
(1994) 12 MP CK 0031
In the Madhya Pradesh High Court
Case No : M.P. No. 4484 of 1992 (J)

Dr. D.P. Agrawal and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 07-12-1994

Acts Referred:

Madhya Pradesh General Clauses Act, 1957 — Section 17

Citation : (1996) 2 MPJR 434

Hon'ble Judges : R.P. Awasthy, J;A.K. Mathur, J

Bench : Division Bench

Advocate : N.C. Jain, for the Appellant; V.K. Tankha and P.D. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, J.

All these petitions which are annexed in the schedule, are disposed of by this common order.

All the petitioners were appointed either Chairman, Vice-Chairman and Members of the Authorities, like Special Area Development Authority, Town Improvement Trust and various other authorities. All these petitioners have filed these writ petitions challenging their dismissal from the local bodies as a non-official members to these bodies during the President's Rules promulgated on 15.12.1992. The allegation is that this termination is illegal. Various allegations have been levelled in these petitions that all these appointees were of the Bhartiya Janta Party (B. J. P.) and they have been victimised as the appointees of the earlier Government. Therefore, allegation is that during the President's Rule all these non-official members of the then Government has been terminated on account of political consideration.,

A reply has been filed by the respondents in which it has been stated that the termination is out of a political vendatta. During President's Rules, all non-official

Chairmen, Vice- Chairmen and members have been replaced by the Government official to depoliticise the whole atmosphere and this has been done in public interest. Suffice it to say that all these appointments were made out of pleasure of the then Government by Governor and not on account of any public recruitment. Therefore, the person who has appointed, can also dismiss. Section 17 of the M. P. General Clauses Act, 1957 says that the person who has power to appoint, has a power to dismiss. Since all these appointments were under the various local acts and were of pleasure appointments and they are, as a matter of fact, fall out of the spoil system; therefore, these persons have no right to post and they cannot seek any protection of this Court. This Court will only interfere with such appointment if it is actuate with malafide or caste any aspersion or if there is any statutory protection under any law. In the present case, all such appointments as a measure of policy has been dispensed with and replaced by officials; therefore, there is no question of malafide. It has also been contended that some of the appointments were tenure appointments; therefore, these incumbents could not have been dismissed before the expiry of that tenure. It is true that in some of the appointments, a tenure has been fixed but that also does not entitle these incumbents as a right to continue till the expiry of their tenure. Since, the appointments were pleasure appointments and they were not by way of a regular recruitment, they were appointed by the then Government by pick and choose. Therefore, such persons have no right to post and they cannot seek any protection under the constitutional provision except the termination is arbitrary or a malafide. In the present case, both the factors are missing because during the President's rule, it was decided as a policy decision that all such non-official which are heading these local bodies or corporate bodies, they should be removed and such office should be manned by officials only. Therefore, it is a plain and simple policy decision of the Government during the President Rules and it cannot be said to be malafide or arbitrary or to victimise any one particular person. This was a plain policy decision to depoliticise the atmosphere.

Learned counsel for the petitioners have invited our attention to the case of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, This was a case of appointment of the District Government counsel and the Government took a decision that all such persons were removed en bloc by one stroke of pen. This action was found to be arbitrary by the Hon. Supreme Court. The appointment of the District Government Counsel is by way of certain methods and there is a procedure prescribed that a panel shall be prepared by the District Judge and the same shall be sent to the Government and the Government shall appoint persons out of this panel. There are certain restrictions on their private practice as well as their political activities; therefore, there is a mythology provided for appointment. Thus, when such persons are so appointed by following the procedure prescribed in "Legal Remembrance Manual, their Lordships held that such termination is arbitrary and illegal. But that is not a case here. Here all the appointees were not by the selection as was done in the

case of *Shrilekha Vidyarthi (supra)*. More so, this case has further come up for consideration before the Hon. Supreme Court in the subsequent case of *State of U.P. & Others v. U. P. State Law Officer's Association & Others J.T. 1994 (1) 225* and their Lordships have distinguished this case and further observed as under :-

What is further since the appointment of District Government Counsel is made strictly on the basis of comparative merits and after screening at different levels, the termination of their services is not consistent with the public interest.

Therefore, the case of *Shrilekha Vidyarthi (supra)* cannot afford any assistance to the petitioners.

The learned counsel for the petitioners also invited our attention to the case of *S.L. Kapoor Vs. Jagmohan and Others*, This was a case in which the Municipal Committee, Delhi was superseded and no opportunity was given to the superseded Municipal Committee; therefore, this action was challenged before the Hon. Supreme Court and their Lordships of the Supreme Court held that before superseding a duly elected committee, the principle of natural justice should have been followed, but that is not the case here. Here all these members of the Committees or Chairman and Vice-Chairman were appointed by the then Government as pleasure appointments; therefore, their termination need not be followed by principle of natural justice. In the present case, as per the return filed by the State, all non-official members of local bodies or Corporations have been removed as measure of policy decision; therefore, no exception can be taken of such termination. The learned counsel for the petitioners has also invited our attention to the case of *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, In this, their Lordships of the Supreme Court have emphasised the principles of natural justice. The learned counsel further invited our attention to the case of *State of Madhya Pradesh Vs. Ramashanker Raghuvanshi and Another*, That was a case where the incumbent services were terminated on the ground of police report that the incumbent had taken part in RSS and Jansangh activities in the past. This is a wholly distinguishable case. In this case, services of the regularly recruited teacher was sought to be terminated on account of his political views. In that context, their Lordships observed that the incumbent may have a political association prior to appointment but once he becomes a Government servant and he is subject to various rules relating to conduct and his termination should be in accordance with those Rules and not on account of his past association. Therefore, in these circumstances, this case also does not lend any assistance to the petitioner's case. The learned counsel has invited our attention to the case of *Mahabir Prasad Dwivedi Vs. State of Uttar Pradesh and others*, In that case a duly elected Chairman of Town Area, Oran, district-Banda, was sought to be removed under the orders of Collector and that was subject to the confirmation by the Government; but while confirming the petitioner, was not heard nor a proper detailed speaking order was passed. Therefore, in these circumstances, the Allahabad High Court held that the termination was in the violation of principle of natural justice, but that is not the

case here. None of the incumbent were elected and as such this case has no relevance. Learned counsel also invited our attention to the case of Dr. R.K. Deka and Others Vs. Union of India and Others, That was a case promissory estoppel and the Government had announced a scheme for allotment of residential plots of non-residents Indian and the question was whether the doctrine of promissory estoppel is applicable to these cases or not. That case has no relevance whatsoever to the controversy involved in the present case. Learned counsel has also invited our attention to the case of A.M. Rode v. Principal, Govt. Degree College, Chhindwara 1973 M.P. L.J. 666. That was a case in which the services of the temporary hand was terminated after putting in 11 years of service. This case has no relevance with present controversy. Thus, as a result of above discussion, we do not find any merit in these petitions.

Shri K. P. Munshi, learned counsel for the petitioners (in Misc. Petition No. 369/93) submitted that the petitioners No. 1 and 2 were appointed as a Chairman and Vice-Chairman of the Raipur Development Authority, Raipur and the petitioner No. 3 was appointed as a Chairman of the Special Area Development Authority, Bhilai. Their appointments were also terminated under President's rule; therefore, this writ petition has been filed challenging the termination of these incumbents. Shri Munshi, learned counsel, has invited our attention to various provisions of the Act and Rules. The fact remains that these appointments were a pleasure appointment; therefore, they have no right to post and for the reasons mentioned in the preceding paras, we do not find any merit in this petition also.

In the result, as discussed above, all the writ petitions mentioned in the annexed schedule, are hereby dismissed.