
(1990) 08 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.P. No. 1185 of 1989

C.P. Kulshrestha (Dr.)	Vs	APPELLANT
Government of M.P. and Others		RESPONDENT

Date of Decision : 02-08-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226, 227
Madhya Pradesh General Clauses Act, 1957 — Section 16
Railways Act, 1989 — Section 76
States Reorganisation Act, 1956 — Section 51(2)

Citation : (1991) J LJ 198

Hon'ble Judges : T.N. Singh, J; R.C. Lahoti, J

Bench : Division Bench

Advocate : J.P. Gupta, for the Appellant; Arvind Dudawat, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

T.N. Singh, J.—Two Petitioners were heard analogously for two-reasons: one, our competence to hear both petitions at Gwalior Bench was challenged; two, both Petitioners have challenged (on different grounds though) the same action of Public Service Commission refusing to call them for interview for the post of Civil Judge. This order shall accordingly govern disposal of both matters, namely, Misc. Petition No. 1185 of 1989 and Misc. Petition No. 1464 of 1989 (Omprakash Gupta v. State of Madhya Pradesh and Ors.).

2. We set out below the order dated 22.4.1981, passed by the Hon'ble the Chief Justice as that is the source of challenge to our competence to hear the petitions:

In accordance with orders of my predecessor dated 5.2.1976, issued under the proviso to notification No. 1620/68 : Judl. III, dated November 28, 1968, issued by the President u/s 51(2) of the States Re-organisation Act, 1956 (No. 36 of 1956) and in supersession of my orders dated 6.1.1981, I hereby order that all cases relating to selection and/or appointment of Judicial Officers; and all cases

instituted by or against Judicial Officers or Ex-judicial Officers of Madhya Pradesh relating to termination of service or any other service matter shall be heard at Jabalpur.

This order shall also apply to pending case.

3. Although strong reliance was placed on two Full Bench decisions of this Court, for reasons to follow, we regard that exercise to be misconceived. The decisions cited are: Abdul Taiyab Bhai and Five Ors. v. Union of India and Five Ors. 1976 J LJ 706; Balkrishan Das v. Hamarain 1979 J LJ 745.

4. In Abdul Taiyab Bhai (supra), the Court was required to address itself mainly to the scope of the power of the President and of the Chief Justice envisaged u/s 51(2) of the States Re-organisation Act, 1956, for short, S.R. Act. Indeed, the vires of the provision was agitated and the challenge was negatived. It is true that some discussion can be read in the two separate judgments in that case on the purport and import of the expression "in respect of cases arising in" used in the Presidential Order dated 28.11.1968 passed u/s 52, but that exercise was evidently inhibited by Apex Court's view expressed in kindred circumstances in regard to that expression in Sri Nasiruddin Vs. State Transport Appellate Tribunal, In Balkrishan Das (supra), the scope of two orders passed on same date, 5.2.1976, by the Hon"ble the Chief Justice, deriving authority from the same Presidential Order, was required to be determined. In that case, the Court "found it necessary to determine the meaning to be attached to the words "hearing" and "determine" used in those orders as the question posed was whether writ petition which raised question of vires of any enactment, Rule or notification had to be listed even for admission and interim order at Jabalpur and the Indore and Gwalior Benches had no jurisdiction to deal with those matters.

5. In the instant case, we are required to construe a different order, albeit passed by the Hon"ble the Chief Justice in virtue of the same Presidential Order. We are required, in our view, to construe the order extracted aforesaid on its own term and language and that indeed, in the perspective of constitutional imperatives. The question that precisely arises for our determination in this case is, what meaning is to be attributed to the clause "cases relating to selection" in its context and setting in the order afore-extracted. On behalf of the Petitioners, it has been urged that the phrase-logy needs careful examination and proper meaning is to be attributed mainly to the words "cases" and "selection". It is also urged that the meaning should accord with constitutional imperatives and the order be so construed as to maintain its constitutionality. The object of the order, it has been further urged, must be kept in view as that can be regarded as the most reliable guide for divising the meaning of the crucial words.

6. It cannot be doubted that the order afore-extracted is a piece of subordinate legislation and due primacy is to be attached, therefore, to current norms of purposive interpretation. (See Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others, ; Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa

and Others,). The role of Directive Principles in evaluating statutory objective is also stressed by the Apex Court consistently for more than a decade. (See Pathumma and Others Vs. State of Kerala and Others, ; Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, ; Ranjan Dwivedi Vs. Union of India (UOI),). Importance attached judicially to the particular norms fulfilling this imperative needs also to be noted. The foremost is that High Court's jurisdiction to grant relief under Article 226 of the Constitution can be curtailed only by constitutional amendment Konduri Buchirajalingam Vs. The State of Hyderabad and Others,). Also noteworthy is the principle enunciated in S.P. Sampath Kumar's case AIR 1987 SC 386 in which it was held that the said jurisdiction extends not only to one Seat but "Seats of each High Court" and that for exercise of the power of judicial review under Article 227, suitable mechanism must exist "at every place where there is a Seat of the High Court".

7. Reading the order as a whole, we are able to gain an insight into its objective. It is supposed to subserve the purpose of Article 233, 234 and 235 of the Constitution. All matters of administrative control over all subordinate Courts in the State are vested thereunder in the High Court, such as of selections, appointments, transfers, promotions, etc. It can be safely presumed, in our view, that it was considered appropriate and legitimate to hear such matters at the Main Seat as involved rights of such persons who had been either duly selected or appointed as Judicial Officers in addition to the general litigation concerning "service matters" of such officers because service records of such officers are maintained at the Main Seat at Jabalpur and administrative decision in those matters are also taken there.

8. We do not think if there can be any other legitimate object except that and it could not be, in our view, the intention of the order to impair rights of citizens qua citizens who had not been selected as Judicial Officers so as to prevent them from complaining to this Court on the Judicial side at any of the Benches also in regard to any grievance concerning the selection procedure. If that view is not taken, the validity of the order can be questioned on the anvil not only of Articles 14, 16 and 21, but also of Article 39A of the Constitution. In Vijay Singh Jadon No. 2 1988 J LJ 660 : 1989 MPLJ 255 , this aspect was considered in Anr. context by a Division Bench of this Court by referring to the decision in State of Maharashtra Vs. Chandrabhan Tale, wherein public employment opportunity was regarded as "national wealth". It was held that a citizen qua citizen cannot be denied access to High Court to enforce his fundamental right under Articles 14, 16 and 21. What has to be further stressed in this connection in the particular fact-situation of this case, is that easy access to justice is an integral part of the right to move the High Court under Article 226 of the Constitution and that flows from the benevolent mandate of Article 39A. That imperative is appropriately stressed in Ranjan Dwivedi's case (supra). Before any citizen is drafted into Judicial Service, he remains a citizen suffering no disability of any type and his cause cannot be reasonably put into a separate class or category to be dealt with differently. There can be, therefore, neither any case of reasonable classification

nor of a reasonable nexus to take the view that even pre-selection cases are covered by the Order.

9. Looking at the Order which is in two parts, the rationale of the split arrests immediate attention. Two types of "cases" are chosen and specified to be dealt with exclusively at the Main Seat at Jabalpur, leaving other cases unaffected by the contemplated jurisdictional constraint. A zone of enumerated jurisdiction is deliberately carved out for the Main Seat, allowing matters unspecified to constitute the residuary jurisdiction to be exercised at other seats in the ordinary or normal course. The words used in two parts are chosen ex-hypothesi to match the object of the split. The settled law also is that, "the meaning of an ordinary word is to be found not so much in strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which it is used and the object which is intended to be attained". [See Santa Singh Vs. The State of Punjab,]. Obviously, with deliberate care, in both parts, the words "cases" is used, care is taken to avoid the words "matters" or "questions" of admittedly wider import and connotation. It cannot be gainsaid that if the first part of the order would have read as "all matters (or questions) relating to selection and/or appointment", there would have been left nothing to be agitated at any other seat (outlying Bench) of the Court in regard to "selection" or "appointment" of a Judicial Officer. But that was prevented deliberately by securing to the Main Seat at Jabalpur only enumerated jurisdiction.

10. To divine the meaning of the word "selection" in its context and setting it is significant to note that the same gerundial verb "relating" serves simultaneously two subjects ("selection", "appointment") and both again are inter-linked by two conjections -- "... relating to selection and/or appointment". This construction provides intrinsic evidence for the conclusion that the words "selection" and "appointment" are used in ejusdem generis sense and both words indicate the perfected state or status of the right accrued to the person concerned, of his being inducted into the judicial service. In Union of India (UOI) Vs. The Steel Stock Holders Syndicate Poona, the words used in Section 76 of the Railways Act, "loss, destruction, damage or deterioration" were held as used in ejusdem generis sense to indicate the actual and physical loss or change in the goods in relation to the right contemplated in regard thereto u/s 76. It may be legitimate to conclude that when cognate expressions of the same genre are used in a particular collection in dealing with any right to pursue any remedy, it may provide a safe guide to determine the status of the suitor and of the right to be enforced.

11. For all the foregoing reasons, we are of the view that only cases of perfected right of a candidate offering himself for selection as a Judicial Officer, such as of his being duly selected for appointment as such officer, come within the purview of the afore-quoted order. It shall be open to any candidate, qua citizen, to challenge any arbitrary action of any authority by which the pre-selection procedure is vitiated and his right to selection is infringed. Roshan Lal Tandon Vs.

Union of India (UOI), had stated law long ago that the citizen does not suffer the disability ordinarily attached to a civil servant in the exercise of his rights until his status changes on his induction into service. The pronounced role and relevance in this context of Chandrabhan's case (supra) has also to be underlined. Right to public employment contemplated under Article 16 of the Constitution is a fundamental right of every citizen and a candidate offering himself for selection for the post of a Judicial Officer suffers neither any change in this status nor any dilution of his rights till such time as he has not been inducted into the Judicial service. Articles 14, 16, 21 and 39A must interdict any attempt to restrict in any manner the enjoyment of his right to challenge freely at any Seat of this Court any arbitrary action of any authority in the pre-selection stage.

12. We hold, therefore, that the preliminary objection is meritless and that is rejected. We hold that sitting at Gwalior Bench, we are competent to examine the grievance of the Petitioner agitated in the two petitions and decide the same on merits.

13. Petitioner Dr. C.P. Kulshrestha of Misc. Petition No. 1185 of 1989 had a short grievance. His date of birth (26.1.1953) is not disputed. Admittedly, age-relaxation has been allowed in the advertisement published on 10.11.1988 by M.P. Public Service Commission (Respondents 2/3) permitting any person employed on temporary or permanent basis in Government service, to apply for the post of a Civil Judge and to take part in Judicial Service Examination for the year 1988-89 if he had not attained the age of 38 years. Admittedly, the Petitioner appeared in the written examination, but was not called for the interview and in the return the only ground to disqualify him is based on challenge to relaxation claimed by him. It is not the case of the Respondent that the Petitioner was over 38 years or was otherwise disqualified on account of his performance in the written examination.

14. What is not denied is that at the relevant time and till today the Petitioner has been serving as Chief Municipal Officer at Mungawali. Respondents have relied on a circular letter dated 21.7.1988 of the Under Secretary to the Government of Madhya Pradesh, Local Government Department, Bhopal. He intimated thereby to the concerned authorities that the order dated 1.1.1987 of the General Administration Department under which employees of Municipal Corporations and Municipal Councils were enjoying age relaxation upto 38 years had been withdrawn. In the return, it is also stated that Petitioners' reliance in the writ petitions on this Court's decision in Alok Awathi's case 1987 MPRCJ 143 would not avail him.

15. We have "no doubt that the objections of Respondents are wholly meritless. The circular letter can have no effect on the advertisement of the Respondents and entitlement thereunder of the Petitioner. The only point to be considered is whether the Petitioner was, at the relevant time, and also today, a Government servant. In a different context, that question came to be decided in Alok

Awasthi's case (supra). It was held in categorical terms in that case that the "Chief Municipal Officer" was a Government servant and that view was taken giving due consideration to the provisions of M.P. Municipalities Act, 1961, M.P. State Municipal Service (Executive) Rules, 1973 and Section 16 of the M.P. General Clauses Act, 1957. It was held that the Chief Municipal Officer was a "servant" of the State Government and was not a "servant" of the Municipal Council. His appointment, transfer, and also matters concerning disciplinary action to be taken against him, all lie within the competence of the State Government. We are in complete agreement with the view expressed in Alok Awasthi and we have no doubt that the Petitioner is not an employee of the Municipal Council, but he is a Government servant. He is accordingly not hit by the circular letter dated 21.7.1988 and he is entitled to the age relaxation contemplated under the advertisement in question.

16. We direct Respondents to declare his result of the written examination and on his performance being found adequate, meeting the requirement of call for interview, needful shall be done in that regard. Within a week, his result shall be declared and within three weeks, interview shall be held to allow him to test his fortune. If he is duly selected, his case for appointment may be considered in accordance with his performance in the written test and the interview.

17. In regard to the case of the other Petitioner, Omprakash Gupta, there was some controversy about his performance in the written test. Accordingly, we had called for the "Model Answers" and also the "Answer Script" of the Petitioner. After examining the same, we found arbitrary marking in respect of several questions, such as questions No. 94, 129, 142, 162 and 184. We recorded our finding on 25.4.1990 after hearing counsel on that date in regard to the controversy that the Petitioner could not be said to have secured less than 147 marks and, therefore, he was entitled to be called for interview. He was denied the chance to appear at the interview as he was held to have secured 142 marks only as against the minimum of 145 marks. Because Petitioner's stake to appointment would depend on his performance in written test and also interview, we took the view that revaluation had to be undertaken by the concerned authority as it may be a case of Petitioner's securing still higher marks. We had reserved orders on that date as the decision on the preliminary question had to be given.

18. Accordingly, we direct Respondent 2/M.P. Public Service Commission to revalue carefully Petitioner's answer script and also make arrangements for his interview. Within a week, revaluation shall be completed and within three weeks, interview shall be held to allow him to test his fortune. If he is duly selected, his case for appointment may be considered in accordance with his performance in the written test and the interview.

19. In the result, both petitions succeed and are allowed in terms of directions herein made. However, there shall be no order as to costs.

A copy of this order shall be placed on records of connected petition, namely, Misc. Petition No. 1464 of 1989.