
(2004) 12 MP CK 0014
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8632 of 2003

Bal Mukund Patel

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Constitution of India, 1950 — Article 311
Madhya Pradesh Tribal Welfare Subordinate Class III Non-Ministerial Rules, 1970 — Rule 10

Citation : (2005) 2 MPLJ 168

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

Bench : Single Bench

Advocate : K.K. Trivedi, Praveen Verma, K.K. Dwivedi, V.K. Shukla and Sharad Verma, for the Appellant; A.P. Shrotri, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

This order would also govern the fate of W. P. Nos. 8613, 8614, 8619, 8621, 8622, 8626, 8627, 8628, 8630, 8631, 8633, 8634, 8635, 8636, 8637, 8639, 8640, 8641, 8642, 8648, 8649, 8654, 8655, 8656, 8657, 8659, 8660, 8661, 8662, 8663, 8664, 8665, 8669, 8670, 8671, 8678, 8682, 8726, 8727, 8730, 8734, 8737, 8742, 8744, 8745, 8748, 8775, 8782, 8701, 8702, 8703, 8704, 8714, 8717, 8688, 8758 and 8693 of 2003 since a common question is involved in all these writ petitions, they are being disposed of by this common order.

In this batch of petitions, the petitioners who are serving on the post of Assistant Teachers, are challenging the gradation list as circulated vide memo dated 22-1-1993 (Annexure A/6) issued by Regional Dy. Commissioner Scheduled Tribe/ Scheduled Caste, Regional Development Authority with a further prayer to quash the entire showing the position of Assistant Teachers working in the said department as on 1-4-1992. A further prayer has been made to direct respondents to prepare a proper and correct gradation list as per the provisions

of M.P. Tribal Welfare Subordinate Class HI Non-Ministerial Rule 1970 (hereinafter referred to as "the Rules") and to place proper placement of the petitioners in the said gradation list. Apart from these reliefs, it has further been prayed that order dated 23-12-1993 passed by respondent No. 3 be quashed by which objections submitted, in regard to final gradation list, were rejected. It has also been sought that petitioners/employees who are serving on the post of Upper Division Teacher may allow to work on the said post.

In brief the case of petitioners is that they were initially selected for sending them for training as Assistant Teachers in the year 1977. On 19-7-1977 one of the petitioner, namely, Bal Mukund Patel, joined the training. After successful completion of training, order of appointments were issued on different dates appointing them on the post of Assistant Teachers on regular appointment. All the petitioners have filed their appointment letters. Annexure A/1 dated 7-8-1979 is the appointment letter of Bal Mukund Patel. In pursuance to their appointments, petitioners joined the place of their posting.

Under Rule 10 of the said Rules, there is a provision to prepare gradation list and as per this rule, a gradation list would be maintained for each Government servant which shall be arranged in order of seniority. Rule 12 pertains to constitution of Committee which shall be constituted in terms of Schedule IV for the purpose of preliminary selection for promotion of eligible candidates. Thereafter Rule 13 says about the condition of eligibility of promotions. As per petitioners, the seniority of directly recruited Government servant appointed on probation is to be counted during his probation from the date of his appointment. Thereafter, by an amendment made in the year 1961, in the rules and according to which the inter se seniority would be maintained on the confirmation of such direct recruits, if the confirmation is ordered at the end of normal period of probation. Thus, according to the petitioners, the seniority of Assistant Teachers directly recruited is to be counted from the date of order of appointment and the names of the persons in the seniority list were required to be arranged in the order of merits mentioned in the order of appointment.

It has been contended on behalf of petitioners that in the past, the gradation list of Assistant Teachers were not circulated in time by the respondents. However, in the year 1990 gradation list was prepared and circulated and names of present petitioners were not in the said list. It is said that petitioners submitted representation pointing out that their names were not included in the gradation list. But, nothing was done by the department nor the petitioners were intimated about the result of their representations. It has also been canvassed on behalf of petitioners that the gradation list was never communicated to them.

Since, several posts of Upper Division Teachers were lying vacant within the Jabalpur Tribal division, as a result of which a DPC meeting was convened and the case of suitable candidates were considered. The DPC after considering the candidatures of the suitable candidates issued order promoting them to the post of Upper Division Teacher on 3-2-1992. It is said that 484 persons were

promoted. In the promotion order, a specific condition was stipulated that the concerning authorities were required to see whether the promoted persons were trained or not and whether against them any enquiry etc. is pending or not. The promotion order further speaks that the promotion is being made temporarily on temporary basis and in case of supersession of seniority of any person, promotion could be cancelled. The name of petitioner Bal Mukund is mentioned in the order of promotion at serial No. 382.

Thereafter when it was noticed by respondents that petitioners have superseded the seniority of some persons, a show cause notice was served on 18-6-1993 stating therein that in the gradation list the name of petitioner was erroneously fixed over and above certain persons. In the show-cause notice (Annexure A/4) 5-7-1993 the date was fixed to reply show cause and it was also directed that in case the employee desire to have a personal hearing, it may be mentioned in their reply. In the show cause notice it is mentioned that the name of petitioner was incorrectly fixed in the gradation list above certain persons and his candidature of promotion was considered on the basis of incomplete gradation list and was erroneously promoted vide order dated 3-2-1992. In the show cause notice it has been stated that the final gradation list of 22-1-1993 on the basis of provisional gradation list was circulated vide memo dated 6-11-1992 in which the name of petitioner (Bal Mukund Patel) is mentioned at serial No. 1195 and therefore a show cause was issued for the cancellation of promotion.

Petitioners submitted reply to show cause (Annexure A/5) and it was contended therein that they were rightly promoted to the post of Upper Division Teacher. It was further clarified that their names were rightly mentioned in the gradation list which was prepared showing the position of Assistant Teachers as on 1-4-1991. According to the petitioners, no senior to them, had ever made any representation challenging the validity of the gradation list of the year 1991 and therefore they cannot be reverted on their substantive post. It is said that petitioners made a demand of personal hearing. According to Learned Counsel for the petitioners, certain persons who were appointed along with petitioners and were shown below their names in the order of appointment have been given seniority over them in the disputed gradation list of the year 1993. Thereafter the petitioners have tried to demonstrate that while preparing the gradation list by referring the names of some of the person, namely, Smt. Sandhya Pandey and some more teachers whose names were mentioned above the petitioner Bal Mukund Patel, though they are shown junior to him in the merit of appointment order and, they are erroneously shown in the gradation list above petitioner. According to the averments made in the petition, copy of gradation list was not circulated to the petitioners nor it was made available to them, therefore no action on the basis of such faulty gradation list could be taken against the petitioners. In anticipation that some orders would be passed against them, some of the petitioners filed original applications before the Tribunal. One of the original application is O. A. No. 1841/1993 challenging the validity of show cause notice and the Tribunal while deciding the said original application found it to be

premature since it was found that petitioners had already filed reply to show cause notice. However, the Tribunal directed respondents to examine each and every objection raised by petitioners and decide it by passing a speaking order. The Tribunal further directed respondents to verify whether petitioners had any notice of provisional gradation list and if so whether they filed any representation challenging the assignment of seniority in the said list and thereafter the authorities should decide the objection on other counts also. The order of the Tribunal has been placed on record as Annexure A/7. On behalf of petitioners, it is being said that thereafter impugned order Annexure A/8 rejecting their representations to show cause was passed and held that petitioners were aware of the circular of provisional gradation list and therefore all the objections pertaining to the gradation list were rejected.

It has been argued by Learned Counsel for the petitioners that the gradation list be quashed and respondents may be directed to prepare fresh gradation list fixing the seniority of the petitioners at proper place.

On behalf of respondents, it has been contended that provisional list was circulated and the objections which were received were also decided. My attention has been drawn to Annexure R/I dated 23-8-1991. The provisional gradation list showing the position as on 1-4-1991 was sent to Assistant Commissioner, Principal, Block Development Officers, Block Development Education Officer through Annexure R/I and it was further directed that, if any, objection or representation is submitted within the stipulated period of one month, the same may be sent to the Directors. A provisional gradation list was published on 23-8-1991 and this provision list was sent for information to all district places where the present petitioners were serving as UDT. In pursuance to the provisional gradation list, the objections were invited and the objections which were received were duly considered and decided. In the return, it has been mentioned that the objections which were received up to the date of 30-11-1991 were duly considered and thereafter the DPC was convened on 23-12-1991 and it continued up to 28-12-1991. In the return, the relevant report of DPC has been reproduced and that portion I would like to reiterate which read thus :

Thus, according to the respondents, the objections which were invited before the cut off date i.e. 30-11-1991 were duly considered and decided. Thereafter different promotion orders were issued with a condition stipulated that the promotion order is only temporary and provisional order and, if any, candidate is found to be superseded in that case the said order could be cancelled.

According to respondents about 484 teachers were promoted by this order dated 3-2-1992 upto the date 8-7-1992. The last person, who was promoted by the said order, his date of appointment was 8-7-1992. After publication of the promotion order, several representations were made to the respondent No. 3. After receiving the aforesaid representations and objections by the affected persons, a revised gradation list was prepared including all the representations made to the office of the respondent No. 3 and later on, on 6-11-1992 a second

provisional list was published and circulated in the office of respondent No. 3 as well as all the district officers, block development officers and principals etc. It has been canvassed on behalf of respondent that a notification of publication of provisional gradation list was also published in daily newspaper "Nav Bharat (Jabalpur) dated 14-11-1992 and "Manorath" (Balaghat) dated 16-11-1992 for publication to all concerned. On these premised pleadings, it has been contended on behalf of the respondents that the grievance made by petitioners in regard to non-consideration of their name which is not shown in the provisional gradation list is absolutely false. According to the return, the first provisional list which was published on 17-9-1991 there were 1367 teachers in the list. Thereafter, after considering the representations made by those teachers upto 30-11-1991, 587 persons were included in the list and in the gradation list which was published on 6-11-1992 showing the position as on 1-4-1992 total number of persons were 3662 which would mean that in the earlier gradation list several names were left over. The reason for this, according to the respondents, was that it was the provisional gradation list of the graduate teachers. After 1-4-1985 most of the Lower Divisional Teachers did graduation and therefore they also became eligible to be listed in the list which was left over due to non-receiving proper and complete information from the district level. Thus, the final gradation list which was published, 3978 persons were mentioned as on 1-4-1992 and 3974 as on 1-4-1991.

According to the respondents, the promotions were made as per final gradation list showing the position as on 1-4-1991 and thus two final gradation lists were published on 22-1-1993 showing the position as on 1-4-1991 and as on 1-4-1992. After communication of these two final gradation list, the DPC was again convened on 5-6-1993. According to the respondents, the paramount consideration for promotion was first to promote trained teachers as UDT as per gradation list showing the position as on 1-4-1991, after making scrutiny it was found that 153 teachers were wrongly promoted vide order dated 3-2-1992, superseding their right of promotions. Out of 153 teachers, their promotion were to be cancelled, 57 were adjusted against the posts likely to fall vacant on cancellation of promotion order of 153 teachers. On account of their higher position in the final gradation list, and remaining 96 teachers promotion orders required to be cancelled and for this reason show cause notice was issued to 96 teachers on 18-6-1993 (Annexure A/4). Against the show cause notice issued only 74 persons representations were received and 22 persons did not make any representation and all of them were provided opportunity of personal hearing.

According to respondents, in pursuance to the Tribunal direction impugned speaking order Annexure A/8 was passed by respondent No. 3 after obtaining due approval of higher authority as per circular dated 26-4-1974 (Annexure R/3).

It has been canvassed on behalf of respondents that the paramount criteria for promotion was first to the trained teachers and therefore 258 trained teachers were first promoted vide promotion order dated 23-12-1993 (Annexure R/4) and

they were given seniority from the date when their juniors were promoted i.e. from the retrospective dates. Thereafter as per the Government circular dated 19-5-1992 (Annexure R/5) direction regarding relaxation made to promote untrained teachers, the cases of untrained teachers were considered. Since the earlier order which was issued on 3-2-1992 was in regard to only trained teachers, thereafter second order of promotion of untrained teachers was issued on 23-12-1993 in which 154 untrained teachers were promoted and they were given seniority from the date of promotion as well as from the date of their joining.

Lastly it has been contended on behalf of respondent that the apprehension in the mind of petitioner that they have been reverted is totally misconceived and wrong in view of the decision of this Court in the case of Ravindra Nath Tiwari vs. Divisional Superintendent of Education, 1978 MPU 49 and Vishwanath vs. State of M. P., 1985 MPLJ 506 : 1983 JU 503 in which it has been specifically held that withdrawal of impugned promotion does not amount to reversion and it is not in any way offend the provision of Article 311 of the Constitution of India or against the principles of natural justice but in the present case on account of abandoned precaution show cause notice was issued to the 96 teachers on 18-6-1993 (Annexure A/4).

It has been contended by Shri A. P. Shrotri, Learned Counsel for the respondents that in the promotion order a specific condition was stipulated that in any case any senior is superseded then the promotion order could be cancelled and therefore if it was found that certain senior teachers were superseded and therefore promotion order was cancelled, the action cannot be said to be arbitrary since the promotion order Annexure A/3 was a conditional order. It has also been proponed by him that it is not the right of an employee to ask for promotion and the order of promotion was temporary and it did not confer any right to the petitioners. In support of his contention, Learned Counsel has placed reliance to the decision of the Apex Court Punjab State Electricity Board and Another Vs. Baldev Singh, and T. Aruna and Others Vs. The Secretary, Andhra Pradesh Public Service Commission and Others, . Another decision of the Apex Court K.S. Kamalanathan Vs. State of Tamil Nadu and Another, has also been placed reliance by Learned Counsel for the respondents.

I have considered the rival contentions of the Learned Counsel for the parties. The main relief which has been claimed by petitioners is for the quashment of the gradation list dated 22-1-1993 the abstract of which is Annexure A/6 and to direct respondents to prepare a correct gradation list. It be seen that if said gradation list is quashed then certainly several employees whose names are appearing in it would be affected and therefore, according to me, their service career cannot be hampered by issuing such type of mandamus affecting their substantive right. In the present case all those employees are not arrayed as respondents and therefore such type of order cannot be issued which would affect their right which they had already acquired and have been placed at

proper place in the gradation list. The Learned Counsel for petitioners could not point out that how and in what manner, without hearing those persons, the gradation list the abstract of which has been placed on record as Annexure A/6, can be quashed and set aside. It be seen that it is impossible to pass an order quashing the gradation list assuming that the petitioner is able to convince the Court that on account of some irregularities made in the preparation of gradation list, unless those who are likely to be affected thereby are arrayed as party and are before the Court and have an opportunity of replying the case set up by the petitioners.

On going through the averment made in the return and particularly Annexure R/I, it is revealed that the provisional gradation list was published on 23-8-1991 and it was circulated in the entire division. I am unable to agree to the submission of Learned Counsel for petitioners that the gradation list was never circulated and the petitioners were totally unaware about its circular. u/s 114 of the Evidence Act illustration (e) would be quite relevant to decide the point in hand. According to the said illustration, there is a presumption of regular performance of judicial and official acts. Indeed, the persons who represented against the provisional gradation list, their objections were considered and decided in accordance with law. Since on account of petitioners' own showing they did not object any objection in regard to their fixation in the provisional list, according to me, they had no case to challenge the final gradation list. They may challenge the final gradation list, but, since they had not arrayed the affected persons whose names are in the gradation list, this Court would stray its hands to quash the gradation list. One very important fact which cannot be marginalized and blinked away is that looking to the large number of candidates which were required to be promoted as well as looking to the number of candidates of feeder posts the respondents must have thought that there may be some irregularity in promotion and for this reason only a specific condition was stipulated in the promotion order of petitioners Annexure A/3 that the promotion order is only provisional and temporary and if it is found that the seniority of a particular Lower Division Teacher is affected, the promotion order may be cancelled. Since there is a clear rider stipulated in the promotion order Annexure A/3 and on scrutiny if it was found by the respondents that certain persons were superseded, according to me, there was nothing illegal on the part of the respondents to pass necessary order in that regard. It has been shown that 258 persons were promoted and one of the order is dated 23-12-1993 (Annexure A/9) and if the gradation list is quashed then certainly the promotions of persons whose names are mentioned in Annexure A/9 would be affected, moreover, petitioners have never challenged Annexure A/9.

In the case of Ravindra Nath Tiwari (supra) the Division Bench of this Court by placing reliance on certain decisions of the Apex Court has held that if an employee is promoted on the basis of seniority list prepared on mistaken interpretation of Absorption Rules and if the employee reverted after revision the list, there is no breach of Article 311. In the case of Vishwanath (supra), the

same principle was reiterated by Single Bench of this Court and it has been emphatically held in it that if promotion was made under mistaken order, correction of such order does not amount to reversion or penalty. In the case of Baldev Singh (supra) the Apex Court while dealing with the matter of ad-hoc promotion held that if the employee who was promoted on ad hoc basis on the direction of higher authorities is directed to discontinue, he had no right and in that case reversion would not amount to punitive. Similar is the case of T. Aruna (supra) wherein promotion was wrongly given and their promotions were challenged when seniority list was circulated, the Apex Court held that the delay could not operate disadvantage of the respondents. Shri A. P. Shrotri, Learned Counsel appearing for the respondents rightly pointed out the circular of Government Annexure R/3 that orders or notification of promotion of a government servant should be cancelled if it is brought to the notice of the appointing authority with such promotion or appointment has resulted from a factual error and the government servant concerned should immediately on such cancellation be brought to the position on which he would have held but for incorrect order of promotion or appointment.

In the present case subsequent event has been taken place and all the present petitioners, as it has been informed to this Court, have already been promoted during the pendency of this petition. However, they may represent to the Government to fix their inter se seniority by filing a representation, if they so desire. On submission of such representation, it may be decided by the authority concerned in accordance with law. However, for the presentie this petition is only academic as all the petitioners have been promoted.

For the reasons stated hereinabove all these petitions are stand dismissed without any order as to costs.