

(2009) 08 MP CK 0021
In the Madhya Pradesh High Court
Case No : W. P. No. 1126 of 1999

Gyaniram Meshram and Others

APPELLANT

Vs

Managing Director, M. P. State Marketing Board, Bhopal and
Others

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 26, 26(2), 30

Citation : (2010) 1 MPLJ 646

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Mrigendra Singh, for the Appellant; Anshuman Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.

The petitioners in the present writ petition filed under Article 226 of the Constitution of India calls in question legality of order dated 8-3-1999, whereby, the resolution dated 31-8-1998 passed by Krishi Upaj Mandi Samiti, Balaghat, appointing the petitioners as Nakedars/Assistant Sub Inspectors has been cancelled on the ground that the Samiti was not empowered to make appointment as the posts belonged to State Agriculture Market Board Service and the power to appoint Nakedars/Assistant Sub Inspectors vested with the State Agriculture Market Board.

The facts, more or less not disputed, are that, the petitioners were engaged on daily wages prior to 31-12-1988 with the Krishi Upaj Mandi Samiti. To fill in three posts of Nakedar/Assistant Sub Inspectors, names were invited from Employment Exchange, Balaghat; whereupon 24 names were received amongst whom the petitioners were selected by the Committee constituted at Samiti Level and a resolution to said effect was passed on 31-7-1998 and 31-8-1998.

Consequent thereof, the petitioners were appointed by order passed on 20-3-1998 and 31-8-1998. The petitioners in pursuance to said order joined as Nakedar/Assistant Sub Inspector. However, later on by order dated 8-3-1999, State Agriculture Marketing Board cancelled the said resolution passed by the Samiti appointing the petitioners as Nakedar/Asstt. Sub Inspectors on the ground that it was beyond the competence of the Krishi Upaj Mandi Samiti to make appointments/regularization on the post belonging to State Agriculture Marketing Board Service. Consequent thereof the appointments were cancelled.

The petitioners assail the order on the ground that the cancellation of their appointments was without affording any opportunity of hearing and, therefore, deserves to be quashed. It is also urged that the appointment was made by a Selection Committee duly constituted under bye-laws, and was empowered to make appointment u/s 30 of the M. P. Krishi Upaj Mandi Adhiniyam, 1972. It is also submitted that the Board was duly informed of the selection and there was a tacit approval of the Board. It is accordingly urged that the order of removal is bad and liable to be set aside.

The respondent Nos. 1 and 4 and 2, 3 and 5 have filed separate returns. Contending inter alia that, since the appointment of the petitioners was not by the Competent Authority no right accrued in their favour to hold the post, because the appointments were void ab initio. To substantiate the submissions reliance is placed on section 26 of the Adhiniyam, 1972 and the Regulations, viz., Madhya Pradesh Rajya Mandi Board Service Regulations, 1998 framed by the Madhya Pradesh State Agriculture Market Board in its 64th meeting in exercise of its power u/s 81-A read with section 26 (2) of the Adhiniyam, 1972, which stipulates that the post of Nakedar/Assistant Sub Inspector Mandi being post of M. P. Rajya Mandi Board Service, it was the Mandi Board which is the full Appointing Authority. Furthermore, it is urged that since the appointment was void ab initio non-opportunity of hearing does not vitiate the order of cancelling such appointment. In support of his contention the learned Counsel for respondents places reliance on the judgments in Union Territory of Chandigarh Vs. Dilbagh Singh and others, , Hanuman Prasad and Others Vs. Union of India (UOI) and Another, , Pramod Lahudas Meshram Vs. State of Maharashtra and Others, , Biswa Ranjan Sahoo and others Vs. Sushanta Kumar Dinda and Others, , State of M.P. and Others Vs. Shyama Pardhi etc. etc., , Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others, (1993) 4 SCC 7270, M.C. Mehta Vs. Union of India (UOI) and Others, .

Considered the rival submissions.

Indisputably, the State Mandi Board Service came to be constituted vide Notification dated 15-6-1997 whereby section 26 of the Adhiniyam, 1972 was formulated in the following terms :-

Constitution of State Mandi Board Service. - (1) For the purpose of providing officers and employees to the Board and the Market Committees there shall be

constituted, a service by the Board to be called the State Mandi Board Service.

(2) The Board shall make regulations in respect of recruitment, qualification, appointment, promotion, scale of pay, leave, leave salary, acting allowance, loan, pension, gratuity, annuity, compassionate fund, provident fund, dismissal, removal, conduct, departmental enquiry, punishment, appeal and other service-conditions of the members of the State Mandi Board Service.

(3) The salary, allowances, gratuity and other payments required to be made to the members of the State Mandi Board Service who are working under the control of the Market Committee shall be a charge on the Market Committee Fund.

(4) The officers and employees appointed or absorbed under any rules or regulations and belonging to the State Marketing Service, Board Service and the Nakedown (Assistant Sub Inspector) of Market Committee Service immediately before the constitution of the State Mandi Board Service under sub-section (1) shall be treated as members of the State Mandi Board Service.

Section 80 of the Adhiniyam, 1972 empowers the Market Committee to make bye-laws, in the following terms :-

Power to make bye-laws. - (1) Subject to the provisions of this Act and the rules made thereunder, a Market Committee may, in respect of a market area under its management, make bye-laws for -

(i) the regulation of its business;

(ii) the condition of trading in a market;

(iii) delegation of powers, duties and functions to the officers and servants, appointment, pay, punishment, pension, gratuities, leave, leave allowances, contributions by them to any provident fund which may be established for the benefit of such officers and servants and other conditions of service;

(iv) the delegation of powers, duties and functions, to a subcommittee, if any;

(v) market functionaries who shall be required to take licence;

(vi) any other matter for which bye-laws are to be made under this Act or it may be necessary to frame bye-laws for effectively implementing the provisions of this Act and the rules made thereunder in the market area.

(2) No bye-law made under sub-section (1) shall take effect until it has been confirmed by the Managing Director.

(3) In making any bye-law the Market Committee may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees and where the breach is a continuing one with further fine which may extend to five rupees for every day after first during which the breach is proved to have been persisted in.

The Market Committee in exercise of its powers u/s 26(2) read with section 80 have framed Service Regulations, viz., Rajya Mandi Board Sewa Viniyam, 1998. Regulation 4 provides for constitution of Mandi Service, including within its fold the post of Nakedar/Assistant Sub Inspector :-

Regulation 6 provides for method of recruitment. Clause 1 (ka) of Regulation 6 makes a provision for direct recruitment and as per Appendix 4 under Regulations 5 and 6, the appointment of Nakedar/Assistant Sub Inspector is by direct recruitment. True it is that this Appendix 4 is effective from 13-4-1999, but even prior to it as per Regulation 4 the post of Nakedar/Assistant Sub Inspector has been earmarked for State Mandi Board Service. The necessary corollary whereof would be that the Krishi Upaj Mandi Samities in the State of Madhya Pradesh were not the Appointing Authorities of Nakedar/Sub Inspectors, with effect from 15-6-1997. Thus, the selection made by the Krishi Upaj Mandi Samiti, Balaghat on 31-7-1998 and 31-8-1998 is without any authority and does not confer any right in favour of the petitioners.

In State of Jharkhand and Others Vs. Manshu Kumbhkar, , Their Lordships were pleased to observe :-

Reliance by the High Court on the order passed in Sanjay Kumar case was thoroughly misconceived. It is to be noted that LPA was dismissed on the ground of delay. Even otherwise, merely because mistake had been committed in one case, there is no rational for perpetuating that mistaken, even when the same is illegally impermissible. It is to be noted that in terms of the executive instructions, the following procedure was to be adopted :-

On other category of Class 4 posts the appointments will be made through District Employment Exchange as far as practicable from local areas. Because only one panel for the appointment of Class 4 employees will be prepared for appointment at district level which will be effective for one year, the District Officer will give extensive publicity to the advertisement calling for applications and examine the applications. Every applicant will quote his registration region/ the district exchange. If due to any reason the District Employment Officer does not recommend his name then the Collector will admit his application on the ground of Registration No. and will consider the application and the District Magistrate will as per necessity, examine the list as recommended by the employment exchange for appointment.

In Punjab State Warehousing Corp., Chandigarh Vs. Manmohan Singh and Another, :-

12. Furthermore, when the terms and conditions of the services of an employee are governed by the rules made under a statute or the proviso appended to Article 309 of the Constitution of India laying down the mode and manner in which the recruitment would be given effect to, even no order under Article 162 of the Constitution of India can be made by way of alterations or amendments of the said Rules. A fortiori if the recruitment rules could not be amended even by

issuing a notification under Article 162 of the Constitution of India the same cannot be done by way of a circular letter.

Furthermore, in the case at hand since the appointment of the petitioner was by a body not competent to make appointment of Nakerdar/Assistant Sub Inspectors, no legal right was created in favour of the petitioners and when no right is under law created non-affording an opportunity of hearing would be of no consequence.

In Union Territory of Chandigarh vs. Dilbagh Singh and others (supra), Their Lordships were pleased to observe :-

If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific Rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily. In the instant case, when the Chandigarh Administration which received the complaints about the unfair and injudicious manner in which select list of candidates for appointment as conductors in CTU was prepared by the Selection Board constituted for the purpose, found those complaints to be well founded on an enquiry got made in that regard, we are unable to find that the Chandigarh Administration had acted either arbitrarily or without bona fide and valid reasons in cancelling such dubious select list. Hence, the contentions of the learned Counsel for the respondents as to the sustainability of the judgment of CAT under appeal on the ground of non-affording of an opportunity of hearing to the respondents (candidates in the select list) is a misconceived one and is consequently rejected.

In Hanuman Prasad and others vs. Union of India and another (supra), Their Lordships were pleased to observe :-

4. It is then contended that though the selected candidates have no vested right, they had got a legitimate expectation for appointment when they were selected for being appointed. They should be given prior opportunity and also know the reasons for cancellation. In support of this contention, he placed reliance on Para 8 of the judgment of this Court in Asha Kaul vs. State of J and K. It is unexceptionable that when duly constituted Selection Committee makes recommendation for appointment of the selected candidates the candidates do not get any vested right or legitimate expectation until they are appointed according to the Rules; they have a chance to be appointed as they have been selected by the recruitment agency. In that case, the Government had cancelled the select list without any reasons. This Court has laid the above rule in that

backdrop. The ratio therein has no application for the reason that after the perusal of the report submitted by the Investigating Agency, the Competent Authority had cancelled the selection so that the regular and proper examination could be conducted giving opportunity to everyone in a fair manner. No prior opportunity need be given in the case of mass copying. It is not the case where a named candidate committed copying. Accordingly, we do not find any illegality in the order passed by the Tribunal.

In *Pramod Lahudas Meshram vs. State of Maharashtra and others* (supra), Their Lordships were pleased to observe:-

3. Shri A. K. Sanghi, the learned Counsel for the petitioners, has contended that when the posts were advertised and the candidates were found eligible, it does not mandate that there should be an interview and selection. Obviously, the Service Selection Board having found the petitioner to be eligible and qualified, recommended him and was accordingly appointed as Junior Engineer, when it was sought to be cancelled on a letter written by the Member Secretary of the Service Selection Board, they are entitled to be heard. No such opportunity has ever been given before cancellation of their appointments. It was, therefore, violative of principles of natural justice. We find no force in the contention. It is seen that on their own admission they have merely applied for the post pursuant to an advertisement made for the selection. It is the case of the Selection Board that a regular selection has to be made and selecting the eligible candidates, recommendation for appointment would be made. Therefore, the letter can be said to have conveyed that the recommendations were not authorized and according to the rules; such being the admitted position, we do not find any fault to cancel the appointments. Under those circumstances, we do not find any illegality in the action taken by the respondents. However, such things will not be permitted to be kept under the carpet. The State Government is directed to refer the matter to the Appropriate State CBI enquiry and the Inspector concerned would make an independent investigation into the matter to find out as to who were responsible for such malpractice committed and it will be open to take appropriate criminal prosecution launched against the culprits.

In *Biswa Ranjan Sahoo and others vs. Sushanta Kumar Dinda and others* (supra), Their Lordships were pleased to observe :-

3. A perusal thereof would indicate the enormity of malpractices in the selection process. The question, therefore, is : whether the principle of natural justice is required to be followed by issuing notice to the selected persons and hearing them ? It is true as contended by Mr. Santosh Hegde, learned Senior Counsel appearing for the petitioners, that in the case of selection of an individual his selection is not found correct in accordance with law, necessarily, a notice is required to be issued and opportunity be given. In a case like mass malpractice as noted by the Tribunal, as extracted hereinbefore, the question emerges : whether the notice was required to be issued to the persons affected and whether they needed to be heard ? Nothing would become fruitful by issuance of

notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment. The procedure adopted are in flagrant breach of the rules offending Articles 14 and 16 of the Constitution.

In *State of M. P. and others vs. Shyama Pardhi and others* (supra), Their Lordships were pleased to hold :-

The Tribunal in the impugned order had held that the respondents having been selected and undergone the training and the Competent Authority having duly appointed them, cancellation of their appointment without any opportunity is violative of the principles of natural justice and it accordingly set aside the order and directed their reinstatement with consequential benefits. Hence, these appeals by special leave.

It is now an admitted fact across the Bar that the respondents had not possessed the pre-requisite qualification, namely, 10 + 2 with Physics, Chemistry and Biology as subject. The Rules specifically provided that qualification as a condition for appointment to the post of ANM. Since prescribed qualification had not been satisfied, the initial selection to undergo training is per se illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of respondents. The question of violation of the principles of natural justice does not arise. The ratio of *Shrawan Kumar Jha and others Vs. State of Bihar and others*, , strongly relied on, has no application to the facts of this case. That was a case where appellants possessed initial qualifications but they did not undergo the training. Since the appointment was set aside on the ground of want of training, this Court interfered with; directed the Government to reinstate them into service and further directed them to send the appellants therein for training.

In *Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others* (supra), Their Lordships were pleased to observe :-

..... The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice.

Hence, in all cases where the Inquiry Officer's report is not furnished to the

delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court, Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to shortcuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal Appellate or Revisional Authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/Tribunals find that the furnishing of the report would have made a difference to the result in the case that should set aside the order of punishment. Where after following the above procedure the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority, management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

In *M. C. Mehta vs. Union of India and others* (supra), Their Lordships were pleased to observe :-

We would next refer to another case, where, though there was no breach of principles of natural justice, this Court held that interference was not necessary, if the result of interference would be the restoration of another order which was not legal. In *Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another*, which arose under the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, the Prescribed Authority dismissed an application filed by the landlord and this was held clearly to be contrary to the very purpose of section 43 (2) (rr) of the Act. The District Court, entertained an

appeal by the landlord and allowed the landlord's appeal without noticing that such an appeal was not maintainable. The tenant filed a writ petition in the High Court contending that the appeal of the landlord before the District Court was not maintainable. This was a correct plea. But the High Court refused to interfere. On further appeal by the tenant, this Court accepted that though no appeal lay to the District Court, the refusal of the High Court to set aside the order of the District Judge was correct as that would have restored the order of the Prescribed Authority, which was illegal.

Learned Senior Counsel for Bharat Petroleum contended that once natural justice was violated, the Court was bound to strike down the orders and there was no discretion to refuse relief and no other prejudice need be proved.

It is true that in *Ridge vs. Baldwin*, 1964 AC 40, it has been held that breach of principles of natural justice is in itself sufficient to grant relief and that no further de facto prejudice need be shown. It is also true that the said principles have been followed by this Court in several cases but we might point out that this Court has not laid down any absolute rule. This is clear from the judgment of Chinnappa Reddy, J., in *S.L. Kapoor Vs. Jagmohan and Others*, . After stating (p. 395) (of SCC): (at p. 147 of AIR) that :-

principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural had been observed

and that "non-observance of natural justice is itself prejudice to a man and proof of prejudice independently of proof of denial of natural justice is unnecessary", Chinnappa Reddy, J. also laid down an important qualification as follows (SCC p. 395, Para 24) :-

As we said earlier, where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs.

It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of principles of natural justice.

In *State of Manipur and Others Vs. Y. Token Singh and Others*, , Their Lordships were pleased to observe :-

The offers of appointment issued in favour of the respondents herein were cancelled inter alia on the premise that the same had been done without the knowledge of the Revenue Department of the State. No records therefor were available with the State. As noticed hereinbefore, an inquiry had been made wherein the said Shri Tayeng, the then Commissioner of Revenue stated that no such appointment had been made to his knowledge. The State proceeded on the said basis. The offers of appointment were cancelled not on the ground that

some irregularities had been committed in the process of recruitment but on the ground that they had been non-est in the eye of law. The purported appointment letters were fake ones. They were not issued by any authority competent therefor.

The Appointing Authority, in absence of any delegation of power having been made in that behalf, was the State Government. The Government order dated 12-1-1998 did not delegate the power of appointment to the Commissioner. He, therefore, was wholly incompetent to issue the appointment letters.

The respondents, therefore, in our opinion, were not entitled to hold the posts. In a case of this nature, where the facts are admitted the principles of natural justice were not required to be complied with, particularly when the same would result in futility. It is true that where appointments had been made by a Competent Authority or at least some steps have been taken in that behalf, the principles of natural justice are required to be complied with, in view of the decision of this Court in *Murugayya Udayar*.

We, as noticed hereinbefore, do not know as to under what circumstances the orders of appointments were issued.

The said decision is not an authority for the proposition that the principles of natural justice are required to be complied with in all situations.

In view of above this Court finds no substance in the petition, the same is, therefore, dismissed. The respondents, however, shall now resort to fresh selection in accordance with the provision of section 26 read with Regulation framed thereunder and shall afford the petitioners an opportunity to appear in selection by relaxing the age, within three months from the date of communication of this order.

With these observations, the petition is dismissed. However, no costs.