
(1999) 07 MP CK 0002

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1620 of 1999

Gajendra Singh Arya and another

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 30-07-1999

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2000) 1 MPJR 119 : (2000) 2 MPLJ 50

Hon'ble Judges : C. Kumar Prasad, J

Bench : Single Bench

Advocate : K.K. Trivedi in Writ Petition No. 1620 of 1999 and Alok Aradhe in Writ Petition No. 2003 of 1999, for the Appellant; S. Agarwal, Govt. Advocate for respondents Nos. 1 and 2, R.S. Jaiswal for respondent No. 3, Alok Aradhe for respondents Nos. 4 to 7, S. Agrawal, Govt. Advocate for respondents Nos. 1, 3, 4 and 5 and Miss Rama Gupta, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

Both writ petitions have been directed to be heard together. Prayer of the petitioners in both the writ petitions filed under Article 227 of the Constitution of India is to quash the order of the Collector who in exercise of its appellate power under Rule 12 of the M.P. Panchayat Shiksha Karmi (Recruitment and Condition of Service) Rules 1997 (hereinafter referred to as the Rules) rescinded the appointments of the petitioners as Shiksha Karmi Grade III. It is the stand of the petitioner that against the order of Collector no further remedy is provided under the Rules and hence they have no option than to approach this Court in its writ jurisdiction. Stand of the respondents, however, is that under Rule 5 of the M.P. Panchayat (Appeal and Revision) Rules 1995 (hereinafter referred to as the Appeal and Revision Rules) petitioners have remedy of revision. It is not in controversy that petitioners as such were not impleaded as party but the Collector by the impugned order has specifically set aside their appointments.

Mr. K.K. Trivedi appears on behalf of the petitioners in W. r. No. 1620/99 whereas respondents 1 and 2 are represented by Shri Sanjay Agrawal, respondent No. 3 by Shri R.S. Jaiswal and respondents 4 to 7 Shri Alok Aradhey. Shri Alok Aradhe appears for the petitioner in Writ Petition No. 2003/99 whereas Shri Sanjay Agrawal appears on behalf of respondents 1, 3, 4 and 5. respondent No. 2 was represented by Miss Rama Gupta.

Rule 12 of the Recruitment Rules provides as follows:--

"12. Appeal -- Appeal against the order passed under these Rules may be made as per provisions of the Adhiniyam."

Scope and ambit of the aforesaid Rule came up for consideration before this Court and by judgment dated 9-7-1999 passed in W.P. No. 1383/99, Jai Dinesh Verma vs. The State of M.P. and others and analogous cases, it has been held that the aforesaid rule within itself embraces remedy of revision as provided under Rule 5 of the M.P. Panchayat (Appeal and Revision) Rules, 1995. In the said case it has been held as follows:--

"Thus, in my opinion simply because the rule making authority has used the expression "appeal" in Rule 12 of the Recruitment Rules, in the face of the scheme of the Act and Appeal and Revision Rules made thereunder, I am not inclined to give restricted meaning to the word "appeal". In my considered opinion when Rule 12 of the Recruitment Rules has provided for remedy of appeal it shall include the remedy of revision also."

Rule 5 of the M.P. Panchayat (Appeal and Revision) Rules, 1995, reads as follows:--

"5. Revision -- (1)(a) The State Government, the Commissioner, the Director of Panchayat the Collector may on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it/him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit." (Emphasis supplied)

Mr. Alok Aradhe as also Mr. Trivedi submit that the remedy of revision is to any party and according to their submission "any party" would mean those persons who were impleaded as such before the Collector in the appeal. They submit that petitioners were not impleaded as party and in that view of the matter they do not come within the expression "any party" so as to enable them to invoke the revisional jurisdiction under Rule 5 of the Rules. Their submission is that although the petitioners are aggrieved by the judgment of the Collector and can be said to be an aggrieved party, but they cannot come within the expression "any party" so as to make them available the remedy of revision. Mr. Aradhe has drawn my attention to the meaning assigned to the word "party" in Black's Law Dictionary, Sixth Edition, it reads as follows:--

"Party" is a technical word having a precise meaning in legal parlance; it refers to those by or against whom a legal suit is brought, whether in law or in equity, the party plaintiff or defendant, whether composed of one or more individuals and whether natural or legal persons; all others who may be affected by the(suit, indirectly or consequently, are persons interested but not parties."

According to the Learned Counsels as petitioners were not those against whom the appeal was filed, they do not come within the expression "party". Mr. Agrawal, however, appearing on behalf of the State Government submits that the appointment of the petitioners have been specifically cancelled by the Collector and hence they are "Party" to the proceeding and have the right to file revision against the order of Collector.

Having appreciated the rival submissions I am of the opinion that petitioners have remedy of revision and they come within the expression "any party" as used in Rule 5 of the Appeal and Revision Rules. Here in the present case it was brought to the notice of the Collector that appointments of the petitioners as Shiksha Karmi are illegal. Therefore, action was in relation to the petitioners. Collector exercised his appellate power and directed for cancellation of their appointments. Thus, the petitioners have not been affected by the judgment of the Collector indirectly or consequently, but by specific orders their appointments have been cancelled. Situation may be different, when somebody's appointment is cancelled indirectly or as a consequence of any judgment in which their cases are not dealt with. Here in the present case, question before the Collector was the validity of appointment, of these petitioners themselves and hence they shall come within the expression "any party" so as to enable them to avail the remedy of revision.

Having held that the petitioners have remedy of revision, I am not inclined to go into the merits of this case at this stage. Petitioners if so advised, may avail the remedy of revision within 30 days from today and, in case, such remedy is invoked the revisional authority shall decide the same on merits in accordance with law.

By order dated 9-4-1999 in W.P. No. 1620/99 this Court stayed the operation of the impugned order of the Collector. By order dated 5-5-1999 passed in W.P. No. 2003/99 this Court has directed for maintenance of status-quo with regard to the services of the petitioners. I direct that the aforesaid orders shall remain operative for a period of 60 days or till the prayer made by the petitioners for grant of interim order is decided by the Commissioner, whichever is earlier. It is made clear that any observation made in these writ petitions are for the purpose of their disposal and it shall have no bearing on the merits of the case of the parties.

In the result, both the writ petitions stand dismissed with aforesaid observation, but without any order as to cost.