
(2018) 09 MP CK 0040

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3225 Of 2016

Hemlal Kol And Others

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 12-09-2018

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 323
Madhya Pradesh Lokseva (Anusuchit Jait, Anusuchit Janjatiyon aur Anya Pichda Wargo Ke Liye Arakshan) Niyam, 1994 — Section 4(2), 4(3)(b), 8, 13
Municipal Corporation Act, 1956 — Section 421

Citation : (2018) 09 MP CK 0040

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : Sanjay Kumar Agrawal, A.P. Singh, Ashok Lalwani

Final Decision : Allowed

Judgement

The petitioners have filed the present petition challenging the order dated 28.11.2015 passed by respondent no.2 thereby resolution passed by respondent no.3 has been suspended.

2. The petitioners no.1 to 5 are presently working on the post of Safai Jansanrakshak, petitioner no.6 is working on the post of Pump Kuli whereas petitioner no.7 is working on the post of Peon in the Municipal Council, Umaria. All the petitioners belong to notified Scheduled Tribes and as such they are entitled for the benefit of reservation in public services. Prior to their regular appointment on the post of Safai Jansanrakshak, Pump Kuli and Peon, the petitioners were engaged on their respective posts on daily wages/muster roll in the said Municipal Council. In order to achieve constitutional goal of providing equal opportunities in the public services to persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes, the State Legislature has enacted the Madhya Pradesh Lokseva (Anusuchit Jati, Anusuchit Janjatiyon aur Anya Pichda Wargo ke Liye Arakshan) Adhiniyam, 1994 (hereinafter referred to

as the "Act 1994"). The said Act contains provision for reservation of vacancies in public services and posts in favour of the persons belonging to SC, ST and OBC. Section 4 of the Act prescribes the percentage of reservation of posts and standard of evaluation. As per the said Section, in case of Class III and IV posts, 16% posts shall be reserved for candidates belonging to Scheduled Tribes. Proviso to Section 4(3)(b) of the Act provides that the Appointing Authority may undertake a special recruitment to fill up unfilled vacancies reserved for SC, ST and OBC.

3. In exercise of the powers conferred by Section 13 of the Act, the State Government has also framed the Rules known as Madhya Pradesh Lokseva (Anusuchit Jait, Anusuchit Janjatiyon aur Anya Pichda Wargo Ke Liye Arakshan) Niyam, 1994. Rule 3 of the Rules of 1998 mandates maintenance of roster as required under Sub-section 2 of Section 4. Sub Rule 1 provides that a separate 100 point roster for each category of post at the level of stage of direct recruitment shall be maintained by each Appointing Authority. In accordance with the Act of 1994 and the Rules framed thereunder, the Municipal Council Umaria has prepared and is maintaining the 100 point roster of all Class IV posts. As per the roster, large number of posts reserved for persons belonging to SC, ST and OBC were lying vacant in the Municipal Council, Umaria. In order to fill up these posts, the State Government has issued an order dated 02.08.2011 thereby directing all the local bodies to undertake a special recruitment drive for filling up backlog posts reserved for SC, ST and OBC.

4. In accordance with the directions issued by the State Government, the President in Council of Municipal Council, Umaria passed a resolution dated 19.12.2011 whereby a decision was taken to fill up backlog posts reserved for SC, ST and OBC. In the said resolution, it was also decided that the preference shall be given to those persons who are already working in the services of Municipal Council. Accordingly, the Chief Municipal Officer published an advertisement dated 24.05.2013 thereby inviting applications from eligible candidates for appointment to the post of Peon, Safai Jansanrakshak and Pump Kuli. As per the said advertisement, 6 posts of Safai Jansanrakshak, 1 post each of Peon and Pump Kuli were reserved for candidates belonging to Scheduled Tribes. The said advertisement was also published in all leading local newspapers. As the petitioners were already working on daily wages/muster roll basis in the Municipal Council Umaria and also they possessed the requisite qualifications for appointment on the said posts. The petitioners applied for direct recruitment to the said posts. The petitioners were asked to appear for interview before a duly constituted selection committee. The selection committee was constituted vide order dated 31.07.2013. The petitioners along with other candidates appeared for interview and on the basis of their performance in the interview coupled with Educational qualification and experience, a selection list was prepared by the Selection Committee. Petitioners no.1 to 5 were selected for appointment to the post of Safai Jansanrakshak in Scheduled Tribes category whereas the petitioners no.6 and 7 were selected for appointment on the post of Pump Kuli and Peon

respectively. The said select list was placed before the President-in-Council of Municipal, Umaria in its meeting held on 18.09.2013. The PIC examined the proceedings of the selection committee and approved the appointment of the petitioners on their respective posts. On the recommendations of the Selection Committee, duly approved by the PIC, the Chief Municipal Officer appointed the petitioners on their respective posts vide order dated 18.09.2013. In compliance of the said order, the petitioners joined on their respective posts on 01.07.2014 and since then they are regularly working on their respective posts. Thereafter, certain complaints were made alleging irregularities in the recruitment process. The respondent no.2 i.e. Collector Umaria vide order dated 31.07.2014 directed the Additional Collector to conduct an enquiry and to submit report in regard to the allegation made in the complaint. The Additional Collector made an enquiry in the matter and submitted his report to the Collector on 17.10.2014. In the said report, the Additional Collector has stated that the model roster was not properly prepared and consequently the recruitment process is not proper. On the basis of the said report, the Commissioner Shahdol Division Shahdol directed the Collector to take action in accordance with the Act of 1994. Accordingly, the Chief Municipal Officer, Municipal Council Umaria submitted a proposal to the Collector on 24.11.2015 for taking action in accordance with Section 323 of the Municipalities Act.

On the basis of the said proposal submitted by the Chief Municipal Officer, the Collector Umaria has passed the impugned order dated 28.11.2015 whereby the resolution dated 18.09.2013 passed by the PIC of Municipal Council Umaria has been suspended. Being aggrieved by that order, the petitioners have filed the present petition.

5. Learned counsel for the petitioners submit that the impugned order dated 28.11.2015 is arbitrary and illegal. The same has been passed without affording any opportunity of hearing to the petitioners or issuing any show cause notice. He further submit that the petitioners were appointed pursuant to the resolution dated 18. 09.2013, the execution whereof has been suspended by the impugned order and as such they are directly and adversely affected by the impugned order and, therefore, the impugned order could not have been passed without affording a reasonable opportunity of hearing to the petitioners. He further submit that the resolution passed by the Municipal Council has already been executed and the petitioners have been appointed in pursuance of the said resolution and, therefore, their appointment could not have been cancelled without affording them an opportunity of hearing. The sole reason assigned for setting aside the resolution is that out of total 9 posts, 5 vacant posts of Safai Jansanrakshak those persons belonging to the Scheduled Tribes have been appointed. It is accordingly contended that 3 persons belonging to ST have been appointed for excess of their prescribed quota. He further submits that the finding of the Collector is patently erroneous. Admittedly, 3 posts of Safai Jansanrakshak were lying vacant for ST category. If out of the remaining vacant posts, 3 more Scheduled Tribes candidates have been appointed then the same

does not violate 100 point roster as much as a Scheduled Tribes candidate is entitled to be considered and appointed on unreserved post. So far as, the post of Peon and Pump Kuli is concerned and there is no dispute that the said posts were reserved for Scheduled Tribes Candidates and the petitioners no.6 and 7 have been appointed on the said post. He further relied on the judgment passed by the Apex Court in the case of The Siemens Engineering & Manufacturing Co. Of India Ltd. Vs. Union of India and Another reported in (1976) 2 SCC, 981 as well as the judgment passed by the Division Bench of this Court in the case of Moolchand and Another Vs. Indore Municipal Corporation and Others reported in AIR 1973 MP 245 .

6. Respondents no.1 and 2 have filed their reply and in the said reply the respondents have stated that the petitioners were appointed on the post of Safai Jansanrakshak, Pump Kuli and Peon under a Special Recruitment Drive for filling of backlog posts. Against the said Recruitment Drive, the certain complaints were submitted before the Collector. The Collector directed to the Additional Collector to inquire into the matter. Accordingly, the Additional Collector submitted his report on 17.10.2014 and in the said enquiry, it was found that the roster for reservation of SC, ST and OBC has not been followed and the Selection Committee which recommended the names was not constituted as per Section 8 of the Act of 1994. Respondents have further stated that Section 323 of the M.P. Municipalities Act, 1961 provides that if in the opinion of the Collector, the execution of any resolution of the Municipal Council is not in conformity with law then he can suspend the execution of the said resolution. The Chief Municipal Officer of respondent no.3 submitted an application before the Collector under Section 323 of the Act, to suspend the resolution dated 18.09.2013 passed by the President-in-Council. After receiving the said resolution, the Collector called the Chief Municipal Officer of respondent no.3 and recorded his statement. The Collector also considered the enquiry report submitted by the Additional Collector and after considering the same, he found that the resolution dated 18.09.2013 is in violation of the provisions contained in the Act of 1994. The Act of 1994 has been enacted to provide for the reservation in the vacancies in favour of the persons belonging to ST, SC and OBC. Respondents have further stated that the Selection Committee which recommended the names of the petitioners did not represent by any of the members belonging to the SC, ST and OBC. He further submits that the entire process conducted by the then CMO was not in accordance with law and was in violation of the provisions contained in the Act of 1994 and, therefore, the Collector has rightly exercised the power conferred under Section 323 of the Act of 1961 and in exercising the said power, there is no illegality and infirmity. So far as, the contentions of the petitioners that they have not been afforded any opportunity of hearing is concerned. Learned Government Advocate submits that this contention is totally misconceived because Section 323 provides for opportunity of hearing to the Council only. In the present case, the CMO of respondent no.3 was called and his statements were recorded and afforded the reasonable opportunity of hearing, the impugned

order has been passed. In such circumstances, learned Government Advocate submits that the petition deserves to be dismissed.

7. Respondent no.3 has also filed the reply and in the said reply, respondent no.3 has stated that the petitioners have been lawfully appointed and there is no discrepancy in their appointment. He further stated that the order passed by the Collector being contrary to settled principles of law and principles of reservation.

8. Heard learned counsel for the parties and perused the record.

9. In the present case, the petitioners were initially appointed on the post of Safai Jansanrakshak, Pump Kuli and Peon, working on daily wages/muster roll in the Municipal Council Umaria i.e. respondent no.3. The State Government in order to comply with the provision of Act of 1994 has passed an order dated 2.08.2011 thereby directing all the local bodies under a special recruitment roll for filling up backlog posts reserved for candidates belonging to SC, ST and OBC. In compliance of the direction issued by the State Government, the President-in-Council for Municipal Council Umaria passed a resolution dated 19.12.2011 whereby a decision was taken to fill up the backlog posts reserved for SC, ST and OBC. In the said resolution, it was also decided that the preference shall be given to those persons who are already working in the services of Municipal Council. On the basis of the decision taken by the President-in-Council, the Chief Municipal Officer published an advertisement dated 24.05.2013 whereby inviting applications for appointment on the post of Peon, Safai Jansanrakshak and Pump Kuli. As per the said advertisement, 6 posts of Safai Jansanrakshak, 1 post each of Peon and Pump Kuli were reserved for candidates belonging to Scheduled Tribes. The petitioners being eligible for appointment on the said post, they have submitted their applications. The petitioners were asked to appear for interview before a duly constituted committee and a committee was constituted vide order dated 31.07.2013. Accordingly, the petitioners appeared for interview and on the basis of their performance in the interview coupled with Educational qualification and experience, a select list was prepared by the Selection Committee. The petitioners were selected and their names also appeared in the select list. The said select list was placed before the President-in-Council of Municipal Council Umaria in its meeting held on 18.09.2013. The President-in-Council approved the appointment of the petitioners on their respective posts and thereafter, appointment order has been issued in favour of the petitioners on 18.09.2013. In compliance of the said order, the petitioners have submitted their joining report on 01.07.2014.

10. In the meanwhile, certain complaints were received against the appointment of the petitioners to the Collector. The Collector accordingly, directed the Additional Collector to conduct an enquiry into the matter and submit its report. Accordingly, the Additional Collector inquired into the matter and submits his report to the Collector on 17.10.2014. In the said report, the Additional Collector has stated that the model roster was not properly prepared and the selection Committee was not properly constituted as per the provisions of the Act of 1994.

On the basis of the said report, the Commissioner Shahdol Division Shahdol, directed the Collector to take action in accordance with the Act of 1994.

11. The Chief Municipal Officer, Municipal Council, Umaria submitted a proposal to the Collector on 24. 11.2015 for taking action in accordance with the Section 323 of the Municipalities Act. On the basis of the said report submitted by the Chief Municipal Officer, the Collector has passed an order dated 28.11.2015 thereby suspending the resolution passed by the President-in-Council of the Municipal Council Umaria on 18.09.2013. The main contention of learned counsel for the petitioner is that the before suspending the said resolution no notice or any opportunity of hearing was given to the petitioners. The Section 323 of the Municipalities Act provides for the power to suspend execution of orders etc., of Council. As per the Section 323 of the Municipalities Act of 1961 has given the powers to the Collector to suspend the execution of orders etc., of the Council. As per the said Section, the Collector or any other Officer authorized by the State Government in this behalf may suspend the execution of any order or resolution of Council which is not in conformity with law or with the Rules of bye-laws made thereunder and is detrimental to the interest of the Council. As per proviso to the said Section, the order shall not be revised, modified or confirmed by the State Government without giving the Council reasonable opportunity of showing cause against the order. Thus, as per the said Section, the Collector cannot revised or modified any resolution passed by the Council unless the reasonable opportunity of hearing showing cause has been issued to the Council against the said order. In the present case, the Collector while suspending the said resolution has not afforded any opportunity of hearing to the petitioners. It is also to be noted that in the present case, the resolution passed by the Council has already been acted upon and the appointment order has been issued in favour of the petitioners. Thus, substantive right has been created in favour of the petitioners and therefore, although it is not provided for giving the opportunity of hearing to the petitioners under Section 323 of the Act of 1961 but the Rules of natural justice requires that when a substantive right has been created in favour of an employee before passing any adverse order against him, an opportunity of hearing is required to be given to the said employee. The Section 323 of the Municipalities Act is in paramateria with the Section 421 of the Municipal Corporation Act, 1956, relying on the said provision the Division Bench of this Court in the case of Moolchand and Another (supra) in para 10 has held as under:-

"10. In view of this scheme of the section, it cannot be contended that when the matter refers to a private individual whose rights are involved, the government is expected to act under Section 421 of the Act without affording him any opportunity of representation or hearing. In that case as well, the State Government is expected to follow the principles of natural justice. Consequently when the Government exercises jurisdiction under Section 421 of the Act, it is bound to act in accordance with the provisions of natural justice and, therefore, before passing a final order it is expected to afford an opportunity to the person concerned to make a representation and also the opportunity of hearing.

Admittedly, in the present case, before passing the final order setting aside the order of the Appeal Committee giving sanction to the petitioners for construction of galleries, the State Government had afforded no opportunity to the petitioners either of hearing or of making a representation. Consequently the order passed by the State Government setting aside order of the Appeal Committee cannot be maintained and so the order of the Commissioner dated the 30th August, 1969, informing the petitioner that the order of the Appeal Committee cannot be complied with, cannot also be allowed to stand. Similarly the notice dated 28th April, 1970, saying that the reference made to the Government has been accepted and, therefore, calling upon the petitioner to remove the galleries cannot also be allowed to stand."

12. The Apex Court in the case of The Siemens Engineering & Manufacturing Co. of India Ltd (supra) in para 6 has held as under:-

"6. It is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

13. Therefore, in light of the aforesaid, the order impugned deserves to be quashed. So far as, merits of the case are concerned for the post of Peon and Pump Kuli, there is no dispute that the said post is reserved for Scheduled Tribes candidates and the petitioners no.6 and 7 have been appointed on the said post. Thus, looking to these aspects, the Collector should not have stayed the entire process of selection. In the case of Safai Jansanrakshak also the 100 point roster has been followed by the respondents and they were appointed on the vacant post.

14. In light of the aforesaid, this writ petition is allowed. The impugned order dated 28.11.2015 is hereby quashed. As the petitioners are continued on their respective post due to the interim order passed by this Court on 23.02.2016 and, therefore, no further orders are required to be passed. No order as to costs.