

(2000) 05 SC CK 0094

In the Supreme Court Of India

Case No : Civil Appeal No. 3297 of 2000 (arising out of S.L.P. (C) No. 8750 of 1999)

Jaswant Singh and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 08-05-2000

Acts Referred:

Madhya Pradesh Panchayat Adhiniyam, 1981 — Section 83(1), 83(2)

Citation : AIR 2000 SC 3586(1) : (2000) 87 FLR 281 : (2000) 8 JT 258 : (2000) 3 PLJR 198 : (2002) 9 SCC 700

Hon'ble Judges : U. C. Banerjee, J;G. B. Pattanaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. The appellants, pursuant to the order issued by the Janpad Panchayat, joined as Lower Division Clerk (LDC) in February, 1987. Their appointments, however, stood annulled by the order of the Collector in exercise of power u/s 83 of the Panchayat Adhiniyam, 1981.

3. The Collector, on a finding that the prescribed procedure for appointment, had not been followed, cancelled the order of appointment. The prescribed procedure supposed to be calling for the candidates from the Employment Exchange. Against the said order of the Collector, the High Court was moved, but being unsuccessful there, this appeal is before us.

4. Mr. Mishra, learned senior Counsel appearing for the appellants, raised two contentions in assailing the legality of the order of cancellation passed by the Collector : (1) in view of the two judgments of this Court in Union of India (UOI) and Others Vs. N. Hargopal and Others, and Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, , the conclusion of the Collector was erroneous that the prescribed procedure had

not been followed merely because the candidates had not been sponsored by the Employment Exchange and (2) that there has been failure on the part of the Collector in complying with the mandatory provisions of Section 83 (2) of the Panchayat Adhiniyam, 1981, that vitiates the order of cancellation.

5. The learned Counsel for the respondent, on the other hand, contended that even though no opportunity of hearing was given to the appellants, but no different result would have ensued, even if opportunity would have been given, inasmuch as the procedure had not been followed by the Panchayat in making the recruitment in question.

6. In view of the order we propose to pass, we do not want to go into the first contention of the learned Counsel, as in our opinion, it would be for the Collector to examine the same and to come to a conclusion on that aspect. So far as the second contention of the learned Counsel is concerned, the same is unassailable. Under the provisions of Section 83 of the Panchayat Adhiniyam 1981, as per Sub-section (2) of Section 83, no order under Sub-section (1) could be made to the prejudice of a party inasmuch as such party has not been given an opportunity of being heard.

7. The appellants having been appointed pursuant to the order of the Panchayat and having been continued as LDC since February 1987, no order under Sub-section (1) of Section 83 of the Adhiniyam could have been passed by the Collector without affording the opportunity of hearing to them. Admittedly, the opportunity of hearing has not been given. The impugned order of cancellation, therefore, stands vitiated. We, therefore, set aside the order of the High Court as well as the order of cancellation passed by the Collector.

8. The order of cancellation having been quashed by us, the appellants shall be deemed to be continuing in service. The Collector, if so desires, may pass a fresh order in exercise of power in Section 83(1) of the Adhiniyam by following the procedure in Section 83(2).

9. The appeal stands allowed accordingly.