

(2008) 08 MP CK 0045

In the Madhya Pradesh High Court

Case No : Writ Petition No. 284 of 2008 (S)

Lalan Thakur

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2008) ILR (MP) 3116 : (2009) 1 MPLJ 138

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : Vivek Jain, for the Appellant; Smt. Ami Prabal, D.A.G. for Respondent No. 1, D.K. Katare and M.P.S. Raghuvanshi, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Sharma, J.

The petitioner before this Court, a social worker and Chairman of Non-Government Organisation (Loktantrik Bhrishtachar Mukti Morcha), Gwalior has filed this present petition challenging the validity of an order dated 27th December, 2007 (Annexure P/I) passed by the State Government by which the respondent No. 3 has been re-appointed on the post of Chief Engineer for a period of one year. The contention of the petitioner is that in the Public Works department, State of Madhya Pradesh, there are 11 sanctioned posts of Chief Engineers, out of which 08 posts are for general category, 02 are reserved for the Scheduled Caste category and 01 post is reserved for the Scheduled Tribe category. The petitioner has further stated that the State of Madhya Pradesh has enacted the rules under Article 309 of the Constitution, for appointment of the Chief Engineers and the Engineer-in-Chief known as the Madhya Pradesh Public Works Department Engineer-in-Chief and Chief Engineers Recruitment Rules, 1983 (hereinafter referred to as the Rules of 1983) and the Rules of 1983 does not provide for re-appointment. It has also been stated by the petitioner that age of retirement of these officers is governed under the provisions of the Madhya

Pradesh Shaskiya Sevak (Adhiwarshiki Ayu) Adhiniyam, 1967 and as per the amended in the aforesaid Act, i.e., Madhya Pradesh Shaskiya Sevak Adhivarshiki Ayu Sanshodhan Adhiniyam, 1998, the age of retirement has been increased to 60 years, and therefore, once there is a statutory provision which provides for retirement from Government service at the age of 60 years, the respondent No. 3 could not have been granted the reappointment on the post of Chief Engineer by the respondents No. 1 and 2. The petitioner has also enclosed a circular issued by the State Government dated 23rd January, 1999 by which the State Government has placed a total ban on extension/re-appointment and has also enclosed a circular dated 22nd February, 2005 by which it has been reiterated that no extension/re-appointment is permitted in the State of Madhya Pradesh. The petitioner has further stated that the post which was likely to fall vacant was to be filled by a reserved category candidate, and therefore, by granting re-appointment to the respondent No. 3, the rights of a reserved category candidate have been infringed. It has also been averred by the petitioner that re-appointment to the respondent No. 3 has been granted contrary to the public interest and respondent No. 3 is not having any special technical or scientific knowledge nor is doing any work making his service indispensable. The petitioner has also stated before this Court that he does have locus standi to file this present petition as he is a social worker and public interest is involved in the matter.

The learned counsel for the petitioner has relied upon a judgment delivered by the Apex Court in the case of *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, on the ground of maintainability of a writ petition. He has also relied upon a judgment delivered by the Apex Court in the case of *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, , again on the ground of maintainability of the writ petition.

The learned counsel for the petitioner has also placed reliance on a judgment delivered by the Apex Court in the case of *Vinoy Kumar Vs. State of U.P. and Others*, wherein it has been held that a third party does have a locus standi to file a writ petition in case it is a writ of Quo Warranto or Habeas Corpus or Public Interest Litigation.

Lastly, the learned counsel for the petitioner has relied upon a judgment delivered by the Apex Court in the case of *B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others*, , on the same issue and a similar view has been taken by the Apex Court regarding maintainability of a writ petition for issuance of a writ of Quo Warranto.

The petitioner has also argued that the Rules of Business does not empower the State Government to grant extension or re-appointment to a Government servant and the stand of the State Government is incorrect. It has been stated that there is no statutory provision empowering the State Government to grant extension/re-appointment to the respondent No. 3. It has been brought to the notice of this Court that there are 14 Chief Engineers working in the Public Works

department and out of them 10 are posted in the department and 04 are working on deputation and by no stretch of imagination extension/re-appointment could have been granted to the respondent No. 3.

The petitioner has also relied upon a judgment delivered by the Bombay High Court in the case of R. R. Tripathi and Another v. The Union of India and Others, Public Interest Litigation (Lodging) No. 93 of 2007 decided on 14th and 15th February, 2008 wherein the extension in service was quashed in respect of persons who were granted extension by the State of Maharashtra. The contention of the petitioner is that the judgment delivered by the Bombay High Court squarely covers the controversy involved in the present petition.

The petitioner has further relied upon a judgment delivered by the Apex Court in the case of Pancham Chand and Others v. State of Himachal Pradesh and Others, Appeal (Civil) No. 1732 of 2008 in which it has been held that the Rules of Business should be strictly followed and the decision taken in the matter by the State Government in the aforesaid case was quashed.

The respondent No. 1 and 2/State has filed a detailed reply in the matter. It has been vehemently argued on behalf of the respondents that the petitioner does not have any locus standi to file this present petition as he is not the person aggrieved. The executive instruction dated 1st October, 2004 provides for extension/re-appointment/contractual appointment to the persons beyond 60 years of age. Clause 4 thereof provides that an extension can be granted in the public interest to the employees working in the scientific and technical field beyond 60 years of age. The respondents/State have enclosed a note sheet relating to promotions to the post of Chief Engineers and the Superintendent Engineers along with the return and it has been contended that most of the Chief Engineers were due for retirement in the year 2008! It has been further stated by the respondents that in the feeder cadre, i.e., the Superintendent Engineers were not available to be promoted as the Chief Engineers, and therefore, as large number of working Chief Engineers were going to retire and as suitable persons were not available for promotion, in the interest of public service and in larger public interest, re-appointment has been granted to the respondent No. 3. It has also been argued that the matter relating to the grant of extension/re-appointment of the respondent No. 3 has been processed as per the executive instructions and also keeping in view the provisions of the Rules of Business which empowers the State Government to grant extension/re-appointment, the respondent No. 3 was granted the re-appointment for a period of one year with effect from 30th November, 2007 or the date of taking over the charge whichever is earlier.

The respondents have further contended that the order has been passed in the public interest and there is no procedural irregularity committed by the respondents/State in passing the impugned order.

The respondents/State have stated finally that the order was initially passed in

anticipation of the approval of the cabinet and during pendency of the writ petition, the matter was placed before the cabinet and the approval has been granted by the Council of Ministers vide order dated 4th August, 2008 filed as Annexure A to I.A. No. 12468 of 2008 and therefore, the provision relating to reappointment have not been violated and the order passed by the State Government does not warrant any interference.

The respondent No. 3 has filed a reply and it has been stated in the reply that the petitioner does not have any locus standi to file this present petition as he is not a person aggrieved. It has also been argued that the Government is in need of technical hands keeping in view the large number of on going projects of national importance, the State Government has exercised its wisdom and has granted the re-appointment to the respondent No. 3. The respondent No. 3 has prayed for dismissal of the writ petition.

Heard learned counsel for the parties at length and perused the record.

It is evident from the material available on record that there is no dispute that the respondent No. 3 stood retired on attaining the age of superannuation with effect from 30th November, 2007 and the State Government has passed an order for re-appointment for a period of one year on 27th December, 2007 which was approved by the cabinet vide order dated 4th August, 2008.

In the present case, the post of Chief Engineer can be filled up under the recruitment rules by way of promotion only and the Superintendent Engineers having experience of five years and also on the post of the Executive Engineer are entitled to be considered for promotion. The respondent/State has stated in the return, that only three Superintendent Engineers in the department are having such qualifications and out of them, two are facing departmental enquiry proceedings, and therefore, ineligible for promotion. This aspect of the matter was considered and a proposal was forwarded to the State Government for promoting the Superintendent Engineers by granting relaxation under the experience clause and at the same time another proposal was forwarded for granting extension/re-appointment to the working Chief Engineers and the Engineer-in-Chief for a period of two years. However, keeping in view the scarcity of eligible persons for promotion and the larger public interest, so also, keeping in view the on-going important and prestigious projects in the State of Madhya Pradesh, it was proposed to re-appoint the respondent No. 3 and the matter was forwarded to the Chief Minister on 24th December, 2007. As the order of extension/re-appointment was required to be issued with the approval of the cabinet, an order of re-appointment was passed in anticipation of the approval of the cabinet. The order of re-appointment has to be passed with the approval of cabinet as provided under the Rules of Business of the Executive Government of Madhya Pradesh and also as provided under the executive instructions issued by the State Government dated 1st October, 2004, and therefore, an order of reappointment was issued in favour of the respondent No. 3 in anticipation of the approval of the cabinet as provided under the Rules of Business of the Executive

Government of Madhya Pradesh and later on the approval of the cabinet has already been accorded in the matter. It has also been pointed out by the State Government that there has been no violation of the reservation policy while granting the extension/re-appointment to the respondent No. 3 and as it is only in an exceptional case, re-appointment is permissible in the public interest. This Court has carefully gone through the executive instructions dated 1st October, 2000 and also the executive instructions dated 4th August, 1998 issued by the State Government which are enclosed along with the return as Annexure R/I. The State Government has granted the extension/re-appointment to the respondent No. 3, keeping in view the executive instructions on the subject, and therefore, this Court does not find any illegality in the matter.

The petition was opposed by the respondent/State on the ground of maintainability, however, the Apex Court in the case of Calcutta Gas Company (Proprietary) Ltd. (supra) has held that Article 226 of the Constitution confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of the rights conferred by Part-III or for any other purpose. It has also been held that in case of some of the writs like habeas corpus or quo warranto, a person who is not the person aggrieved can also prefer a writ petition in the matter. A similar view was expressed by the Apex Court in the other judgments cited by the learned counsel appearing for the petitioner.

The Apex Court in the case of B. Srinivasa Reddy (supra) has held in paragraph 81 as under :

In our opinion, the finding of legal mala fides is unsustainable being based on a misunderstanding of the law and facts. When a competent and experienced officer of an outstanding merit is appointed to a higher post on contract basis after his superannuation from service in larger public interest does not suffer from legal malice at all. The decision of the then Chief Minister, Shri S. M. Krishna, recorded in the file which is also extracted by the High Court at page 69 of SLP Paper Book, Vol. II. In the context of the note put up by the Secretary of the Department, it is again extracted at pages 67 and 68 which clearly bring out the fact that the appointment was made in the interest of the Board and the State at a time when nobody else other than the appellant could have served the interests of the State better. The High Court failed to appreciate the element of urgency involved in making the appointment because of impending negotiations with the World Bank scheduled for 9-2-2004.

The writ petition, in our opinion, was motivated as respondent No. 1 had lodged a false complaint to the Lokayukta against the appellant which was found to be baseless by the Lokayukta (Annexure P-9). A petition praying for a Writ of Quo Warranto being in the nature of public interest litigation, it is not maintainable at the instance of a person who is not unbiased. The second respondent is the President of the first respondent-Union. He has chosen this forum to settle personal scores against his erstwhile superior officer after his retirement, the

proceedings, in our view, is not meant to settle personal scores by an employee of the department. The High Court, in our view, ought to have dismissed the writ petition filed by respondent No. 1 at the threshold.

This Court after taking into account the pleadings of the parties and nature of relief claimed in the petition is of the considered opinion that the objection raised by the respondents in respect of maintainability of the writ petition is not sustainable and the petition filed by the petitioner under Article 226 of the Constitution for issuance of a writ of Quo warranto is maintainable before this Court. The petitioner has not been able to make out a case for interference on merits and therefore, this Court is of the considered opinion that the order dated 27th December, 2007, passed by the State Government does not warrant any interference.

However, this Court is of the firm opinion that the State Government has justified the extension/re-appointment granted to the respondent No. 3 on the post of Chief Engineer for a period of one year. It is not a case where a Government servant is being continued in service by virtue of his initial appointment beyond 60 years of age. It is a case of re-appointment after retirement, and therefore, the rules of Adhiniyam of 1967 and as amended Adhiniyam of 1988 which provides for retirement age to be 60 years are certainly not applicable in the matter. The respondent No. 3 has retired on attaining the age of superannuation as per the provisions of the Adhiniyam of 1967 and as amended in the year 1988 and thereafter the State Government has granted reappointment for a period of one year for the reasons which are certainly in public interest. The State Government has granted re-appointment to a competent and experienced officer in the larger public interest and the same does not suffer from legal malice at all.

Resultantly, petition being devoid of merit and substance is hereby dismissed. No order as to cost.