
(1996) 01 MP CK 0086
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2179 of 1995

M. Wagi Mohd.

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-01-1996

Acts Referred:

Madhya Pradesh Wakf Rules, 1960 — Rule 17

Citation : (1997) 1 MPLJ 76

Hon'ble Judges : D.P.S. Chouhan, J

Bench : Single Bench

Advocate : Z.N. Shah, for the Appellant; M.L. Choubey, Government Advocate, for the Respondent

Judgement

D.P.S. Chouhan, J.

Heard the learned counsel for the petitioner and the learned counsel for the State, with the consent of the counsel for the parties, the petition is finally disposed of.

The petitioner was a Government servant and retired on attaining the age of superannuation on 31-1-1993 as Joint Director, Finance in the State of Madhya Pradesh. After his retirement, he was appointed as secretary of M. P. Wakf Board vide order dated 20/26-5-1993 and the appointment was for a period of two years.

The learned counsel for the respondents submitted that the period of two years has come to an end on 20-5-1995 and as such, the petition is rendered infructuous and the petitioner has no right to continue the petition, and get the advantage on the basis of the interim order passed by this court. Learned counsel for the respondent submitted that the services of the Secretary, M. P. Wakf Board are governed by the rules known as M. P. Wakf Rules, 1960 published in M. P. Rajpatra, Part IV Gazetted on 11-12-1960 and he relied on Rule 17 of the said Rules, which is extracted below :-

"17. Retirement. - The date of retirement by superannuation of the holder of the post of Secretary shall be date on which he completes the age of sixty :

Provided that when an Officer who retired from Government service is appointed as secretary, the date of retirement by superannuation shall be the date on which he completes the age of sixty-two years."

On the basis of the proviso, the learned counsel for the petitioner submitted that the appointment of the petitioner is under the Rules which are statutory and such appointment has to be governed by terms and conditions of the Rules.

The proviso to Rule 17 of the said Rules clearly provides that when an officer of the Government on his retirement from Government service, is appointed as Secretary, the date of retirement by superannuation shall be the date on which he completes the age of sixty-two years.

Learned State counsel submitted that the proviso to Rule 17 of the said Rules would not help the petitioner as the appointment of the petitioner was for a fixed period of two years, and after the expiry of the period of two years, for which he was appointed, he has lost his right to continue on the post of the secretary of the Wakf Board. Learned State counsel further submitted that the petitioner accepted the appointment which was only for a period of two years and now he is estopped from taking shelter or benefit under the said proviso.

The appointment of any person on the post of Secretary of Wakf Board under the Rules, could be by two process, one, out of the persons who have not been superannuated elsewhere or who have not retired from any Government service; and the other, out of the persons who have been retired from Government service. The persons who have not retired from the service are appointed directly as Secretary of the M. P. Wakf Board. Their age of superannuation as provided in the said Rule is 60 years but those who have retired from the Government service, their age of retirement by superannuation shall be 62 years i.e. the date on which he completes the age of sixty-two years.

The learned counsel for the petitioner submitted that though the appointment order contains the period of two years but the appointment of the petitioner was not either officiating basis or on ad hoc basis. Para 2 of the appointment order makes it clear that anterior to the appointment of the petitioner, one Shri Yusuf Ali was working as the officiating Secretary but on the appointment of the petitioner he was to be relieved and as such Shri Yusuf Ali was relieved from the office of the Secretary, who was working in the officiating capacity, on taking over by the petitioner as Secretary of the Wakf Board. Thus, the appointment of the petitioner was not on ad hoc basis or on the basis till the regular Secretary is appointed.

The Rule is provided for the appointment of the regular Secretary and the sources of appointment are two, as has been stated earlier. The petitioner was appointed from the source of retired category of the Government servants and as

such the order of appointment which contains the condition regarding the period of two years is contrary to the rules and cannot override the provisions of the Rules.

This submission has got substance. The petitioner was not appointed either in the officiating capacity or in the ad hoc capacity. His appointment was regular and the source of appointment was the aforesaid rules and the rules provided that such persons who have retired from Government service, if so appointed, shall continue on the post till they complete the age of 62 years.

The other submission advanced by the State counsel regarding estoppel has also no substance as the acceptance of the appointment by the petitioner would not affect the legal position and would not come in his way as estoppel, as it is the settled position of law that there can be no estoppel against the law.

The petitioner retired as Government servant on attaining the age of superannuation on 31-1-1993 and he will complete the age of 62 years on 31-1-1997.

In view of the above, the petitioner is entitled to continue, under the Rules, upto the date he completes the age of 62 years.

The petition is accordingly finally disposed of. No order as to costs.