
(2015) 08 MP CK 0014
In the Madhya Pradesh High Court
Case No : W.P. No. 11816 of 2010

Geeta Rani Gupta

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:

Citation : (2015) 4 MPLJ 476

Hon'ble Judges : A.M. Khanwilkar, C.J., Shantanu Kemkar and J.K. Maheshwari, JJ.

Bench : Full Bench

Advocate : Siddharth Gulatee, for the Appellant; Samdarshi Tiwari, Dy. Advocate General, for the Respondent

Judgement

1. We have heard counsel for the parties.

This matter has been placed before us pursuant to the reference made by the learned Single Judge vide judgment dated 13-8-2013 in Writ Petition No. 11816/2010 (s). The learned Single Judge has framed three questions, which read thus:--

"(A) Whether the decision given by the Division Bench in W.P. No. 4203 of 2001 Geeta Rani Gupta vs. State of M.P. decided on 19-5-2003 is a correct law, in view of the fact that Rule 4 of the M.P. Medico Legal Institute (Gazetted) Service Recruitment Rules, 1987 were not considered at all in their right perspective?

(B) Whether the Division Bench was right in holding that the services of persons like respondent No. 4 in said case could not be regularised as the said appointments were made de hors the aforesaid Gazetted Rules, though such Rules came in force much after the appointments made?

(C) Whether a temporary appointment was rightly said to be bad only because such appointment was not made on probation?"

These questions have been framed with reference to the dictum of the Division

Bench in the case of Dr. Geeta Rani Gupta vs. State of M.P. and others decided on 19-8-2003. Indisputably, the view taken in the said decision has become final with the dismissal of SLP (Civil).....CC No. 2011/2004 by the Supreme Court on 8-3-2004.

2. The Division Bench on the facts of the case before it had held that the private respondent was not entitled to be regularized "from the date of his initial appointment" as he was not appointed against a substantive post and further he was not kept on probation in terms of the Service Rules. The Division Bench in Paragraph No. 14 of its decision, inter alia, has noted as follows:

"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 30-3-1994. Thus, regularisation of services of the respondent No. 3 from the date of initial appointment on an ad hoc post being de hors the rules cannot be sustained and, hence, it deserves to be quashed."

3. On that finding, the Division Bench applied the provisions of Rule 4, in particular, Clause (1) of the Madhya Pradesh Medico-Legal Institute (Gazetted) Service Recruitment Rules, 1987 and answered the issue against the private respondent.

4. Rule 4(1) of the Rules of 1987, predicates that, the persons who at the commencement of the Rules of 1987 were holding substantively or in an officiating capacity specified posts, to have been subsumed in the service. Rule 4(1) reads thus:--

"4. 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)

(3)"

It is common ground that in the present case, Clauses (2) and (3) of Rule 4 are not attracted.

5. In the present case, however, the learned Single Judge having, prima facie, opined that the post held by the private Respondent No. 4, on the date when the

Rules of 1987 came into force was in officiating capacity, could have proceeded to answer the matters in issue on the basis of Rule 4(1) of the Rules of 1987. The learned Single Judge, therefore, was not right in doubting the opinion as recorded by the Division Bench in the fact situation of that case.

6. On the issue of initial appointment to be considered as illegal or irregular, the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and also the recent decision in the case of State of Karnataka and Others Vs. M.L. Kesari and Others, , has noted that where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments be considered as illegal and not amenable to regularization. These decisions also amplify the conditions to be observed while considering the proposal for one time regularization of any employee, as can be discerned from Paragraph No. 53 of the Judgment in the case of Umadevi (supra), which reads thus:--

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of Courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of Courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

(emphasis supplied)

In the case of M.L. Kesari (supra), in Paragraph No. 7, the Court observed thus:--

"7. It is evident from the above that there is an exception to the general principles against "regularization" enunciated in Umadevi, if the following conditions are fulfilled :

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any

Court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

(emphasis supplied)

7. The question as to whether the prima facie finding recorded by the learned Single Judge in paragraph 13 - that though the initial appointment of respondent No. 4 was on temporary basis has been rightly regularised in the service and that he was officiating on the concerned post when the Rules of 1987 came into force, is correct or otherwise is a matter which will have to be answered by the concerned Court after due consideration of relevant factual matters and the settled legal position referred to above on case to case basis.

8. We may not be understood to have expressed any opinion in that behalf nor of having accepted the reasoning recorded by the learned Single Judge, in any manner. In view of above, the Registry to forthwith place the papers before the learned Single Judge for proceeding further, in accordance with law.