
(2014) 02 MP CK 0083

In the Madhya Pradesh High Court

Case No : Review Petition No. 17 of 2014

Madhyanchal Gramin Bank

APPELLANT

Vs

Laxman Lal Ojha

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Citation : (2014) 02 MP CK 0083

Hon'ble Judges : Sujoy Paul, J;Sheel Nagu, J

Bench : Division Bench

Advocate : V.S. Shroti, Mr. Raju Sharma and Mr. Vivek Johri, for the Appellant; Harish Dixit and Shri Sunil Jain, for the Respondent

Final Decision : Disposed Off

Judgement

1. On the joint request of the parties, these similar review petitions are analogously heard and decided by this common order. These review petitions are arising out of orders passed in W.A. No. 707/2010 and other connected matters, decided on 18.10.2013. The writ appellate court has affirmed the order passed in W.P. No. 2025/08 and other connected matters.

2. Shri V.S. Shroti, learned senior counsel raised two fold submissions. Firstly, it is contended that the direction passed by the writ court in para 16(3) runs contrary to the statutory rules. Secondly, it is contended that the direction of writ court runs contrary to the settled legal position and judgments of Supreme Court. To elaborate, it is contended that the promotion in question is governed by Statutory Rules. The constitutionality of the said rules was not called in question before the writ court. As per those rules, the marks obtained by the candidates in the written test need to be taken into account for the purpose of selection. The direction given by the writ court for not taking into account said marks is contrary to the rules. He further submits that although this point was not raised while arguing the writ appeal, since it goes to the root of the matter and amounts to an error apparent on the face of the record, this can be raised in review petition. In support of this contention, he relied on various judgments.

3. Per contra, Shri Harish Dixit and Shri Sunil Jain submit that before the writ appellate court, the arguments were confined to the fixation of percentage of marks and, therefore, in review petition the petitioners cannot be permitted to raise a new point.

4. Learned counsel for the employees supported the order passed in writ petition and writ appeal.

5. We have bestowed our anxious consideration on the rival contentions of the parties and perused the record.

6. A perusal of the record shows that in the pleadings of writ appeal the present petitioners have raised the point about validity of the direction by the writ court (para 5). The basic question is, whether in review petition in absence of pressing the said points in W.A., this court can examine the said aspect?

7. In *Molu Ram Amar Singh Vs. Saroj Kumari*, , it is opined that even if the point was not argued, the error pointed out seems to be quite apparent on the face of the record. Thus, in that case the review was allowed despite the fact that the point was not raised while arguing the main case.

8. A Division Bench of this Court in *State of Madhya Pradesh and another Vs. Jaswantpuri and others*, opined that review is entertainable because of mistakes of parties, their attorneys as well as for mistakes of court. It is further opined that the court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice.

9. In *Y. Venkannachowdary Vs. The Special Deputy Collector, Land Acquisition (General), Hyderabad District and Others*, , Hyderabad District and others), the High Court opined that if certain provision was not brought to the notice of the court when appeal was argued, owing to the mistake of counsel, it may amount to error apparent on the face of the record. The Apex Court in *Rajender Singh Vs. Lt. Governor, Andaman and Nicobar Islands and Others*, opined that the scope of review is very wide.

10. In view of aforesaid judgments, it is clear that review can be entertained even if the point is not argued before the court provided it amounts to error apparent on the face of the record. In view of Promotion Rules, it is necessary to examine the contention of the employer/petitioner whether the direction of Writ Court is in consonance with the Promotion Rules.

11. Thus, we deem it proper in order to do full and effective justice to review and recall the order passed in WA No. 707/2010 and other connected matters decided on 18.10.2013 and rehear the parties on merits. Learned counsel for the parties stated that they will argue the matter on 7.3.2014.

12. Resultantly, the orders passed in WA No. 707/2010 and other connected matter decided on 18.10.2013 are recalled and reviewed. Writ Appeals are restored to its original number.

13. These Review Petitions are accordingly disposed of.

14. A copy of this order be kept in the record of Writ Appeals. With the consent, Registry is directed to list the Writ Appeals on 7.3.2014 for further consideration/ final disposal.