
(2011) 08 MP CK 0026

In the Madhya Pradesh High Court

Case No : Writ Petition No. 631 of 2000

Chakresh Kumar Jain

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 27-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9, 141

Citation : (2011) ILR (MP) 2453 : (2011) 5 MPHT 162

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—As challenge in both these petitions are made to a common order passed by the Commissioner, Sagar Division Sagar in the matter of appointment of Shiksha Karmi Grade-III under Janpad Panchayat Bada Malahara, District Chhatarpur, both these petitions are being decided by this common order.

2. For the sake of convenience, pleadings and documents available in W.P.No.631 /2000 are being referred to.

3. In the year 1999, an advertisement was issued by the Janpad Panchayat, Bada Malahara, advertising 264 vacant posts of Shiksha Karmi Grade-III, out of these 264 posts, 174 posts were under the School Education Department and the remaining 90 posts under Rajeev Gandhi Shiksha Mission. Appointment was to be made on the post of Shiksha Karmi Grade-III and it was to be made in accordance to the conditions stipulated by the State Government in circular dated 01-01-1998, issued in exercising of powers conferred on the State Government under the M.P. Panchayat Raj Adhiniyam, 1993 for conducting the process of selection in accordance to the statutory Rule, namely the M.P. Panchayat Shiksha Karmi (Recruitment and Service Conditions) Rules, 1997 Annexure P-4.

4. A selection committee was constituted, the selection committee consisted of

respondent no.2 Chief Executive Officer, Janpad Panchayat Bada Malahara, respondent no. 3 Block Education Officer, respondent no.4 President of Education Standing Committee, respondent no.5 Member of Standing Committee, respondent no.6 another member of Standing Committee, respondent no.7 member of Education Committee and respondent nos. 8 and 9, Subject Specialist alongwith respondent no. 10 another Subject Specialist, another representative of MX. A. one Devdatta Dwivedi is also alleged to have included in the selection committee. On the basis of the selection conducted, select list Annexure P-1 was issued.

5. On the ground that there are number of illegalities in the selection, near relatives of some of the members of the Selection Committee have been appointed a, writ petition was filed before this court by the petitioners herein being W.P.No.4374/1998. This court finding statutory remedy of appeal available to the petitioners directed the petitioners vide order dated 25-09-1998 to take recourse to the remedy of appeal available before the Collector. The appeal was filed before the Collector and vide order Annexure P-2 dated 31-05-1999 this authority quashed the entire selection mainly on the ground that the selection was not conducted in accordance to the law. However, before the Collector, non of the 294 selected candidates were impleaded, none of them was heard and the Collector passed an order without notice to them and cancelled their appointments.

6. Being aggrieved by cancellation of their selection, 238 selected candidates filed further appeal before the Commissioner, Sagar Division, Sagar and the Commissioner, Sagar Division by the impugned order having allowed the appeal, the petitioners are before this court, challenging the order Annexure P-3 dated 21-12-1999, passed by the Additional Commissioner at the instance of 238 selected candidates who had filed the appeal.

7. Shri A.K. Jain, learned counsel for the petitioners taking me though the reasons given by the Collector in the order Annexure P-2 dated 31-05-1999 submitted that the Collector having found various irregularities in the matter of nepotism shown by the selection committee in appointing their near relatives and by pointing out certain error in the constitution of the selection committee tried to emphasize that the entire selection stands vitiated for the grounds indicated by the Collector, the order passed by the Commissioner interfering with a reasonable order of collector is unsustainable. It was emphasized by him that against the order of Collector, no appeal was maintainable before the Commissioner and therefore, the entire action is unsustainable.

8. Respondents particularly the interveners represented by Shri Sanjay Dwivedi has raised a preliminary objection. It is stated by them that the challenge in this writ petition is made of an order passed by the Additional Commissioner, Sagar, exercising power of an appellate authority under the Panchayat (Appeal & Revision) Rules, 1995. The appeal before the Additional Commissioner was filed by 238 appellants and without impleading these 238 appellants who have been

appointed in pursuance to the order passed, it is argued that this writ petition is not maintainable. In support of his contention Shri Sanjay Dwivedi, invites my attention to the principles laid down by the Supreme Court in the case of Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, , in the case of A.M.S. Sushant v. M. Sujatha, (2000) 10 SCC 197 and in the case of Arti Bhatnagar (Smt.) and Others Vs. State of M.P. and Others, , it is argued by him that in the absence of the appellants who are parties before the Commissioner, this petition is not maintainable. Further taking me through the reasons given by the Additional Commissioner in his 36 pages order, so also the findings recorded by the Inquiry Officer appointed by the Collector to conduct an inquiry into the matter, Shri Sanjay Dwivedi, learned counsel for the interveners emphasized that the irregularities pointed out by the Collector were not at all established and merely because in the case of 3 persons, certain relatives were there in the selection penal, the entire selection would not be vitiated particularly when the finding recorded is that when these three candidates were interviewed, member of the selection committee were not present and the records indicate that each of candidate was selected on their own merit.

9. I have heard the learned counsel for the parties at length and perused the record. Before advertng to consider the rival contentions on merit, the moot question with regard to maintainability of this writ petition on the preliminary ground raised has to be taken note of. It is a fact that in this writ petition none of the selected candidates is impleaded. Apart from the fact that non of the selected candidates is impleaded, challenge in this writ petition is made to an order passed by the Additional Commissioner, Sagar on 21-12-1999 vide Annexure P-3. This appeal was filed at the instance of about 238 selected candidates and order Annexure P-3 allows the appeal filed by these 238 appellants but the petitioners want this court to quash the order passed by the appellate authority namely the Additional Commissioner, Sagar, without impleading the appellants therein i.e. 238 appellants. In this writ petition i.e. W.P.No.631/2000, none of the selected candidates or the appellants in the appeal before the Additional Commissioner are impleaded as parties, even though 13 respondents are impleaded, respondent no. 1 is the State Government, respondent no.2 is the Janpad Panchayat Bada Malahara, respondents nos. 3 to 11 are the members of the selection committee, respondent no. 12 is Collector, Chhatarpur and respondent no. 13 is Additional Commissioner. Neither the selected candidates are impleaded as respondents nor the 238 appellants who had instituted the appeal before the Additional Commissioner impleaded. Even though some what similar position exists in W.P.No.44235/01 but 6 of the respondents therein are the selected candidates and are alleged to be relative of the members of the selection committee, but in this appeal also the appellants who were parties before the Additional Commissioner have not been impleaded even in this writ petition. In the case of Prabodh Verma (supra) the Supreme Court has laid the principles that if the selected candidates are not impleaded as parties the writ petition is not maintainable. Even though Shri A.K. Jain, learned counsel for the

petitioner by placing reliance on a judgment of the Supreme Court in the case of Biswa Ranjan Sahoo and others Vs. Sushanta Kumar Dinda and Others, , tried to emphasize that the selected candidates need not to be impleaded as parties but the facts and circumstances of the present case are clearly distinguishable. In the present case challenge is made to an order passed by the Additional Commissioner, who has exercised power of an appellate authority under the M.P. Panchayat Raj Adhiniyam, 1993 and M.P. Panchayat (Appeal and Revision) Rules 1995. In the proceedings held before the Additional Commissioner in this statutory appeals, 234 persons had filed the appeal, their appeal has been allowed and they have been granted benefits in pursuance to the order passed in their favour by the statutory appellate authority, the petitioners want this court to quash this order of the statutory appellate authority and while doing so none of the appellants at whose instance the order was passed in the appeal by the Additional Commissioner on 21-12-1999 are before this court. Any order passed in this writ petition will have the effect of setting aside the appellate order passed by the Additional Commissioner would naturally will effect the appellants who were parties before the Additional Commissioner and who had filed the appeal. Therefore, this is case where an order of appellate authority is challenged and the appellants at the whose instance the impugned order is passed are not impleaded as party, this is a material lacuna and this court cannot interfere into the matter in the absence of the appellants at whose instance the impugned appellate order was passed, they are necessary parties and this petition suffers from misjoinder of the parties.

10. The aforesaid reasonings given by this court is based on the principles laid down by the constitution bench of the Supreme Court in the case of Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, . In the aforesaid case it has been held by the Supreme Court that under law, a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. It is held in this case that when a writ of certiorari is sought for and order of a Tribunal or a Authority is challenged and the prayer is made to quash such an order then all such persons who are parties and in whose favour order is passed by the Authority of Tribunal are necessary parties. It is held in this case that no order passed by the Tribunal or Authority can be quashed if a person who as a party before the Lower Tribunal and in whose favour the impugned order was passed is not joined as a party in the writ proceedings. In the present case also similar situation exists. The persons who were parties before the statutory appellate court i.e. the Commissioner and at whose instance the impugned orders are passed are not before this court.

11. The judgment rendered by the Supreme Court in the case of Udit Narain Singh Malpaharia (supra) so also in the case of Prabodh Verma (supra) was considered recently in the case of Public Service Commission, Uttaranchal v. Mamta Bisht and Others, (2011) 1 SCC (L&S) 208 and in para-9 the following

principles have been laid down:

9. In case Respondent 1 wanted her selection against the reserved category vacancy, the last selected candidate in that category was a necessary party and without impleading her, the writ petition could not have been entertained by the High Court in view of the law laid down by nearly a Constitution Bench of this Court in *Udit Narain Singh Malpaharia V. Board of Revenue*, wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1, Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called "CPC") provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh V. State of Gujarat*, *Babubhai Muljibhai Patel V. Nandlal Khodidas Board* and *Sarguja Transport Service V. STAT*).

12. Accordingly this court finds much force in the preliminary objections raised by the learned counsel for the respondents the objection is upheld and the petition is dismissed.

13. The petition is pending since 2000 and it is seen that this objection has been raised at the earlier date also but inspite of objection raised, the petitioners have not cared to impleaded the affected parties.

14. Accordingly in the facts and circumstances of the case, finding no merit in the claim made by the petitioners, both these petitions are therefore, dismissed, without any order so as to costs.