

(2018) 02 MP CK 0165
In the Madhya Pradesh High Court
Case No : 11170 of 2011

Lokendra Singh Baghel & Anr

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 16-02-2018

Acts Referred:

Citation : (2018) 02 MP CK 0165

Hon'ble Judges : Vandana Kasrekar

Bench : Single Bench

Advocate : P. K. Singh Sanger, J. Pandit, D. K. Tripathi, Amrit Kaur Ruprah

Judgement

1. Both the writ petitions are being decided by this common order, as the similar issue has been involved in both the petitions. However, for the sake of convenience, the facts are taken from W.P.No.11170/2011.
2. The petitioner has filed the present petition challenging the order dated 04/07/2011 passed by respondent No.3 thereby cancelling the appointment of the petitioner on the post of Computer Operator.
3. Brief facts of the case are that respondent No.3 has published an advertisement on 19/10/2009 inviting applications for appointment on three posts of Computer Operator on contract basis. In pursuance to the said advertisement, the petitioner has applied for appointment on the said post and he was called for written test held on 28/02/2010. Thereafter, he was called for interview which was held on 26/03/2010. After written test and interview, the merit list was prepared and he was placed at serial No.1. Respondent No.3 thereafter issued an appointment letter dated 07/06/2011 and the petitioner has given his joining on 09/06/2011. However, to the utter surprising of the petitioner he was served an order dated

04/07/2011 whereby the services of the petitioner were terminated with immediate effect without assigning any reason. The said order has been passed referring W.P.No.4188/2010, in which this Court has passed an interim order stating that appointment if any made shall be provisional and subject to final decision of the writ petition.

4. Learned counsel for the petitioner submits that the said order has been passed without giving any notice or any opportunity of hearing to the petitioner. It has further been submitted that as per Clause 7 of the appointment order, the services of the petitioner could only be terminated with one month advance notice. However, no such notice was ever issued to the petitioner.

5. Respondents have filed their return. In the said return, respondents have stated that a serious fraud was played by the then Chief Medical & Health Officer in making the appointment. It has been submitted that a complaint has been made to the Collector Chhatarpur for making enquiry in respect of appointment on the post of Computer Operator. The Collector has made an enquiry and in the enquiry report has found that against sanctioned posts of Computer Operator which were to be appointed on contract basis, one post was already filled by the then CMHO, Chhatarpur by giving an appointment to one Smt. Rakhi Khare who was working under the Scheme of IDSP and had misrepresented the fact. For these three posts, papers were set by Principal, Maharaja College Chhatarpur and Principal of Polytechnic Nowgaon. These question papers were received by the then CMHO on 09/02/2010 and the CMHO kept these question papers in his unauthorized custody without permission of the Collector. As a result, three candidates secured 60 marks out of 60. It was noted that these three persons, who were appointed are relatives of the employees working in the same department. From the enquiry report it is revealed that examination papers were leaked prior to conduction of the examination and there was no option available to cancel the appointment of the petitioner and other persons who are secured appointment by illegal means. He further submits that it is settled principle of law that appointments obtained through fraud and illegal means are void ab initio and, therefore, no notice is required to be served upon the petitioners inasmuch as the same would be futile exercise.

6. The petitioner has filed the rejoinder to the reply filed by the respondents. The petitioner in his rejoinder has stated that his appointment has been made as per the procedure. They have been appointed after following all due and required proceedings prescribed for appointment on the post of Contract Computer Operator. So far as the contention of respondents that no interview being conducted by the then CMHO and issued the order for appointment only on the basis of written examination and marks secured in the 12th Class examination. The petitioner has further submits that the document Annexure P/4 itself reveals the facts that the petitioner was issued an interview letter to be appeared in an interview being held on 26/03/2010 at 11 am and on having made his appearance therein and found qualified him in three constituents he was selected and, accordingly, he was appointed on the said post.

7. Heard learned counsel for the parties and perused the record. From perusal for the record it reveals that respondent No.3 published an advertisement on 19/10/2009 for filling up 3 posts of Computer Operator. In pursuance to the said advertisement, the petitioner has applied for the said post. After due process of selection, the petitioner was selected and an appointment order was issued in his favour on 07/06/2011 and, accordingly, he joined on 09/06/2011. Thereafter, a complaint was made to the Collector regarding the appointment of the petitioner and other candidates. On the basis of said complaint, an enquiry was conducted by the Collector and the Collector in its report has found that the CMHO while making the appointments has not followed the due process. In view of the report submitted by the Inquiry Officer, respondent No.3 has issued an order dated 04/07/2011 thereby cancelling the appointment of the petitioner. Being aggrieved by that order, the petitioner has filed the present writ petition. Respondents in their return have stated that as the complaint is made to the Collector regarding the appointments. After enquiry the Collector has found that illegality has been committed in making the appointments, therefore, the appointment of these candidates were cancelled. Respondents in their return has stated that as the appointment is illegal and void ab initio and, therefore, no notice or any opportunity of hearing is required to be given to the petitioner. The Division Bench of this Court in the case of Hari Narayan Sakya vs. State of M.P. & others,

2002(3) MPLJ 351, has held that cancellation of appointments on ground of appointment being illegal prior opportunity of hearing was necessary.

8. Thus, in light of the aforesaid judgment passed by the Division Bench of this Court in Hari Narayan Sakya (supra), I deem it proper to allow this

writ petition. The order dated 04/07/2011 is hereby set aside and the respondents are directed to reinstate the petitioner. The petitioner is not

entitled to get the salary on the principle of no work no pay. However, the respondents are at liberty to pass a fresh order after giving an

opportunity of hearing to the petitioner.