

(1999) 07 MP CK 0063

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 1850, 1809, 1907, 1945, 1985, 1967, 1970, 1996 to 1998, 2008 to 2010, 2022, 2023, 2042, 2045, 2083, 2089, 2094, 2129, 2144, 2151, 2155, 2156, 2160, 2163, 2164, 2194 to 2198, 2214, 2283, 2330, 2364, 2365, 2587, 2647, 2676, 2890, 3064,

Deep Shikha Bilaiya and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 29-07-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2000) 2 MPJR 112 : (2000) 2 MPLJ 269

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : M.K. Agrawal, A.G. Dhande, Umakant Sharma, R.P. Khare, R.L. Gupta, K.N. Agrawal, M. Pateria, Smt. J. Choudhary, P.N. Dubey, K.P. Singh, C.B. Gumasta, B.K. Dave, Ranjan Banerjee and Smt. D.K.V. Bohrey, for the Appellant; V.S. Shrotri and Sanjay Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

After the elected body came into office in Municipal Corporation, Katni, 393 appointments were made on daily wage in different departments of the Corporation including the schools run by it. They were paid monthly wages calculated on the basis of daily wages. When it came to the notice of the State Government, it directed for enquiry and in the enquiry it came to light that appointments were made on daily wages illegally without any sanction from the State Government. State Government by letter dated 8-3-1999 wrote to the Commissioner of the Municipal Corporation to remove all 393 employees who were appointed on daily wages after the election of the Corporation. In pursuance of the aforesaid order of the State Government, Commissioner of the Corporation passed an order on 8-4-1999 stating therein that all the employees appointed after the election of the present Corporation, on the expiry of the

period of one month; shall stand removed from service. Petitioners were appointed on daily wages after the aforesaid election and they being aggrieved by the aforesaid decision of the Commissioner have filed these writ petitions under Articles 226/227 of the Constitution of India and seek its quashing.

I have heard Shri M.K. Agrawal, Shri A.G. Dhande, Shri Umakant Sharma, Shri R.P. Khare, Shri R.L. Gupta, Shri M. Pateria, Smt. J. Choudhary, Shri P.N. Dubey, Shri K.P. Singh, Shri C.B. Gumasta, Shri B.K. Dubey, Smt. D.K. v. Bohrey and Shri Ranjan Banerji in support of the writ petitions whereas Shri V.S. Shrotri and Shri Sanjay Agrawal had appeared for respondent-Corporation.

According to the petitioners, respondent Corporation started making appointment on daily wages in the year 1995, and they being eligible, were selected for appointment on daily wages on fixed monthly salary. Return has been filed in which it has been stated that appointments of 393 persons on daily wages have been made without any advertisement or following any process of selection known to law. It is the stand of respondent-Corporation that the provisions of the M.P. Municipal Employees Recruitment and Condition Rules, 1968 do apply which provides for notification of number of vacancies to the local Employment Exchange, advertising vacancy in the local news paper and selection by interview, but in the present case nothing was followed. Petitioners contention, however, is that the provisions of the aforesaid Rules are not applicable and hence their appointments cannot be faulted on the ground that it has been not made in accordance with the provisions of the M.P. Municipal Employees Recruitment and Condition Rules, 1968 (hereinafter referred to as the "Rules"). Be that as it may, on repeatedly being questioned the petitioners could not demonstrate that their appointments have been made following one or the other procedure of selection known to law.

Even if I proceed on the assumption that the provisions of the Rules do not apply to the respondent-Corporation still the mandate of Articles 14 and 16 of the Constitution of India obliges every State within the meaning of Article 12 of the Constitution of India to follow the procedure, which is in tune with Articles 14 and 16 of the Constitution of India. It is not in controversy that in the present case appointments have been made by a Municipal Corporation which is State within the meaning of Article 12 of the Constitution of India. In view of the fact that the Corporation has chosen to appoint 393 persons on daily wages without specifying the period for which they were appointed, it was incumbent upon it to follow one or the other known procedure of selection. It is not the nomenclature but the substance of appointment which is required to be seen. In case appointment made on daily wage is to last then in that case one is required to follow procedure known to law. However, no procedure known to law has been followed. This renders the appointment illegal.

In fact, the stand of some of the petitioners is that there being no statutory rule governing appointment on daily wages respondent-Corporation has made appointment according to its subjective satisfaction and the Corporation is

making appointments in the same way since long, even prior to the appointment of the petitioners. Even if I assume in favour of the petitioners that no statutory rule has been framed for appointment on daily wages and the respondent Corporation had made appointment earlier on daily wages without following any procedure, still when the same is questioned in a Court of law, one is required to see as to whether the procedure followed for appointment is in tune with the provisions of Articles 14 and 16 of the Constitution of India. Further this cannot be ignored on the ground that earlier also appointments were made without following any procedure.

Having said this, I find that 393 persons have been appointed without following any procedure known and recognised by law. In view of aforesaid I do not have the slightest hesitation in holding that the petitioner's appointments are wholly illegal. It can be safely said that without advertisement and without assessment of comparative merit, the respondent- Corporation has given them appointments by picking them from the roads like in olden days King used to distribute largess. In a country governed by rule of law, this mode is totally forbidden.

It is true that the Municipal Corporation has issued the impugned order dated 8-4-1999 in the light of the direction of the State Government in its order dated 8-3-1999, whereby the later has asked the former to terminate the services of all daily wage employees, who were inducted after the new office bearer of the Corporation has taken over.

Learned Counsels for the petitioners submit that the State Government is not possessed of power to give direction to the Municipal Corporation to terminate services of its employees. Section 421 of the M.P. Municipal Corporation Act, 1956 confers power to the State Government to suspend any resolution or order of the Corporation. Here in the present case the State Government got an enquiry conducted by a Joint Collector and on receipt of the report, it found that a large number of persons have been appointed illegally on daily wages, it directed for rescinding all these appointments. It is relevant here to state that section 421(3) of the M.P. Municipal Corporation Act gives discretion to Corporation to contend before the State Government that appointments made by it are legal and the State Government, u/s 421(4) is under an obligation to consider the same and pass necessary orders cancelling, modifying or confirming the order passed by it. Here the respondent-Corporation has not chosen to make any representation to the Government and finding substance in its decision accepted and implemented the same. Hence I do not find any substance in this submission of the Learned Counsels for the petitioners.

It is emphasised that before terminating the petitioner's services, an enquiry was made by the Joint Collector, and as a result thereof, their services have been terminated, but before terminating their services respondent- Corporation or the State Government has not given them notice or opportunity of hearing. It is beyond controversy that before terminating the services of the petitioners no such notice or opportunity was given. In support of their submissions they have

placed reliance on a judgment of the Supreme Court in the case of Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, ; My attention has been drawn to the following passage from the said judgment:--

"35. But in cases where the termination is preceded by an inquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the Officer and where on the basis of such a report, the termination order is issued, such an order will be violative of principles of natural justice inasmuch as the purpose of the inquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employees conduct but are cases where the employer has virtually accepted the definitive and clear findings of the Inquiry Officer, which are all arrived at behind the back of the employee even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases."

Heavy reliance has been placed by the Learned Counsels for the petitioners on the decision of the Supreme Court in the case of Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, :

"In our view, it is an absolutely clear case where the inquiry officer examined witnesses, recorded their statements and gave a clear finding of the appellant accepting a bribe and even recommended his termination. All these were done behind the back of the appellant. Managing director passed the termination order the very next day. It cannot in the above circumstances be stated, by any stretch of imagination that the report is a preliminary inquiry report. Its findings are definitive. It is not a preliminary report where some facts are gathered and a recommendation is made for a regular departmental inquiry. In view of the principles laid down in the cases referred to above, this case is an obvious case where the report and its findings are the foundation of the termination order and not merely the motive. The Tribunal was right in its conclusion. The High Court was in grave error in treating such a report as a preliminary report."

None of the authorities relied on by the Learned Counsels for the petitioners is of any assistance to them. In both the cases services were terminated on the ground of misconduct and employees were stigmatised. Further in both the cases the appointments made were found not to be totally illegal on account of infraction of Articles 14 and 16 of the Constitution of India. Further individuals were faulted and not the entire selection. Here in the present case services of all employees have been terminated, and individuals have not been chosen for termination of their services. No stigma has been cast on the selected candidates. Petitioners are daily wage employees and they have no right to the post. The entire selection of these petitioners, was made throwing the constitutional mandate to winds. From what has been stated above, it can be

safely said that entire process of selection is stinking, conceived in fraud and delivered in deceit. Principle of natural justice is not an unruly horse. Its application depends upon the facts and circumstances of each case. Hence, I am of the opinion that in the facts of the present case, petitioners were not entitled to notice or opportunity of hearing and this itself will not vitiate the impugned order.

Mr. A.P. Singh, appearing on behalf of the petitioners contends that appointment of 393 persons have taken place separately and as such they ought not to have been removed from service collectively. This in the submission of Shri Singh itself shows mala fide. In support of his submission he has placed reliance on a judgment of the Supreme Court in the case of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, . He has drawn my attention to the following paragraph of the aforesaid judgment:--

"Non application of mind to individual cases before issuing a general circular terminating all such appointments throughout the State of U.P. is itself eloquent of the arbitrariness writ large on the face of the circular. It is obvious that issuance of the impugned circular was not governed by any rule but by the whim or fancy of someone totally unaware of the requirements of rule of law, neatly spelled out in the case of John Wilkes (1770) 4 Burr 2528 more than two centuries back and quoted with approval by this Court almost a quarter century earlier in S.G. Jaisinghani Vs. Union of India (UOI) and Others, . We have considered it necessary to re-emphasise this aspect and reiterate what has been said so often by this Court only because we find that some persons entrusted with the task of governance appear to be unaware of the fact that the exercise of discretion they have must be governed by rule, not by humour, whim, caprice or fancy or personal predilections. It also disturbs us to find that the Legal Remembrancer's Department of the State of U.P. which has the duty to correctly advise the State Government in such matter, overlooked the obvious and failed to discharge its bounden duty of correctly advising the State Government in matters of law. We would like to believe that the impugned circular was issued for want of proper legal advice in this behalf instead of any ulterior motive suggested by the petitioners/appellants.

In the aforesaid case by one stroke of pen State of U.P. terminated appointments of all Government counsels in all the districts of the State and directed preparation of fresh panel. In this case appointments of all Government counsels were terminated, although it was not the allegation that their initial appointments itself were bad in law. This was done without examining the fact as to whether terms of the incumbent had expired or were subsisting. Here in the present case, however, appointments of the petitioners have been found to be illegal and in that view of the matter submission of Shri Singh had no substance and the decision relied on is clearly not attractive.

Mr. Khare appearing on behalf of the petitioners in W.P. No. 1958/1999 submits that the works on which petitioners were appointed still subsist and therefore,

their services ought not to have been terminated. Reliance has been placed on the judgment of the Supreme Court in the case of Secretary, H.S.E.B Vs. Suresh and Others etc. etc., . My attention has been drawn to the following passage from the said judgment:--

"As noticed above draconian concept of law is no longer available for the purpose of interpreting a social and beneficial piece of legislation specially on the wake of the new millennium. The democratic policy ought to survive with full vigour, socialist status as enshrined in the Constitution ought to be given full play and it is in this perspective the question arises -- is it permissible in the new millennium to decry the cry of the labour force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning of Article 12 of the Constitution -- the answer cannot possibly be in the affirmative -- the law Courts exist for the society and in the event law Courts feel the requirement in accordance with principles of justice, equity and good conscience, the law Courts ought rise up to the occasion to meet and redress the expectation of the people. The expression "Regulation" cannot possibly be read as contra public interest but in the interest of public."

Aforesaid authority is not remotely attracted in the facts and circumstances of the case. In the said case contract system was resorted to camouflage the real contractual relationship between the real employer i.e. Board on one hand and the employees on the other. Nothing of this sort exists in the present case.

Further one has to bear in mind the distinction between existence of work and existence of sanctioned post. It is not the petitioner's case that they have been appointed on sanctioned posts after following any procedure for appointment. It has been pointed out by Shri Shrotri and Shri Agrawal appearing on behalf of the respondent-Corporation that annual income of the Corporation for the year 1998-1999 was approximately Rs. 67928400/- out of which Rs. 54755884/- has been spent on establishment which is 80.61% of the total expenditure. It has been further stated that respondent-Corporation had obtained a loan of Rs. 20600000/- from the Life Insurance Corporation of India for its water supply scheme in the financial year 1997-1998 and 1998- 1999 and in the year 1,997-1998 out of the said amount Rs. 560000/- have been spent towards payment of salaries to its employees. It is further pointed out that the Corporation is required to pay a sum of Rs. 10,00,000/- per month in the shape of wages to the petitioners and the work performed by them, can be discharged by existing employees and the amount being spent on the salaries of the Petitioners can be well utilised for the welfare activities of the citizens. In such a situation their stand is that the respondent-Corporation cannot be compelled to retain the services of the petitioners. In support of their submission reliance has been placed on a decision of the Supreme Court in the case Municipal Corporation, Bilaspur and Another Vs. Veer Singh Rajput and Others, ; My attention has been drawn to the following paragraph from the said judgment:--

"The High Court has purported to follow the decision of this Court in *State of Haryana vs. Piara Singh*. In this judgment in para 25 this Court has pointed out that before giving directions for regularisation, the Court must act with due care and caution. A practical and pragmatic view has to be taken, inasmuch as every such direction not only tells upon the public exchequer but also has the effect of increasing the cadre strength of a particular service, class or category. In this paragraph there is a discussion on several problems which can arise if wholesale regularisation is ordered. One such problem relates to irregularities in appointments. Candidates who are sought to be regularised may be neither sponsored by the employment exchange nor appointed after issuing a proper advertisement calling for applications. In short, it may be a back-door entry. A direction to regularise such appointments would only result in encouragement to such unhealthy practices. In the present case, the stand of the appellant-Corporation throughout has been that these daily rated employees have been appointed because of political considerations by the Standing Committee. After the Standing Committee was superseded and Administrator was appointed, serious irregularities were discovered in these appointments. In this situation, a direction given by the High Court for regularisation of such persons is not warranted. Our attention has been drawn to the observations made by this Court in *Satyanarayan Sharma vs. National Mineral Development Corpn. Ltd.* where this Court declined regularisation in case where there were no vacancies and work was not available in the establishment. In the present case, there is no material indicating that the work is not available. The appointments however, are irregular and made on political considerations. There are clear government directions for reduction of establishment expenditure and a prohibition on the filling of vacant posts or creating new posts including regularisation of daily waged employees. The order of the High Court for regularisation of such employees is not warranted. It is in the teeth of these administrative directions and cannot be sustained.

(Emphasis supplied)

Observations of the Supreme Court quoted above apply *mutatis mutandis* in the case in hand. I am of the opinion that in the face of the financial position as pleaded by the respondent-Corporation, they cannot be compelled to retain the services of the petitioners. As pointed out earlier, availability of work and availability of sanctioned post are different and distinct things. There may be a situation where an Organisation has plenty of work and for that it requires employees but its finance does not permit the same. Herein in the present case it is the stand of the respondent Corporation that approximately a sum of Rs. 1,20,00,000/- shall be spent, if these petitioners are allowed to continue and the work performed by these petitioners can be performed by existing employees. It is further stand of the Corporation that its financial position does not permit continuance of the petitioners. Hence petitioners are not entitled for continuance in the service merely on the ground that work exists and after the termination of the petitioners service few people have been appointed on daily wages.

Mr. Sharma appearing on behalf of the petitioners has taken an extreme stand. He concedes that petitioner's appointments were made without following any procedure, but he submits that what procedure is required to be followed is not known to the petitioners and hence they cannot be penalised for failure of the respondent-Corporation to follow the procedure for appointment. This argument, in my opinion, is an argument of desperation. Petitioners are the beneficiaries of the illegal act and once it is found that their existence as employees of the Corporation were by means not sanctioned by law or to put it differently by dubious method, they have to suffer for the same.

Shri Sharma is further not right when he says that petitioners by termination of their services have suffered. Their appointments were having been made illegal without following even a semblance of procedure for appointment known to law and they got these appointments not on merits after assessment of inter-se merit but as largess from the Municipal Corporation. Therefore, they remain beneficiary of illegal appointments and although their removal may be in general terms can be said to be sufferance but in fact, it is enjoying the largess during the period of appointment. I do not find any substance in this submission of Shri Sharma.

Learned Counsels for the petitioners pray for retention of the services of the petitioners on what they term to be humanitarian ground. They submit that the petitioners are well qualified and meritorious and termination of their services at this juncture will render them unemployed, resulting into innumerable miseries and, therefore, the impugned order terminating their services be quashed. Learned Counsels submitted that aforesaid intention is writ large from the directive principles of the State policy as embodied under Articles 39(b) and 41 of the Constitution of India. Articles 39(b) and 41 of the Constitution of India enjoin upon the State that the material resources are distributed to serve the common good and it makes effective provision for securing right to work. Articles 14, 16, 39(b) and 41 of the Constitution of India apply not only to the petitioners but every citizen of this country. Petitioners claim to be qualified, meritorious and needy. As their appointments have been made by back door entry, it can be safely assumed that more qualified, more meritorious and more needy persons might have been left out for consideration. This has affected the right of many qualified unemployed needy and meritorious persons. Quashing of the impugned order and direction for retention of the services of the petitioners in my considered opinion would be encouraging unhealthy practice and shall amount to giving premium on corruption and nepotism. Public employment, it is trite, is public property and every citizen of the country has right to share the same. Doctrine of tampering justice with mercy is not available to the petitioners as mercy has to be based on justice. Persons appointed through back door entry cannot claim justice in their favour.

Learned Counsels for the petitioners lastly contended that respondents be directed to consider their cases for appointment and given them preference, in

case respondents in future take steps for appointment. I have my own reservation as to whether employees who obtained appointment by illegal and dubious means can be given preference in future appointments. However, in view of the stand of the respondent-Corporation in the return that in case of need to employ daily rated employees or regular employees the petitioners shall be preferred, I do hereby direct that, in case, in future, respondent-Corporation takes steps for appointment on daily wages or regular basis it shall consider the cases of the petitioners and give them preference on the assessment of the inter-se seniority and merit and also relax the age limit, to the extent they have worked in the Corporation.

Before I part with the case, I may observe that the competent authority is under obligation to proceed against the persons responsible for this mass scale illegal appointments. Their duty does not come to an end only by cancelling the appointments of beneficiaries, but they are expected to proceed against benefactors also.

As a result, I do not find any merit in any of the writ petitions and they are dismissed accordingly with the observations made above. In the facts and circumstances of the present case, I am inclined to leave the parties to bear their own cost.