
(2008) 01 CHH CK 0011
In the Chhattisgarh High Court

G.S. Makkad

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 31-01-2008

Acts Referred:

Citation : (2008) 3 MPHT 47

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—The petitioner impugns the order dated 23-12-1997 (Annexure P-15) and order dated 12-1-1998 (Annexure P-16) whereunder, promotion of the petitioner to the post of Lecturer has been cancelled on the ground that the promotion has been made, without there being vacancy in science faculty.

2. The indisputable facts, in nutshell, are that the petitioner was appointed as Upper Division Teacher with effect from 1st of November, 1985 till 25th April, 1986 on temporary basis. Thereafter, on 11th July, 1986 (Annexure P-2), the appointment of the petitioner was again made with effect from 15th July, 1986 till further orders, purely on temporary basis. The petitioner was thereafter promoted as Lecturer in science faculty which fell vacant on account of death of one Shri H.L. Jaggi. The respondent No. 3, on 13-7-1990 (Annexure P-8) passed an order that the petitioner has been appointed as Lecturer with effect from 9-7-1990 pursuant to the interview held on 8-7-1990. He would be granted salary of the post of Lecturer with effect from the date of approval of his appointment from the Commissioner, Public Instructions, Government of Madhya Pradesh, Bhopal (respondent No. 2). Accordingly, the petitioner was paid salary of Upper Division Teacher only. On 12-1-1991, the Principal of the respondent School wrote a letter to the Joint Director, Public Instructions (Annexure P-9) for granting approval to the appointment of the petitioner on the post of Lecturer. The Joint Director, vide order dated 29-1-1991 (Annexure P-10) rejected

appointment of the petitioner on the post of Lecturer as the vacancy was reserved for appointment by direct recruitment and the appointment of the petitioner by promotion was not proper. Accordingly, the Director, Public Instructions, on 23-12-1997 (Annexure P-15) wrote to the Joint Director, Public Instructions that the appointment of the petitioner on the post of Lecturer is bad because he was appointed against the vacant post of Hindi, Political Science and History, in science faculty. Similar letter to that effect was sent to the petitioner on 12-1-1998 (Annexure P-16).

3. Being aggrieved, the petitioner has filed this petition seeking quashing of the orders dated 23-12-1997 and 12-1-1998 (Annexures P-15 and P-16). Further, a direction to the respondents to promote the petitioner from 8-6-1993 and to accord all the consequential benefits.

4. Shri R.K. Kesharwani, learned Counsel appearing for the petitioner would submit that once the petitioner has been selected on the post of Lecturer, the petitioner has acquired a right to the post. Subsequent approval or non-approval will not come in the way of appointment of the petitioner on the post of Lecturer.

5. Learned Counsel further submits that the vacancy arose due to death of Shri H.L. Jaggi who was teaching in Physics and Mathematics. The reason recorded by the respondents that the petitioner was appointed against vacant post in Arts faculty is not correct.

6. Per contra, Shri Ajay Dwivedi, learned Deputy Government Advocate for State/ respondent Nos. 1 and 2 would submit that the vacancy in Science faculty was reserved for direct recruitment and there was a clear vacancy in Arts faculty in which the petitioner was promoted and appointed as Lecturer. The notification dated 2nd November, 1995 (Annexure R-1) makes it clear that the promotion can be made in the same subject not in other subjects. Learned Counsel further submits that the appointment of the petitioner on the post of Lecturer cannot be held as valid as there was no approval of the Commissioner, Public Instructions as required under the provisions of law.

7. None appears for respondent No. 3.

8. I have heard learned Counsel for the parties, perused the pleadings and record appended thereto. Letter dated 30-11-1989 (Annexure P-6), 23rd March, 1990 (Annexure P-7), appointment order dated 13-7-1990 issued by the respondent No. 3 (Annexure P-8), letter dated 21-1-1991 (Annexure P-9) addressed to the Joint Director, Public Instructions and letter dated 29-1-1991 (Annexure P-10) whereby the appointment of the petitioner was not approved by the Directorate of Public Instructions clearly indicates that the appointment order dated 13-7-1990 (Annexure P-8) was conditional as the petitioner was clearly informed that the petitioner would be entitled to pay-scale of Lecturer after the appointment is approved by the Commissioner, Public Instructions, Government of Madhya Pradesh.

9. The Madhya Pradesh Ashaskiya Shikshan Sanstha (Sehooion Me Karyarat Adhyapakon Tatha Anya Karmachariyon Ki Padonnati) Niyam, 1988 (hereinafter referred to as "the Rules, 1988") provides for appointment on promotion. Rule 6 of the Rules, 1988 clearly provides that all the appointments made on the post of Lecturer/Principal would be subject to approval of the Commissioner, Public Instructions. Rule 6 of the Rules, 1988 reads as under:

6- ?1? inksUufr lfefr }kjk vafre :i ls vuqeksfnr lwph inksUufr ds fy, p;u lwph gksxh fdUrq gkbZ Ldwy ds izkpk;Z] mPprj ek;/fed Ldwy ds O;k[;krk@izkpk;Z ds in ij inksUufr ds fy, vk;qDr yksd f" k{k.k dk vuqeksnu vko;"d gksxk A

?2? p;u lwph lkekU;r% ml le; rd izo`Rr jgsxh tc rd fd mldk iqufoZyksdu ;k iqujh{k.k u dj fy;k tkos A

At the relevant time when the appointment was made, the above slated Rules, 1988 were applicable to the facts of the case.

10. It is crystal clear from the orders and provisions of Rule 6 of the Rules, 1998 that the appointment of the petitioner was not in accordance with Statutory Rules and other legal provisions. Thus, the impugned order dated 23-12-1997 (Annexure P-15) and order dated 12-1-1998 (Annexure P-16), cannot be faulted with. There is no merit in the case.

In view of the foregoing, this petition is dismissed. No order as to costs.