
(2016) 02 MP CK 0072
In the Madhya Pradesh High Court
Case No : W.P. No. 1381 of 2016.

Central Professor/Scientist Technical Council, Gwalior	APPELLANT
Vs	
Rajmata Vijayaraje Scindia Krishi Vishwa Vidyalaya, Gwalior	RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2016) 2 JabLJ 56 : (2016) 2 MPLJ 319

Hon'ble Judges : Rohit Arya, J.

Bench : Single Bench

Advocate : Prashant Sharma, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Rohit Arya, J. - Shri Prashant Sharma, Advocate for the petitioner.

2. This writ petition under Article 226/227 of the Constitution of India is at the instance of a Society known as Central Professor/Scientist Technical Council through its Secretary Shri P.S. Tomar for the following relief:-

"Respondents be directed to include all the post of Annexure-P/4 under the advertisement Annexure-P/1 and 15 days time be granted to members of the petitioner union to apply for the added post and the candidates of members of the petitioner union be directed to be considered."

3. Respondent Rajmata Vijayaraje Scindia Krishi Vishwa Vidyalaya (hereinafter referred to as "Agriculture College") had invited applications for filling up vacancies under different disciplines at University, College of Agriculture, KNK College of Horticulture, Mandsaur and ICAR Research Projects on 10th September, 2013. It appears that process for appointment was not initiated. Thereafter, another advertisement was issued on 20th March, 2015 inviting the applications for filling up posts under various disciplines from disabled persons only, latest by 10th April, 2015. Thereafter, another advertisement dated 18-12-2015 was issued on 18-12-2015 and last date for submission of

application was 1-2-2016.

4. The society has raised two fold grievance viz. (i) in subsequent advertisement dated 18-12-2015 the posts under ICAR Research Project having not been included, therefore, respondent be commanded to include the posts of ICAR Research Project in advertisement and (ii) the society has taken exception to the condition that the candidates who were fulfilling prescribed qualification under the advertisement dated 22-10-2013, need only to apply again in fresh application along with proof of earlier application and fees deposited.

5. Although no such prayer has been sought in the writ petition as quoted above.

6. The primary question as to whether, the instant writ petition with the nature of relief claimed can be entertained at the instance of Society under Article 226/227 of the Constitution of India ?

7. Subject-matter of the writ petition relates to officers/aspirants/applicants/scientists on promotional prospects of ICAR projects. Hence, the complaint is within the sweep of equality clause under Article 14 and 16 of the Constitution of India.

8. In the considered opinion of this Court, only such officers having complained of denial of equality before law and equal protection of law under Articles 14 and 16 of the Constitution of India in the context of promotional benefits, can invoke extraordinary constitutional jurisdiction of this Court under Article 226 of Constitution of India for protection of their legal and fundamental rights. Hence, the cause so espoused by the Society in fact and in effect is an individual cause and therefore "person aggrieved" in the matter of promotion can only maintain writ petition.

9. Meaning of expression "aggrieved person" varies according to the context of the statute and facts of the case. The person must be one who has suffered a legal grievance and against whom decision has been taken and he complains of being deprived of, or being refused something which otherwise he was entitled to in law (AIR 1981 SC 116 referred to).

10. The aforesaid meaning of "aggrieved person" finds support from the judgment of Constitution Bench of Supreme Court in the case of Bar Council, Maharashtra v. M.V. Dabholkar, AIR 1975 SC 2092. In the context of invoking jurisdiction under Article 226 of the Constitution of India, a person can be said to be an aggrieved person if he establishes existence of a legal right which is alleged to have been violated, because that is the foundation for seeking indulgence of the High Court in its extraordinary constitutional jurisdiction under Article 226 of the Constitution. Para 27 of Bar Council's case (supra) reads as under :-

"Where a right of appeal to Courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person

aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words a "person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which prejudicially affects his interest". It has therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette."

11. Therefore, when number of individuals are affected by an official act, they can bring a legal proceeding to challenge the said act, if all such persons join in the proceedings by name. True it is that association of such persons is recognised in law like Societies registered under the Societies Registration Act. It, being a legal entity, apart from its members can sue or be sued in its own name, in accordance with the provisions of the Act under which, or by which, it is constituted. However, for maintaining a writ petition under Article 226 of the Constitution, the Society has to establish violation of legal right of the Society as such and not otherwise. Hon'ble the Supreme Court in the case of Chiranjit Lal Chowdhuri v. The Union of India and others, AIR 1951 SC 41 has observed that where an association is permitted by law to bring a legal proceeding, it can bring an application under Article 226 of the Constitution of India only when its rights as a collective body, as distinguished from the aggregate rights of its members, are affected by the Act challenged in such proceedings.

12. Now if we look at provisions under Trade Unions Act, 1926 and Industrial Disputes Act, 1947 in the context of legal perception of meaning of expression "aggrieved person" which varies according to the context of statute and facts of the case. Under section 4 of Trade Unions Act, employees numbering 7 or more can form a trade union as representative of employees for talks, negotiations, settlements with the management for community interest of workmen in the process of collective bargaining. Further, in furtherance of resolution of industrial disputes, bipartite and tripartite agreements arrived at between the Union and Management (under sections 12 and 18 of the Industrial Disputes Act) are recognised in law and have binding force. Even an individual dispute of the nature of discharge, dismissal, retrenchment or otherwise termination of

employment of an individual workman is also considered to be an industrial dispute. Trade Unions are held entitled under law to raise an industrial dispute. Consequently, trade union in the context of industrial disputes are also held entitled for maintaining an application under Articles 226 and 227 of the Constitution of India before the High Court against the award of Tribunal or otherwise depending upon the facts and circumstances of the case in the matter of espousing cause of employees.

13. Therefore, in absence of provisions under the relevant Act where under, the society is .registered empowering a society to espouse the cause of the nature as raised in this writ petition complaining violation of Articles 14 and 16 of the Constitution of India in the matter of chances of promotions impinging upon the advertisement impugned, no writ petition is maintainable at the instance of a society as the relief as claimed in this writ petition is personal to an individual in nature as the society cannot be said to be an "aggrieved person" to maintain this writ petition.

14. The view taken by this Court as regards concept of "person aggrieved" and existence of jurisdictional facts requirement for invoking writ jurisdiction by this Court under Article 226 of the Constitution of India finds support from the decision of Hon. Apex Court in the case of Ayaubkhan Noorkhan Pathan v. State of Maharashtra and others, (2013) 4 SCC 465 wherein Hon. Apex Court has succinctly dealt with the concept of "person aggrieved" with reference to catena of decisions in paragraphs 9 and 10 which read as under :-

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a Court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the Courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad and anr. v. State of U. P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of W. B. and ors., AIR 1962 SC 1044;

Rajendra Singh v. State of M. P., AIR 1996 SC 2736; and Tamilnadu Mercantile Bank Shareholders Welfare Association (2) v. S. C. Sekar and ors., (2009) 2 SCC 784].

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide: Shanti Kumar R. Chanji v. Home Insurance Co. of New York, AIR 1974 SC 1719; and State of Rajasthan and ors. v. Union of India and ors., AIR 1977 SC 1361)."

15. Resultantly, petition is dismissed. However, individual person may, if so advised, take recourse to law for redressal of grievance before the appropriate forum in accordance with law.