
(2003) 08 MP CK 0055
In the Madhya Pradesh High Court
Case No : Writ Petition 4203 of 2001

Dr. Geeta Rani Gupta

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-08-2003

Acts Referred:

Citation : (2004) 1 MPJR 88

Hon'ble Judges : Uma Nath Singh, J; Dipak Misra, J

Bench : Division Bench

Advocate : J.P. Pandey, for the Appellant; S.K. Yadav, for the Respondent

Final Decision : Allowed

Judgement

Uma Nath Singh, J.

This writ petition arising out of an order dated 26.5.2001 passed by M.P. Administrative Tribunal Bench at Bhopal, (for short "the Tribunal") dismissing the O.A. No. 776/1999, has been preferred to seek reliefs: for quashing the impugned order; for commanding the Respondent Nos. 1 and 2 to consider the case of the Petitioner for promotion to the post of Junior Forensic Specialist (Medical) from the date of promotion of the Respondent No. 3 with all consequential benefits; for commanding the Respondent Nos. 1 and 2 to allow the Petitioner to perform her duties as per aims and objects of the Medico-legal Institute (hereinafter referred to as "the institute") and for further commanding the Respondents to refrain from discrimination against the Petitioner. However, in her Original Application before the Tribunal the Petitioner had only sought reliefs for directions to Respondents Nos. 1 and 2 for providing all facilities including access to dead bodies received in the Institute for post-mortem examination in connection with her research works. Besides that, the Respondents were also sought to be commanded to promote the Petitioner to the next higher post of Junior Forensic Specialist in preference to one Dr. C.S. Jain, the Respondent No. 3 herein.

The first relief for permission to use the dead bodies received in the institute for research works, was refused on a ground that without consent of next of kin of the deceased the institute was not in a position to allow the Petitioner perform post-mortem. Secondly, the Petitioner in her application submitted on 22.12.1996 for permission to do Ph.D. had specifically mentioned that she would take help from the Anatomy Department for study or Osteology and for collecting materials necessary for her research works.

The second relief for allotment of regular works to the Petitioner was declined for the reason that this being an administrative decision required no interference.

As regards the third relief for promotion to the post of Junior Forensic Specialist in preference to one Dr. C.S. Jain, the Respondent No. 3 herein, the Tribunal held that though Dr. Jain was initially appointed on adhoc basis, he was given a regular appointment on the recommendation of the M.P. Public Service Commission (in brief "the P.S.C.") with effect from 26.12.1986 by an order dated 7th October, 1994. The Tribunal has placed reliance on a judgment of Hon/ble the Apex Court in the case of Direct Recruit Class II Engineering Officers' Association and Ors. v. State of Maharashtra and Ors. (AIR 1990 SC 1604).

As regards the career profile of the Petitioner, she was initially appointed as an Asst. Surgeon in the Public Health and Family Welfare Department of the Govt. of Madhya Pradesh on 16.10.1987. While being in service the Petitioner applied for and was selected for the post of Medical Officer in the Medico-legal Institute under the Department of Home. The Petitioner was appointed on probation for a period of two years vide an order dated 3.11.1989 and joined the post on 18.11.1989. The Petitioner was confirmed with effect from 18.11.1991 vide an order dated 30.3.1994 issued by the Government as per Rule 8 (6) of the M.P. Civil Services (General Condition of Service) Rules, 1961.

The Petitioner is said to be mainly aggrieved by regular appointment of Dr. C.S. Jain (Respondent No. 3) as Medical Officer in the Medico-legal Institute with effect from 22.6.1986 vide an order dated 7.10.1994 on recommendations of the P.S.C. It is said that the Respondent No. 3 was initially appointed as a Medical Officer in the Institute only on adhoc basis without undergoing selection process of the P.S.C. and without following the M.P. Civil Services (General Condition of Service) Rules, 1961, which used to be followed by the Institute before framing the M.P. Medico-legal Institute (Gazetted) Service Recruitment Rules, 1987, (M.P. Gazette dated 5.2.1988. Part 4 (G)). It is said that the Respondent No. 3 applied in response to the advertisement No. 1854/85 of the Director, Medico-legal Institute, Bhopal (Annexure P/18) for temporary appointment to the posts of Medical/Non-medical officers which were required to be filled up urgently. It appears from an order dated 26.12.1985 issued by the Deputy Secretary, Department of Home (Police) (Annexure P/21) that the Respondent No. 3 was given appointment to the post of Medical Officer (Medical) on adhoc basis for six months with two others who were appointed to the post of Medical Officers (Non-medical). The Respondent No. 3 joined the post on 26.2.1986.

The Petitioner assails the regular appointment of the Respondent No. 3 and the consequent seniority mainly on the grounds that he was initially appointed for six months with effect from 26.2.1986 only on adhoc basis and thus his services would have come to an end after six months on 25.8.1986 in normal course, but he is said to have been continued thereafter without any order. It is also urged that the Respondent No. 3 should have applied for a post of Medical Officer (Medical) through the P.S.C. in response to the advertisement No. 0389 and the Respondent No. 3, having failed to do so, could not have been considered for regularization and confirmation against a regular post and more so when he was never appointed on probation in terms of Rule 8 (6) of the M.P. Civil Services (General Condition of Service) Rules, 1961 and he was not a member of the M.P. Medico-legal Institute (Gazetted) Service in terms of Rules 4, 6 and 12 (2) of the M.P. Medico-legal Institute (Gazetted) Service Recruitment Rules, 1987. Rule 8 (6) of the M.P. Civil Services (General Condition of Service) Rules, 1961 on reproduction reads as under:

Probation - (1) A person appointed to a service or post by direct recruitment shall ordinarily be placed on probation for such period as may be prescribed.

(2) The appointing authority may, for sufficient reasons, extend the period of probation by a further period not exceeding one year.

NOTE: Omitted Vide GAD. No F - 3-15-74-3-1, date 9.12.1974.

(3) A probationer shall undergo such training and pass such departmental examinations during the period of his probation as may be prescribed.

(4) The service of a probationer may be terminated during the period of probation if in the opinion of the appointing authority he is not likely to shape into a suitable Government Servant.

(5) The service of a probationer who has not passed the departmental examinations or who is found unsuitable for the service or post may be terminated at the end of the period of his probation.

(6) On the successful completion of probation and passing of the prescribed departmental examination, if any, the probationer shall, if there is a permanent post available, be confirmed in the service or post to which he has been appointed, otherwise a certificate shall be issued in his favour by the appointing authority to that effect that the probationer would have been confirmed but for the non-availability of the permanent post and that as soon as a permanent post becomes available he will be confirmed.

(7) xxxxx xxxxx xxxxx

Rules 4, 6 and 12 (2) of the M.P. Medico-legal Institute (Gazetted) Service Recruitment Rules, 1987 on reproduction reads as under:

Constitution of the Service - The service shall consist of the following persons, namely:

(1) persons who at the commencement of these rules are holding substantively or in an officiating capacity the posts specified in the Schedule-I.

(2) Persons recruited to the service before the commencement of these rules; and

(3) Persons recruited to the service in accordance with the provisions of these rules.

Method of Recruitment - (1) Recruitment to the service, after the commencement of these rules, shall be made by the following methods, viz -

(a) by direct recruitment by selection;

(b) by promotion of members of the service:

(c) by transfer of persons from other service.

(2) The number of persons recruited under Clause (b) or Clause (c) of Sub-rule (1) shall not at any time exceed the percentage shown in Schedule II.

(3) Subject to the provisions of these rules, the method of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the service as may be required to be filled during any particular period of recruitment and the number of persons to be recruited by each method shall be determined on each occasion by the Government in consultation with the Commission.

(4) Notwithstanding anything contained in Sub-rule (1), if in the opinion of the Government the exigencies of the service so require, the Government may with prior concurrence of the GAD adopt such methods of recruitment to the service other than those specified in the said sub-rule, as it may, be order issued in this behalf, prescribe.

List of candidates recommended by the Commission - (1) The Commission shall forward to the Government a list arranged in order of merit of the candidates who have qualified by such standards as the commission may determine and of the candidates belonging to the Scheduled Castes and the Scheduled Tribes who, though not qualified by that standard, are declared by the Commission to be suitable for appointment to the service with due regard to the maintenance of efficiency of administration. The list shall also be published for general information.

(2) Subject to the provisions of these rules and the Madva Pradesh Civil Services (General Conditions of Service Rules. 1961, candidate will be considered for appointment to the available vacancies in the order in which their names appear in the list.

(3) xxxxxx xxxxxx xxxxxx

The position being clear, that the Respondent No. 3 could not have been appointed to a regular post and given seniority from the date of initial

appointment on adhoc basis de hors the rules the Petitioner claims the seniority at par with that of the Respondent No. 3 on the ground that she applied for the post of Medical Officer (Medical) in the Institute through proper channel and prior to that she had been regularly appointed to the post of Asst. Surgeon on selection by the P.S.C. with effect from 16.10.1987 and the earlier post being equivalent to the post of Medical Officer in the institute, her earlier services would also be counted for the purpose of determining her seniority vis a vis that of the Respondent No. 3. The Petitioner has also urged that she was selected for a permanent post of the Medical Officer and was confirmed on that post with effect from 18.11.1991 as per order dated 30.3.1994, whereas the Respondent No. 3 was appointed only on adhoc basis with effect from 26.2.1986 and though he had not applied against a permanent post, he was regularised on that post with seniority from the initial date of adhoc appointment. The Petitioner has further urged that as the Respondent No. 3 was initially appointed on adhoc basis, it was mandatory to consult the P.S.C. in terms of regulations 3 (a) and 5 of the M.P. Public Service Commission (Limitation of Functions) Regulation 1957 for a regular appointment. On reproduction the said regulations read as:

3 It shall not be necessary for the Commission to be consulted in regard to-

(a) The appointment by direct recruitment or by promotion or by transfer to any of the posts or classes of posts or to any of the services to the extent specified in the Appendix to these Regulations:

5 (1) it shall not be necessary for the Commission to be consulted on the suitability of a person for appointment, promotion or transfer to a post the period of which does not exceed six months.

(2) In other cases where appointment, promotion or transfer to a service or post would otherwise require consultation with the Commission, it shall not be necessary to consult the Commission, if owing to an emergency the Commission cannot be consulted without detriment to public service:

Provided that -

(i) intimation of such appointment, promotion or transfer shall be sent to the Commission at the same time, and

(ii) action to fill up the post in the normal way or to obtain the concurrence of the Commission, as the case may be, shall be initiated as early as possible.

That apart, appointment of the Respondent No. 3 is also assailed on a ground that unless the said Respondent was holding a substantive post or was officiating on a substantive post of medical officer, his services could not have been regularized against that post and he would not have been further promoted for he was not even a member of the service under the Rules. It is also assailed that in the gradation list of medical officers of the Institute issued for the period from 1.4.1991 to 1.4.1994, the Respondent No. 3 did not find mention but thereafter in the gradation list of 1.4.1995 his name was surprisingly included with a

regular service with effect from 26.2.1986. It is further contended that though the Respondent No. 3 is said to have been promoted on the basis of a recommendation of the P.S.C., but no such document was placed on the records of the Tribunal and the Tribunal proceeded only on the basis of an affidavit on behalf of the Government. Thus, to sum up the Petitioner's case, she appears to be aggrieved by appointment of the Respondent No. 3 on the following grounds:

(I) that the Respondent No. 3 did not apply in response to the M.P. P.S.C. Advertisement No. 0389 (Annexure (No. 6)).

(II) that the Respondent No. 3 never held or even officiated on a regular post.

(III) that the Respondent No. 3 was never appointed on probation and his adhoc appointment for 6 months period expired on 25.8.1996 in absence of an order for extension or continuation of service.

(IV) The Govt. of M.P. Home (Police) Department vide order No. 4776/5059/93/B-2/II, dated 7.10.1994 (Annexure P-25) regularized the services of the Respondent No. 3 with effect from his date of joining of adhoc service i.e. 26.2.1986, which not being in accordance with the rules is illegal.

(V) Though there is a reference to a letter No. 31102/273/92/GS dated 10.11.1993 of the P.S.C. in the order of the Govt. of M.P. Home (Police) Department dated 7.10.1994, but the records of the P.S.C. including the letter were not placed before the Tribunal.

Though, the Petitioner has also called in question the appointment of the Respondent No. 3 as an Asstt. Surgeon in the Public Health and Welfare Department on adhoc basis vide an order No. REGL/G/82/10001-3, dated 27.5.1982 of the Joint Director of Health Services on a ground that it was done without following the selection process of the P.S.C., but the earlier appointment does not appear to be relevant for questioning the present appointment in the institute.

In their reply to the writ petition, the Respondent Nos. 1 and 2 inter alia have submitted that appointment of the Petitioner in the Institute vide an order dated 3.11.1989 is a fresh appointment and her earlier appointment as an Asstt. Surgeon in the Department of Public Health and Family Welfare on 16.10.1987 would not be counted for fixing her seniority.

As regards other reliefs, the Respondents have maintained the stand taken before the tribunal that the Petitioner would not be permitted to use the dead bodies received in the Institute without consent of next of kin thereof. However, the Respondents have expressed their readiness to provide the Petitioner with facilities in the form of guidance and instruments in the research work. They have also submitted that Ph.D is not necessary for further promotion. In para 7 of the reply, the Respondents have admitted as: "the Respondent No. 3 was given appointment as medical officer (medical) in Medico Legal Institute, Bhopal on adhoc basis by an order dated 26.12.1986. The Respondent No. 3 was given

regular appointment on recommendations of the P.S.C. with effect from 22.6.1986 by order dated 7.10.1994. Thus, the Respondent No. 3 is entitled for counting of his seniority with effect from 22.6.1986. Under these circumstances, the Petitioner is obviously junior to Respondent No. 3 and she cannot be claimed to be placed above the Respondent No. 3 in the seniority list." It is also stated that since the Respondent No. 3 was regularized in the service with effect from 22.6.1986, he is senior to the Petitioner who joined the service on 18.11.1989. It is further stated that now the Petitioner is not kept in reserve and she is being allotted regular work.

One due consideration of rival submissions and on scrutiny of the records, we are of the view that the Respondent No. 3 was appointed on adhoc basis to a gazetted post and continued thereafter without adopting selection process of the P.S.C. and without following the service rules referred to hereinabove. We are also of the view that the Respondent No. 3 was not entitled to be regularized from the date of his initial appointment as he had not been appointed against a substantive post and further he was not kept on probation in terms of the service Rules. The Respondent No. 3 was given a regular appointment from back date with effect from 22.6.1986 vide an order dated 7.10.1994, and in the selection process, the provisions of M.P. Civil Services (General Condition of Service) Rules. 1961. Rules 4, 6 and 12 (2) of the M.P. Medico-legal Institute (Gazetted) Service Recruitment Rules. 1987 and regulations 3 (a) and 5 of the M.P.P.S.C. (Limitation of Function) Regulations 1957 were said a "good bye". That apart, the P.S.C. records were not placed before the Tribunal and were also not placed before this Court. A letter of the Public Service Commission referred to in support of the submission that the P.S.C. was consulted for regularization of services of the Respondent No. 3 is also not on record. It appears that the State has adopted a round-about-way and followed a vague process to facilitate a regular appointment and subsequent promotion of the Respondent No. 3 in the service in question. As against that, the Petitioner was appointed on probation on 18.11.1989 against a substantive post in consultation with the P.S.C., in conformity with the service rules and she was confirmed with effect from 18.11.1991 vide an order dated 30.5.1994. Thus, regularisation of services of the Respondent No. 3 from the date of initial appointment on an adhoc post being de hors the rules can not be sustained and, hence, it deserves to be quashed.

Needless to say that an adhoc post is created on account of temporary necessity whereas a regular appointment is done in accordance with relevant rules and regulations. Since the Respondent No. 3 appears to have been appointed otherwise than in accordance with the rules on a regular basis from the initial date of appointment his regular appointment as such would be in violation of Articles 14 and 16 of the Constitution. Further from the records of the case, it does not seem that any of the service rules was relaxed for administrative reasons to accommodate the Respondent No. 3 on regular basis from the date of initial appointment. Besides that, it is nobody's case that as there was no service

rules to govern such appointments, so, the Respondent was appointed in that manner.

Hon"ble the apex court in the matter of State of U.P. and Others Vs. Dr. R.K. Tandon and Others, para 4) has held as:

It is settled law that all adhoc appointments made dehors the rules do not confer any right to permanency or seniority. They acquire the rights only from the date of their regular appointment according to rules.

In another case reported in V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others, , Hon"ble the Apex Court has held:

It is well settled law that appointment/promotion must be in accordance with the rules, direct recruit takes his seniority from the date on which he starts discharging the duty of the post borne on the cadre while a temporary appointee appointed dehors the rules or on adhoc basis or to a fortuitous vacancy gets seniority from the date of regular appointment. Appointment in accordance with Rules is a condition precedent to count seniority. Temporary or adhoc or fortuitous appointment etc. is not an appointment in accordance with the Rules and the temporary service cannot be counted towards the seniority.

In the case of Anuradha Mukherjee (Smt) and Others Vs. Union of India (UOI) and Others, , Hon"ble the Apex Court has also held:

Those appointed dehors the rules can get seniority not from the date of their initial appointment but from the date on which they are actually selected and appointed in accordance with the rules and their appointment and seniority would take effect from the date of selection after due completion of the process and they would be junior to in-service as well as direct recruit candidates.

Again in the matter of Chief of Naval Staff and another Vs. G. Gopalakrishna Pillai and others, , Hon"ble the Apex court has taken a similar view as:

It also appears to us that the Tribunal in passing the impugned order has relied on condition "B" as referred to in the decision of the Constitution Bench in The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, in support of the impugned order. In our view, the principle enunciated in the said case is not applicable in the facts of this case because the initial appointment of Sri Pillai by way of adhoc arrangement, was not made by following the procedure laid down by the Rules as referred to in Condition-B in the said decision. Hence, the decision of the Tribunal cannot be sustained. We, therefore, allow this appeal and set aside the impugned order without however any order as to costs.

Further in the matter of G.S. Venkat Reddy and others etc. etc. Vs. Government of Andhra Pradesh and others, and S. Chinnappa Reddy and Others Vs. State of A.P. and Others, . Hon"ble the Apex Court held that the temporary incumbents not covered by expression "Last regular appointment", were not entitled to be

senior.

In the premises discussed hereinabove we hereby set aside the order dated 26.5.2001 passed by the M.P. State Administrative Tribunal, Bench at Bhopal in O.A. No. 776/1999 and quash the order dated 7th October, 1994 issued by the Govt. of M.P. Home (Police) Department granting seniority to Dr. C.S. Jain, Medical Officer (Medical) in the Medicolegal Institute, Bhopal (the Respondent No. 3) with effect from 26.2.1986 and direct the Respondent Nos. 1 and 2 to draw a fresh seniority list as per rules in consultation with the Respondent No. 4. We also direct the Respondent Nos. 1 and 2 to review the seniority of the Petitioner and give her proper placement in fresh seniority list to be drawn by them. However, in view of averments made in para 4, 5, 6 and 9 of the return filed on behalf of the Respondent Nos. 1 and 2, we decline to grant other reliefs and prayed for in para 7 (iii), (v) and (vi) of the Writ Petition.

Accordingly, the Writ Petition succeeds in part.