
(2011) 08 MP CK 0109
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6506 of 2011

Dharmendra Singh

APPELLANT

Vs

Commissioner, Shahdol and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Gram Panchayat Adhiniyam, 1993 — Section 45

Citation : (2011) ILR (MP) 2447 : (2012) 1 MPHT 26

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—Challenging the order-dated 31.1.2011 -Annexure P/1 passed by the Commissioner; order-dated 28.3.2011 - Annexure P/8 passed by the Commissioner; and, the order-dated 21.3.2011 - Annexure P/7 passed by the Collector in the matter of cancellation of appointment of petitioner on the post of Panchayat Karmi, this writ petition has been filed.

2. Various facts that are relevant for deciding the present case are not correctly reflected in the writ petition or in the reply filed by the respondents. That being so, on the basis of the material available on record, the facts indicate that the Panchayat in question namely - Gram Panchayat of village Kamta, Tehsil Jaitpur under Janpad Panchayat Budhar, District Shahdol issued an advertisement on 17.3.2007, seeking application from willing candidates to submit their candidature for appointment to the post of Panchayat Karmi. Records indicate that in pursuance to the advertisement issued, about 15 candidates submitted their candidature of which 13 were found eligible for appointment. As the appointment in question was to be done in accordance to the Scheme that was in force as per the circular dated 12.9.1995 and as the policy with regard to merit criteria being given due weightage was not in force at that point of time when the recruitment process took place, it seems that the Gram Panchayat met, passed a resolution on 29.5.2007, and decided to appoint respondent No.5, by

majority. Respondent No.5 received 9 votes against the petitioner, who received 7 votes. Copy of this resolution dated 29.5.2007 is Annexure R/5/2. However, without cancelling this resolution, the Gram Panchayat again met on 7.7.2007, reconsidered the earlier resolution and on the basis of the merit qualification passed a second resolution on 7.7.2007 and prepared a merit list, in which petitioner and another person were shown at Serial Nos. 1 and 2. However, the Gram Panchayat again met on 21.7.2007, reconsidered the earlier resolution dated 7.7.2007, amended the same criteria and passed a new resolution - Annexure R/5/5 on 21.7.2007 and appointed the petitioner. Being aggrieved by this resolution, respondent No.5 filed an appeal, as appointment order was issued in favour of the petitioner on 26.8.2007. The appeal was filed before the prescribed authority - the Sub Divisional Officer, Jaitpur. This was dismissed vide Annexure P/9 on 10.1.2008. Being aggrieved thereof, respondent No.5 filed Writ Petition No. 1885/2008 before this Court and in the said writ petition, vide order-dated 20.2.2008 -Annexure P/10, the following order was passed:

Considering the aforesaid submissions, the petition is disposed of with an opportunity to the petitioner to move an appropriate application before the prescribed authority with respect to the earlier as well as impugned resolutions within a period of 15 days from the date of receipt of certified copy of this order.

Respondent No.5 thereafter filed an application purportedly u/s 85(1) read with section 91 of the Panchayat Raj Adhiniyam before the SDO, which was rejected vide order-dated 3.6.2009 - Annexure P/11 as the SDO had no power to deal with the matter u/s 85(1). Further revision was filed before the Collector, Shahdol and challenge was made to the subsequent resolution dated 21.7.2007. The Collector allowed this revision and remanded the matter back for fresh consideration. Copy of this order passed by the Collector on 22.3.2009 is Annexure P/5. The Gram Panchayat considered the applications on merit and vide order-dated 22.4.2010 -Annexure R/5/7, respondent No.5 was appointed as Panchayat Karmi and the Collector vide order-dated 22.4.2010 - Annexure R/5/6 notified respondent No.5 as Secretary u/s 69(1), respondent No.5 joined vide Annexure R/5/8. Aggrieved by the order passed by the Collector, Shahdol on 22.3.2009, petitioner preferred an appeal before the Commissioner, the Commissioner quashed the order passed by the Collector on 22.3.2009; the order passed by the SDO on 10.1.2008 and also quashed the resolutions and vide the impugned order-dated 31.1.2011 - Annexure P/1 remanded the matter back for proceeding by respondent No.5 in accordance to the directions issued by this Court on 20.2.2008, in W.P.No. 1885/2008. Challenging the actions impugned, petitioner has filed this writ petition.

3. According to the petitioner the resolution dated 29.5.2007 was not passed in accordance to law as was existing on the said date and, therefore, the subsequent resolutions dated 7.7.2007 and 21.7.2007 which are in accordance to law, these resolutions for appointment of the petitioner was correct. During the course of hearing of the writ petition, Shri Gagan Deep Singh, learned

counsel for the petitioner, mainly emphasized that the resolution passed on 29.5.2007 appointing respondent No. 5 is an illegal resolution, which was not passed in accordance to law, it was passed by the Up Sarpanch in the absence of the Sarpanch, he emphasized that no such resolution even exists or was passed by the Panchayat.

4. On the contrary, respondents have resisted the aforesaid claim and according to respondent No.5 petitioner was over-age and was not entitled to participate in the selection procedure, as per the advertisement the minimum age limit prescribed was 18 years and the maximum age limit prescribed was 33 years and as petitioner was 36 years of age on the date of the advertisement, he was ineligible for appointment. It is argued by Shri S.S. Bisen that merely because in the scheme dated 12.9.1995, only the minimum age is given and no upper age limit is given that does not mean that the Panchayat cannot prescribe any upper age limit. Referring to Clause 3.3 of the Scheme dated 12.9.1995, Shri Bisen argued that in the absence of any upper age limit being fixed, the Panchayat is well within its right to prescribe an upper age limit and once the Panchayat has prescribed an upper age limit, the petitioner is ineligible and, therefore, he has no locus standi to challenge the selection process. That apart, Shri Bisen argued that when the appointment made is prior to 13.8.2007, when the policy for appointment on merit came into force for the first time, and when the scheme applicable at the time of appointment was by casting of vote and by majority, the action taken by the Panchayat in appointing the respondent is proper and the same does not warrant any interference.

5. Shri Gagan Deep Singh, learned counsel for the petitioner, refuted the aforesaid vehemently and argued that respondent No.5 has been appointed in an illegal manner even though no resolution was passed in accordance to law and, therefore, no relief can be granted to the respondent. It is further emphasized that under the scheme dated 12.9.1995, only a minimum age limit of 18 years is prescribed and in the absence of upper age limit being prescribed in the policy, the fixation of 33 years as the upper age limit by the Gram Panchayat is illegal.

6. I have heard learned counsel for the parties at length and perused the record.

7. On a perusal of the order-dated 31.1.2011 - Annexure P/1 passed by Commissioner, Shahdol, it is clear that the Commissioner has taken note of the fact that the two resolutions passed by the Gram Panchayat on 21.7.2007 and 7.7.2007 are contrary to the provisions of section 45 of the Gram Panchayat Adhiniyam, 1993 which prohibits passing of a resolution when one resolution is already in operation. That apart, the Commissioner has found serious irregularities in the matter of action taken and orders passed by the SDO and the Collector; and has given liberty to respondent No.5 to proceed in accordance to the directions issued by this Court in W.P.No. 1885/2008, on 20.2.2008. The question now is as to whether at the instance of the present petitioner interference into the matter is warranted, when the only order passed by the Commissioner is to proceed in accordance to the directions already issued by this

Court in an earlier round of litigation.

8. For considering this question a very important aspect of the matter to be taken note of is with regard to the locus standi of the petitioner to participate in the process of selection. Admittedly, the petitioner is 36 years of age on the date of the advertisement and if the advertisement is taken note of, the maximum age limit prescribed is 33 years and on that count petitioner is ineligible to seek appointment. Contention of the petitioner is that under the policy dated 12.9.1995, the Gram Panchayat is not entitled to fix any upper age limit. This contention of the petitioner is wholly misconceived. Clause 3.3 of the Scheme dated 12.9.1995 reads as under:

9. If the aforesaid is the position, then apart from the criteria laid down in the Scheme dated 12.9.1995, the Panchayat is entitled to fix a reasonable criteria for selection to the post in question keeping in view the requirement of the Panchayat and if the Scheme itself gives power to the Panchayat to prescribe certain additional criteria, so long as the criteria fixed is not in contravention to or in conflict to the Scheme in question, the Panchayat's decision has to be upheld. The Scheme only prescribes the minimum age limit for appointment to the post of Panchayat Karmi and it is silent with regard to the maximum age limit. Looking to the requirement of the Panchayat, if the Panchayat fixes a maximum age limit there is nothing brought to the notice of this Court on the basis of which this decision of the Panchayat can be termed as illegal.

10. During the course of hearing of the writ petition, it was also pointed out that ignoring the merit of the petitioner, respondent No.5 has been appointed by casting of majority vote, it is argued that this is contrary to the principles laid down in the policy dated 13.8.2007 issued by the State Government. The said question is considered by a Bench of this Court recently on 26.7.2011, in Writ Petition No. 17319/2010 (Kalpnath Mishra Vs. State of MP and Others), and after taking note of the provision of sections 86(1) and 86(2) of the Panchayat Raj Adhiniyam, the policy dated 12.9.1995 and the circulars issued for prescribing the procedure for appointment of Panchayat Karmi on 27.1.2006 and again on 13.8.2007, it has been held by the learned Bench that in the light of the circulars issued on 27.1.2006, if the appointment is made under the provisions of sub-section (1) of section 86 by the Panchayat, then the merit criteria prescribed in the circular dated 27.1.2006 is not applicable. It is held that the provisions of appointment on merit in the circular dated 27.1.2006 will be applicable only if the appointment is made by the State Authorities u/s 86(2). Thereafter, the circular dated 13.8.2007 is interpreted and it is held that with effect from the date this circular was issued on 13.8.2007 all appointments of Panchayat Karmi has to be done on the basis of merit and not otherwise. It is, therefore, clear from this judgment that prior to 13.8.2007, the procedure for appointment by majority of vote was permissible and, therefore, the contention of the petitioner that the merit has been ignored cannot be accepted in the present case, in view of the principle laid down in the case of Kalpnath Mishra (supra).

11. In that view of the matter, prima facie the claim of the petitioner for seeking appointment is wholly unsustainable for the simple reason that the petitioner is found to be over-age and cannot seek appointment to the post in question. Under such circumstances, this Court does not find any ground to interfere into the matter. The Commissioner concerned having evaluated the entire aspects of the matter in its totality and having passed an order for proceeding in accordance to the directions already given by this Court on 20.2.2008, in Writ Petition No. 1885/2008, no case is made out for interference now at the instance of the petitioner. Consequently, the interim order passed on 20.4.2011 is also vacated.

12. Accordingly, finding no case for interference on the grounds raised, the petition is dismissed.