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(2015) 12 MP CK 0009

In the Madhya Pradesh High Court

Case No : WP 6223/13

Jagan Behari Mishra — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 14-12-2015

Acts Referred:
Constitution of India, 1950 — Article 123, 226

Citation : (2015) 12 MP CK 0009

Hon'ble Judges : Alok Aradhe, J.

Bench : Single Bench

Advocate : P.K. Shrivastava, Learned Counsel, for the Appellant; M.K. Sharma, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Alok Aradhe, J.

Shri P.K. Shrivastava, learned counsel for the petitioner.

Shri M.K. Sharma, learned counsel for respondents No. 1 to 3.

Shri K.N. Gupta, learned Senior counsel with Shri R.S. Dhakad, learned counsel for respondent No. 4.

1. With the consent of the parties, the matter is heard finally.

2. In this petition under Article 226 of the Constitution of India, the petitioner seeks quashment of the appointment of respondent No. 4 as Panel Lawyer for the office of Accountant General by way of writ of quo warranto.

3. The facts giving rise to filing of this petition briefly stated are that pursuant to application submitted by respondent No. 4, he was appointed as Panel Lawyer for the office of the Accountant General in the year 2009. The term of the appointment of respondent No. 4 has been extended from time to time and till today, he is discharging the duties as Panel Lawyer for the office of the

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Accountant General.

4. Learned counsel for the petitioner submitted that the respondent No. 4 is not eligible for appointment as Panel Lawyer for the office of the Accountant General as he neither mentioned the educational qualification nor the date and number of enrollment as an Advocate in the application form while submitting application for empanelment for the office of Accountant General. It is further submitted that 10 years of experience is required as an Advocate to perform the duty as Panel Lawyer for the office of the Accountant General, however, the respondent No. 4 did not have 10 years of experience as an Advocate when he was appointed as Panel Lawyer for the office of the Accountant General. It is further submitted that respondents No. 1 and 2 have not framed any guidelines and therefore in the absence of guidelines, the appointment of respondent No. 4 is arbitrary. It is further submitted that the guidelines have issued by the Ministry of Law and Justice, Department of Legal Affairs and as per the allocation of Business Rules, the President of India alone is the competent Authority for appointment of Panel Lawyer for Central Government and Indian Audit & Accounts Department.

5. On the other hand, learned counsel for respondents No. 1, 2 and 3 submitted that Comptroller & Auditor General of India is constitutional authority under Article 123 of the Constitution of India and he is competent to issue an order of appointment of respondent No. 4 and the guidelines issued by the Govt. of India are not applicable in respect of the appointment for the post in question.

6. Learned Senior counsel for respondent No. 4 has, at the outset, raised an preliminary objection on the ground that the engagement of Panel Lawyer for the office of Accountant General is not public office and therefore writ of quo warranto could not be issued. In support of the aforesaid submission, reference has been made by the learned Senior counsel to a decision in the case of State of U.P. and Others Vs. Rakesh Kumar Keshari and Another, . It is further submitted that even otherwise, if the petitioner is seeking a writ of mandamus, the petitioner is not aggrieved person inasmuch as the petitioner has neither applied for the post in question nor is eligible for the same. In other words, the petitioner has no locus standi to file this petition. It is further submitted that respondent No. 4 was appointed in the year 2008 and thereafter his appointment has been renewed from time to time. It is also submitted that respondent No. 4 is enrolled as an Advocate on 8/6/2008 and is qualified for appointment on the post of Panel Lawyer. It is further submitted that the guidelines referred to on behalf of the petitioner are not applicable in respect of the engagement as Panel Lawyer for the office of the Accountant General.

7. In rebuttal, learned counsel for the petitioner has submitted that the appointment in question has been made without power and authority of respondent No. 2. In support of his submissions, learned counsel for the petitioner has placed reliance on the decision in the case of Mahesh Chandra Gupta Vs. Union of India (UOI) and Others, .

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8. I have considered the respective submissions made by the learned counsel for the parties.

9. The Supreme Court in the case of State of U.P. and Another Vs. Johri Mal, while dealing with the scope of judicial review in respect of action in the realm of a public law has held that there is limited scope of judicial review, namely, (i) Courts, while exercising the power of judicial review, do not sit in an appeal over the decisions of administrative bodies; (ii) A person for a judicial review would lie only on certain well-defined grounds; (iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself was perverse or illegal; (iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; (v) The supervisory jurisdiction conferred on a court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice; and (vi) The Court shall not ordinarily interfere with a policy decision of the State.

10. It has further been held that in the matter of engagement of a District Government Counsel, a concept of public office does not come into play and incumbent cannot seek any writ for appointment of Government counsel. Even otherwise, engagement of a counsel by an Institution or State being in the nature of professional engagement, this court would be loathe to interfere with the decision.

11. The aforesaid view taken by the Supreme Court has been approved by the Supreme Court in the case of State of Uttar Pradesh & others v. Rakesh Kumar Keshari & another (Supra).

12. In view of the aforesaid enunciation of law, it is evident that the engagement of respondent No. 4 as Panel Lawyer for the office of the Accountant General does not amount to holding the public office, therefore, the writ petition seeking relief of quo warranto is not maintainable. Therefore, it is not necessary for this court to express opinion with regard to other contentions raised by the learned counsel for the parties.

13. In the result, I do not find any merit in this petition. Same fails and is hereby dismissed.

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