
(2001) 11 MP CK 0009
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4719 of 2001

Bahadur Singh

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 28-11-2001

Acts Referred:

Citation : (2002) 2 MPLJ 171

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Imtiaz Hussain, for the Appellant; A. Sanghi, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

The jurisdiction of respondent No. 2 and legality and propriety of the order passed has been put under cloud in the instant writ petition. The order Annexure P/17 was passed by respondent No. 2 on 30th July, 2001 in suo motu revisional jurisdiction setting aside the order dated 26-6-2001 passed by the Chief Executive Officer, District Panchayat, Sihore and directing that the respondent No. 6 Jai Singh shall continue as "Guruji" in Sagarpura Navgaon Primary School/ Shiksha Guarantee Kendra.

The facts relevant to the decision of the writ petition are that the petitioner applied for appointment as "Guruji" in Sagarpura Navgaon Primary School/ Shiksha Guarantee Kendra, Navgaon, Tehsil Astha, District-Sihore respondent No. 6 also applied. Respondent No. 6 is Panch, Gram Panchayat, Navgaon. The applications were received by same Panchayat itself of which the respondent No. 6 is a Panch. Petitioner submits that he is possessing the qualification of Higher Secondary in IInd Division as indicated in the mark sheet Annexure P/5; respondent No. 6 is also Higher Secondary, however, in IIIrd Division as per mark sheet P/6, Janpad Panchayat issued an order of appointment in favour of Jai Singh/respondent No. 6 on 29-8-1997. Since the petitioner was better

qualified, Sarpanch of the Gram Panchayat wrote a letter to Chief Executive Officer pointing out the illegality in the appointment. However, no action was taken. An appeal was filed before the Collector by the petitioner challenging the appointment order P/7 dated 29-8-1997. Collector passed the order P/10 on 16-2- 1999 setting aside the appointment of respondent No. 6 Jai Singh and directed the appointment of the petitioner to be made. As a consequence Chief Executive Officer issued an order setting aside the appointment of respondent No. 6 Jai Singh and petitioner was appointed as "Guruji" pursuant to which he joined.

Respondent No. 6 filed revision petition against the order of the Collector before the Commissioner; revision was, decided as per Order P/12 on 23-8-1999. It was held that Collector had no jurisdiction to hear the appeal and the appeal lies to the Chief Executive Officer of District Panchayat. Accordingly, petitioner filed an appeal before the Chief Executive Officer, District Panchayat, Sihore. An order P/13 was passed on 26-6-2001. It was held that undue haste was made while appointing respondent No. 6; the appointment was set aside. Janpad Panchayat also implemented the direction as per Order P/14 dated 17-7-2001. Appointment of the petitioner was also made as he is more meritorious.

Gram Panchayat also passed an order following the directions issued by the Chief Executive Officer of District Panchayat on 26-6-2001 contained in Annexure P/13.

An application was filed before the State Minister, Panchayat and Rural Development Department which was taken in suo motu power. The respondent No. 2/State Minister himself passed the order and set aside the order passed by the Chief Executive Officer, District Panchayat on the ground that once a person has been appointed, it is not open to cancel such an order. Since the Panchayat has selected respondent No. 6 and recommended his name, it was the matter within the jurisdiction of Gram Panchayat. It also considered that the earlier order passed by the Collector was without jurisdiction and was set aside by the Commissioner on 23-8-1999. In such a case District Level Education Guarantee Committee should have considered the matter and passed the order. The order passed by the Chief Executive Officer, District Panchayat-Sihore was set aside, reinstatement of respondent No. 6 Jai Singh was directed and compliance was ordered to be reported. Order was complied with and respondent No. 6 was appointed on 4-9-2001 as per Order P/18. petitioner was not heard before passing the order P/17 by respondent No. 2 and Sarpanch wrote a letter P/19 on 31-8- 2001.

Learned counsel for petitioner submits that order is highly arbitrary, lacks jurisdictional competence, smacks of arbitrariness and was passed as if "King Can Do No Wrong".

Learned counsel for the State was unable to point out any provision in the M.P. Education Guarantee Scheme or any provision enabling the respondent No. 2 to exercise the power under M.P. Education Guarantee Scheme.

Learned counsel for respondent No. 6 is also unable to point out the provision of jurisdictional competence in the M.P. Education Guarantee Scheme. However, urged that State is having plenary power to revise every order suo motu.

M.P. Education Guarantee Scheme provides in para 7 as under:-

APPEAL AND REPRESENTATION:

If the community is not satisfied with the decision of the Gram Panchayat, it can appeal to the CEO Janpad against the decision. The CEO will decide the issue within 7 days. If the Gram Panchayat is not satisfied with the decision of the Janpad Panchayat, then the Gram Panchayat may appeal against the decision to the CEO of Zila Panchayat, who will then, call a meeting of District EGS committee, where the final decision will be taken for ensuring speedy disposal of such cases. The District EGS committee will be kept informed of all such pending appeals and representations by the CEO Janpad Panchayat.

A bare reading of the appellate provision makes it out that appeal is to be heard and decided by the Chief Executive Officer of concerned Panchayat. There is no provision under M.P. Education Guarantee Scheme framed by the State of M.P. enabling the respondent No. 2 to exercise the suo motu power of revision. M.P. Education Guarantee Scheme contains the provision of appeal/revision. That is a self-contained Code. As it does not provide for the suo motu revisional power to the State or State Minister, in absence of provision to suo motu exercise of revisional power, the order is patently without jurisdiction. Since the M.P. Education Guarantee Scheme does not provide for any revision to the State or to the respondent No. 2/the State Minister for Panchayat and Rural Development Department, the order is without jurisdiction. Moreover suo motu powers of the revision has to be expressly conferred under the Scheme. Scheme does not confer such a power. Scheme provides for an appeal against the order of Gram Panchayat to Janpad Panchayat and that appeal has to be heard by Chief Executive Officer and decided within seven days. The right of appeal to the Chief Executive Officer is given to the member of the community and in case Gram Panchayat is aggrieved by the order passed by the Janpad Panchayat, it can file an appeal before the District Panchayat. That has to be filed to Chief Executive Officer and Chief Executive Officer has to decide the same in seven days. There the matter concludes; no further appeal/revision is provided.

In the instant case, Collector had passed an order on 16-2-1999 entertaining the appeal. Collector set aside the order of respondent No. 6. However, this order was set aside by the Commissioner on 23-8-1999 as per order Annexure P/12. The ground taken by the Commissioner, Bhopal Division, Bhopal is under M.P. Education Guarantee Scheme which is quoted above. An appeal lies to Janpad Panchayat or; to the Chief Executive Officer, Janpad Panchayat or to the Chief Executive Officer, District Panchayat, and to District Level Education Guarantee Scheme Committee. Thus, the order of Collector was held to be without jurisdiction and was set aside. In view of the order passed by the Commissioner,

it was clear that who are the authorities empowered to hear the appeal/revision. Respondent No. 2, not being an Appellate/Revisional Authority under the Scheme, it could not have interfered with the matter.

There is yet another flaw in the order. Petitioner was never heard before passing the order by respondent No. 2. Thus, the order is liable to be set aside on this ground also. It is clear that respondent No. 2 lacks the jurisdiction to take the matter in suo motu revision. No direction is required to be given to respondent No. 2 to rehear the matter afresh. Thus, the order passed by respondent No. 2 (P/17) and all consequential orders passed thereon are set aside.

The writ petition is allowed. Cost on parties.