the petitioner for appointment on the post of driver in preference and if he is found fit for the post, then he be given appointment, in case, he is not found fit, then respondent No. 1 will be free to fill up the post after following due procedure in accordance with law.

With the aforesaid direction, this petition is finally disposed of.

7. Once it was already held by this Court that the appointment of petitioner was against the vacant post of driver and that vacancy has again reoccurred on account of promotion of said Laik Mohd., the simple meaning of the direction issued by this Court was to give a preferential right of appointment to the petitioner by setting aside the order of his removal. Of course since the petitioner had not worked during that period, the absence could have been regularised by treating it as break in service or leave without pay or by making the application of principle of no work no pay. Why this was not done and why only an

advertisement was issued is not clear. It is also not put forth by the respondents that somebody more meritorious than the petitioner was considered and was found fit for appointment on the post of driver and, therefore, even after giving reference to the petitioner, he could not be appointed on fresh consideration. This being an exceptional circumstances, in fact the petitioner should have been granted the age relaxation as well. Thus, the stand taken by the respondents that since there was no age relaxation granted, the petitioner was not considered fit to be appointed on the post of driver in fresh selection, cannot be accepted.

8. As has been put forth by the learned counsel for the petitioner, at any rate, the petitioner could not have been put at fault as the initiation of process of regular appointment was done by the respondent No. 1 after the promotion of said Laik Mohd., by inviting the applications through the employment exchange and that being so, the appointment of petitioner as a driver at initial stage could not be said to be bad in law in any manner. As has been held herein above, in case there was any consideration pending before the High Court with respect to the approval of promotion of said Laik Mohd., only a contingency appointment could have been made on the post of driver by the respondent No. 1. For the fault on the part of respondent No. 1, the service career of a young person cannot be put in jeopardy. This being so, in the considered opinion of this Court, the petitioner should have been reinstated in service when a request was made by him after obtaining approval if any, on the post of driver soon after the promotion of said Laik Mohd., once again. Nothing more could be read in the order passed by this Court in the earlier writ petition of the petitioner.

9. In view of the aforesaid, the writ petition is allowed. The petitioner be reinstated on the post of driver and be treated in continuous service for the purposes of grant of seniority only. As there is nothing available on record to show that the petitioner was not gainfully employed, it would not be justified to grant back wages to the petitioner. The necessary orders in this respect be issued within two months from the date of order. The writ petition is allowed to the extent indicated hereinabove. There shall be no order as to costs.