(1985) 04 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. M.P. 259 of 1982

Madan Mohan Gupta and others APPELLANT

Vs

State of Madhya Pradesh and others RESPONDENT

Date of Decision : 19-04-1985

Acts Referred:
Constitution of India, 1950 — Article 309, 320

Citation : (1985) MPLJ 533

Hon'ble Judges : V.D. Gyani, J

Bench : Single Bench

Advocate : G.M. Chafekar with S.L. Bagdi and S.S. Samvatsar, for the Appellant; Samrathmal Jain, Dy. G.A. with S. Bhargav, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, J.

This petition by as many as 15 petitioners, who are Sales Tax Inspectors, is heard along with Misc. Petition No. 503 of 1982 (Devdutta v. Chief Secretary and others) wherein another bunch of 10 petitioners has challenged the seniority list, the confirmation order and have also prayed for a direction from this Court, to respondents 1, 2, 3 to determine their seniority on the basis of the instructions contained in Annexures F-I to F-3. As determination of similar questions is involved in both petitions their subject matter being essentially same they are taken-up together and disposed of by a common order.

Petitioners in this petition rely on the service rules known as Madhya Pradesh Sales Tax Subordinate Class II, Executive Service Recruitment Rules, 1966 (hereinafter referred to as ''the Recruitment Rules'') which have been framed under Article 309 of the Constitution of India and have come into force from 14-4-1967. Rule 7 of the Recruitment Rules provides for method of recruitment to the service after commencement of the said Rules. The rule is reproduced hereunder for ready reference:

Rule 7(1) (a)

Methods of Recruitment:

(1) Recruitment to the service, after the commencement of these rules, shall be by the following methods, viz:--

(a) Sales Tax Inspectors.

By a competitive examination, provided that recruitment to the post of Sales Tax Inspector shall be by competitive examination. The said Rules 7 and 8 read as under:--

"7. Methods of Recruitment:

(1) Recruitment to the service, after the commencement of these rules, shall be by the following methods, viz:--

(a) Sales Tax Inspectors.

By a competitive examination.

(b) Assistant Sales Tax Officer.

By promotion of persons holding the post indicated in column 2 of the Schedule IV.

(2) Subject to the provisions of these rules, the method or methods of recruitment to be adopted for the purpose of filing any particular vacancy or vacancies in the cadre of Sales Tax Inspector as may be required to be filled during any particular period of recruitment; and the number of persons to be recruited by each method, shall be determined on each occasion by the Sales Tax Commissioner in consultation with the commission.

(3) Notwithstanding anything contained in Sub-rule (1), if in the opinion of the Government the exigencies of the service so require, the Government may, after consulting the Commissioner adopt such method of recruitment of Sales Tax Inspectors other than those specified in the said sub-rule, as it may, by order issued in this behalf, prescribe.

The petitioners'' contention is that even prior to the coming into force, of these rules they were holding the posts of Sales Tax Inspectors on being selected by the State Public Service Commission before being appointed as such. They were confirmed in service on and from the date mentioned against their names in Annexure A, which is reproduced hereunder:--

Annexure ?A?

Sr. No.

Name

Date of joining the Department

Date of confirmation.

?1.

ShriMadanmohan Gupta

7-12-1963

1-7-1967

,, Sureshchandra D. Joshi

20-11-1963

2-4-1966

? PrakashAnantPurohit

21-11-1963

3-4-1968

? Dhillansingh

22-11-1963

4-4-1968

,, Sitaram Gupta

5-12-1963

1-10-1968

,, Gopaldas Sharma

21-11-1963

2-10-1968

,, KrishnakumarTiwari

20-11-1963

3-10-1968

? SatyabhushanDixit

2-12-1963

4-10-1968

,, RushiMunisinh

16-5-1964

8-10-1968

? RamnarayanShrivastav

5-12-1965

1-4-1972

? RajaramMohite

20 11-1965

1-4-1972

,, MaheshchandKatarpanch

21-12-1965

1-4-1972

? HarbhajansinghMalhctra

29-11-1965

1-4-1972

? VishwanathBhardwaj

18-11-1965

1-4-1972

,, UmakantVarma

9-2-1966

1-4-1972.?

It will thus be seen that the last, in the list of these petitioners was appointed on 9-2-1966 i. e. more than a year before the rules came into force or 14-4-1967.

The respondents prior to their coming to the Sales Tax Department were working as Block Level Extention Officers in the Panchayat and Social Welfare Department.

The petitioners have challenged the seniority accorded to the respondents 4 to 88 on the ground that they (the petitioners) were confirmed long before these respondents were confirmed in service. Their grievance is that the confirmation of these respondents made retrospective from 31-3-1967 has adversely affected their seniority as the respondents 4 to 88 have been placed above them although they (the respondents 4 to 88) were neither confirmed nor appointed to the service before the petitioners. The respondent-State while admitting the rules has contended that so for as the seniority of respondents 4 to 88 is concerned, these rules have no application (torn) their case for the reason that the Governor of Madhya Pradesh in'' exercise of his powers under Article 320 of the Constitution had limited the function of the Public Service Commission under the Madhya Pradesh Public Service Commission (Limitation of Functions) Regulations, 1957 (hereinafter referred to as ''the Regulations''). It is also submitted that the absorption of respondents 4 to 88 had become necessary as they were rendered surplus in their parent departments. The respondent-State does not dispute the fact that the petitioners were holding the posts of Sales Tax Inspectors prior to the coming into force of the Recruitment Rules. It is, however, contended that in view of the notification issued by the Governor of M.P., Rule 5 of the Rules has no application so far as the respondent Nos. 4 to 88 are concerned. Rule 5 of the said Rules is reproduced hereunder for ready reference.

Rule 5 of the said Rules deals with Constitution of Services and lays down as under:--

Rule 5: Constitution of Services:

The service shall consist of the following persons namely:--

(i) Persons who at the commencement of these rules, are holding substantively posts specified in the Schedule 1 to these rules."

The post of Sales Tax Inspectors is specified in the Schedule 1, the petitioners were holding the same post prior to the coming into force of the above rules as already stated above.

It is not in dispute that the respondents 4 to 88 were absorbed in the Sales Tax Department between 13-2-1967 to 29-9-1970 although the respondent-State adds that they were in Government service in other Governmental departments and some of them right from the year 1948, long before the petitioners were appointed as Sales Tax Inspectors. Annexure-B is the gradation list which shows the date on which the respondents 4 to 88 were appointed to the posts of Sales Tax Inspectors. Since their appointment is later in point of time, the petitioners contend that they cannot be accorded seniority over them (the petitioner). As per the gradation list as on 1-4-1979 prepared and published by the respondent-State in 1981 and filed as Annexure D-I to the petition the present bunch of petitioner is indisputably senior to the respondents 4 to 88. The respondent-State confirmed all the respondents 4 to 88 by order dated 15-2-1980 making the confirmation effective from 31-3-1967. The petitioner''s grudge is that except for respondents Nos. 27, 47, 48, 49, 51, 65, 66, 68, 70, 75, 76, 79, 87 and 88 the other respondents were not even appointed as Sales Tax Inspectors prior to 31-3-1967 still, however, they are confirmed from 31-3-1967 vide order dated 15-2-1980 filed as Annex. C. This factual position has not been controverted by any of the respondents 1 to 3.

Some time in December 1981 another gradation list was published by the respondents 1 to 3 and the petitioners were shown as juniors to the respondents 4 to 88 in this list which is filed as Annexure B-2. The petitioners assail this list on the ground that it was prepared without affording any opportunity of being heard and their seniority which has been altered in a manner violative of the principles of natural justice. As against this contention, the respondents 1 to 3 submit that the gradation list Annexure B reflects the correct position, as the earlier list as on 1-4-1979 published in 1981 was a provision list and the case of confirmation of respondents 4 to 88 was not decided till then. Therefore, they were shown to be juniors to the petitioners.

On these facts and submissions, the short point that arises for consideration is whether in a given cadre confirmation in service can be made even before a person has joined the cadre although he might have been in service of some other governmental departments.

Shri Chafekar, learned counsel for the petitioners contended that once statutory rules under Article 309 of the Constitution have been framed no departure therefrom is permissible under law and the executive instructions even if issued cannot, in law, have an overriding effect over the statutory rules so framed. The respondents 1 to 3 on the other hand contend that the retrospective seniority accorded to respondents 4 to 88 is valid, legal and proper.

For an answer to the question posed earlier, reference to Rule 7 of the Recruitment Rules and Rule 5 of the said rules is necessary. Once these rules came into operation from 14-4-1967 any departure therefrom has got to be justified by the respondents 1 to 3 on some legal and valid ground. Merely saying that retrospective confirmation accorded to respondents 4 to 88 was valid, legal and proper is not enough. The Recruitment Rules are silent on the question of seniority by the Madhya Pradesh Civil Service (General Conditions of Service) Rules, 1966 provided for determination of seniority. It is neither contended nor could it be, that the petitioners are not civil servants. In view of Rule 12 (c) of the Civil Service Rules it is clear that as the petitioners were holding the posts of Sales Tax Inspectors prior to the respondents 4 to 88 in the cadre, these respondents cannot be placed above the petitioners in the gradation list. The respondents 4 to 88 were confirmed by order dated 15-2-1980 while the petitioners were undisputably confirmed in service long before 15-2-1980. The respondents have been confirmed from a retrospective date i. e. 31-3-1967 by order dated 15-2-1980 and this action of respondents 1 to 3 cannot be upheld in law as it adversely affects the rights of the petitioners who have been made juniors to respondents 4 to 88 by one stroke. Needless to add that even administrative actions have got to be informed with reason and fairness. It is inconceivable that the action on the part of respondents 1 to 3 in confirming the respondents 4 to 88 from 31-3-1967 who had not even joined the cadre of Sales Tax Inspectors. How could there be confirmation of their service in such a cadre and how could such an action stand the test of justness, fairness and reasonability.

The only submission which now remains to be considered is the notification issued by the Governor of Madhya Pradesh in exercise of his powers under Article 320 of the Constitution. In this connection it is pertinent to note that the notification relied upon has not been placed on record by the respondents and in absence of the notification such a contention as a matter of fact should not be allowed to be raised and entertained. However, on a perusal of Regulations 3, 4 and 5 of the M.P. Public Service Commission (Limitation of Functions)

Regulations, 1957, it is clear that the necessity of consultation with the Public Service Commission is dispensed with only in cases of emergency where the Commission cannot be consulted without detriment of public service. Regulation 4 enumerates the matters in which consultation with the Commission can be dispensed with subject, of course, to the fulfilment of other conditions. There are as many as 10 items falling under Regulation 4 and none of them even remotely touch the question of determination of seniority in service. It would be worthwhile to reproduce the opinion of the Public Service Commission as extracted from Annexure D to the petition.

The Commission further pointed out that under the Madhya Pradesh Public Service Commission (Limitation of Functions) Regulations recruitment to the post of Sales Tax Inspector is within the purview of the Commission and that consultation with them was necessary before making any appointment which was not done and, therefore, the order issued by Government to appoint Ex. Block Development Officers and Ex. Block Level Extension Officers as Sales Tax Inspectors and deny the vacancies to the candidates recommended for appointment on the basis of the Competitive Examination was contrary to the above rules and Regulations. The Commission also advised Government to withdraw the directions issued in the memorandum referred to above so that the orders of appointment as Sales Tax Inspector in respect of the 40 candidates recommended by them could be issued. Government have informed the Commission that the matter was under their consideration and that the commission will be informed of the decision taken by them in due course.

In this state of affairs, therefore, the submission, has got to be repelled.

As a result of the foregoing discussion this petition deserves to be allowed and is accordingly allowed. The order No. III/146 dated 2-1980 filed as Annexure C according retrospective seniority to the respondents 4 to 88 is arbitrary and illegal and is liable to be quashed and is accordingly quashed.

As regards the petitioners in Misc. Petition No. 503 /1982 are concerned are those who were rendered surplus in the Panchayat and Social Welfare Department, and Department of Industries and had to be absorbed in the Sales Tax Department. It was around 1965 that about 50 Block Level Extension Officers were rendered surplus. The petitioners have based their claim for seniority mainly on the memoranda dated 22nd May, 1967, (Annexure F-l), 8th February 1967 (Annexure F-2) and 19th July 1973 (Annexure F-3). These are instructions issued by the General Administration Department of the respondent No. 1 and as is evident all these instructions have been issued after the Recruitment Rules came into force.

It is now well-established that executive instructions cannot have an overriding effect on the statutory rules and in this case rules framed under Article 309 of the Constitution have been framed. The petitioners feel aggrieved by the order No. S.T. III/146 dated 15-2-1980. The order reads as follows:

It does not stand to reason as to how an imaginary date of confirmation in service and imaginary to such an extent that even those who were not in service at all on the imaginary date of confirmation in service, on what rational basis such a date of confirmation in service be given to a civil servant. The return filed by the respondent-State in this case is full of inconsistencies, incongruities and even contradictions when compared with the return filed in the connected petition. What is to be regretted most is the fact that the incharge officer of both the cases is the same person. In Misc. Petition No. 259 /1982 the M.P. Public Service Commission (Limitation of Functions) Regulations, 1957 are called in aid to justify their action while in the return to this petition it is stated that:

In the letter it was further stated that the recruitment rules, 1966 came into force with effect from 22-12-1967, and that as contemplated in Rule 7 (3) thereof the decision already taken in this department Memo No. 928/VI ST dated 29-3-1967 (Annexure R-VII) referred to needs to be validated now with retrospective effect and the concurrence of the Public Service Commission was, therefore, sought to the appointment of the surplus staff as Sales Tax Inspectors already made or proposed to be made in future. As the matter has become rather old it has not been possible to ascertain the reply of the Public Service Commission in this regard. However, efforts are being continued to find out the reply of the Commission and the same will be filed before this Hon''ble Court as soon as it becomes available.

Seniority in service is a matter of serious concern for any Government servant and it has got to be assigned or accorded on the basis of rules, and in absence thereof on some rational basis.

The petitioners who also claim to represent many others similarly placed have filed Annexure D order dated 23 January 1967, which related to the personnel absorbed from the Panchayat and Social Welfare Department. It has been made clear in the order itself that the names of this list are not arranged according to any order of seniority. Therefore, no seniority can be claimed on the basis of this order. Similarly Annexure E is merely a letter of intimation to the persons who were absorbed from the Department of Industries calling upon them to appear for an interview. Thus these documents do not provide any basis for determination of their seniority. It is pertinent to note that Annexure-D, the order also does not refer as to how the seniority would be determined in case of appointment to the post of Sales Tax Inspector.

It is contended by the petitioners that Annexure F-3 is re-statement of the memoranda F-I and F-2 which govern their seniority. As has been held above these instructions cannot have an overriding effect on the statutory rules. No doubt Annexure F-3 provides for fixation of seniority on the basis of completed years of service but when the post itself is abolished and the person is rendered surplus necessitating absorption in some other cadre, such absorbed person cannot have seniority over those who were already in service in the cadre of Sales Tax Inspectors prior to the absorption.

It must be remembered that the seniority or Gradation List is for a particular cadre or class of service; it is not and it cannot be of all the civil servants serving the State Government.

The petitioners have contended that the policy was to give benefit of the service already rendered but this benefit cannot be allowed to act as a prejudice and detriment of those who were already serving in the department as Inspectors. It is also contended that seniority has always been understood to mean seniority from the date of entry into the Government service. This contention cannot be accepted for the simple reason that if pursued to its logical end it would result in absurdity. There are many Government departments having no coherence in connection in their respective areas of functions. The Gradation List or seniority list is essentially for a given cadre it cannot be list of all Government servants serving the various departments of State.

The petitioners have made a grievance that even after lapse of 13 years the respondent No. 3 has prepared seniority list by reference to an imaginary date of confirmation. This grievance cannot be lightly brushed aside. The date of confirmation in service has got to be based on rational basis in accordance with rules. It cannot be allowed to remain a fortuitous circumstance in the service career of a Government servant.

The petition so far as it relates to the quashing of the order dated 15-2-1980 (Annexure-C) is concerned deserves to be allowed and is accordingly allowed. The order dated 15-2-1980 (Annexure-C in both these petitions) has already been quashed in the connected petition and meets with the same fate in this as well.

However, it is made clear that the memoranda referred to above filed as Annexures F-l to F-3, cannot be allowed to have an overriding effect over the statutory rules and the petitioners cannot claim their seniority to be based on these instructions. The respondents 1 to 3 owe a duty to the petitioners to accord them seniority in accordance with rules. This petition is, therefore, partly allowed to the extent indicated above and the respondents 1 to 3 are directed to fix the petitioners'' seniority in accordance with the Recruitment Rules and General Conditions of Service Rules.

These two petitions have been disposed of by common Order for the reasons already stated. The respondents 1 to 3 shall bear the costs of the petitioners. Counsel''s fee Rs. 500 in M.P. No. 259/1982. The amount of security deposit be refunded to the petitioners after verification.