
(2013) 06 MP CK 0054

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1451 of 2003

Madhuri Sharan Sharma

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 18-06-2013

Acts Referred:

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 2(xiii), 36, 91

Citation : (2013) 06 MP CK 0054

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : A.K. Nirankari, for the Appellant; Sangeeta Pachauri, Dy. Govt. Advocate for Respondents Nos. 1, 2, 5, 6, 8 and 9, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—The petitioner was appointed as Guruji by Rajya Shiksha Kendra vide Annexure P/9 dated 07.12.2002. This order of appointment was called in question by respondent No. 10 by filing appeal u/s 91 of Panchayat Raj Avm Gram Swaraj Adhiniyam, 1993 before the Collector. The Collector heard the matter and decided it by impugned order (Annexure P/1) dated 28.04.2003. The Collector opined that petitioner's appointment runs contrary to the circular of the State Government dated 14.07.2000 (Annexure P/18) and, therefore, he allowed the appeal and set aside the appointment of the petitioner. The State Government by issuing circular dated 14.07.2000 directed that if the third child born after 26.01.2001, the parents shall not be entitled to get the benefits decided to be extended by the State Government. It is contended that the appeal u/s 91 of Panchayat Raj Adhiniyam (Annexure P/16) itself was not tenable before the Collector.

2. This Court considering the aforesaid stayed operation of the impugned order on 16.05.2003.

3. Smt. Sangeet Pachauri, learned Dy. Govt. Advocate, fairly submits that

Collector had exercised the power by entertaining the appeal preferred under Panchayat Raj Adhiniyam.

4. Thus, the basic question is whether the Collector had jurisdiction to entertain an appeal under Panchayat Raj Adhiniyam against the order of appointment on the post of Guruji?

5. Under Panchayat Raj Adhiniyam powers can be exercised to declare a post as vacant u/s 36 of the Adhiniyam. However, on bare perusal of the heading of the said provision shows that it deals with disqualification for being office bearer of the Panchayat. "Office bearer" is defined in section 2(xiii) of the Adhiniyam, which reads as under:

(xiii) "Office bearer" means a panch, sarpanch or up sarpanch of a gram panchayat, a member, President or vice-president of a Janpad Panchayat or a member, or president or vice-president of Zila Panchayat, as the case may be.

The definition of office bearer makes it crystal clear that Guruji, by no stretch of imagination, can be said to be office bearer of the Panchayat. Thus, it is crystal clear that section 36 has no application in the facts and circumstances of this case. No other provisions is brought to the notice of this Court which shows that Collector otherwise had jurisdiction to entertain the appeal and pass the impugned order. Admittedly, Collector has entertained the appeal preferred under Panchayat Raj Adhiniyam and, therefore, the only question to be dealt with by this Court is whether it was open for the Collector to entertain the said appeal. In my opinion, the Collector has erred in entertaining the appeal against the appointment on the post of Guruji. Appointment was not made by Panchayat and it was made by the Zila Shiksha Kendra.

6. For the reasons stated above, this Court is of the considered opinion that the Collector had acted beyond authority of law and beyond jurisdiction in entertaining the appeal and further erred in setting aside the appointment of the petitioner under the provisions of Panchayat Raj Adhiniyam. Resultantly, the impugned order Annexure P/1 is set aside. Petition is allowed. No costs.