

(2018) 07 MP CK 0104
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8620 Of 2010

Mahesh Prasad Tiwari

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 12-07-2018

Acts Referred:

Citation : (2018) 07 MP CK 0104

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : Vineet Kumar Dubey, N.S. Chouhan

Final Decision : Partly Allowed

Judgement

The petitioner has filed the present petition praying for a direction to the respondents to declare the post of Auditor as District Auditor and grant him

the pay scale of Rs. 1400-2340 and further respondents be directed to consider the case of the petitioner for promotion from the post of Auditor to the

post of Assistant Statistical Officer or Assistant Project Officer or Project Officer.

2. The petitioner was initially appointed in the Panchayat and Social Welfare Department on 01.09.1979. He was promoted to the post of Lower

Division Clerk by an order dated 14.06.1982. He was further promoted to the post of Upper Division Clerk on 27.06.1985. To implement the scheme

and programmes of Women and Child Welfare, the State Government has created the individual Directorate in the department of Panchayat Social

and Village Department. Consequently, a separate Directorate was created on 15th August, 1986 namely Women and Child Welfare Department. All

the schemes of Panchayat and Social Welfare Department with regard to the Women and Child Welfare Department was transferred to this

Directorate. The entire staff including the petitioner, looking after the Women and Child Welfare Department was also transferred to this new

Directorate. The terms and conditions of the employees of Panchayat and Social Welfare Department did not change with the creation of the new

Directorate. The services of the petitioner was governed by the Madhya Pradesh Panchayat and Social Welfare Class III (Executive) Service

Recruitment Rules 1967 (hereinafter referred to as the 'Rules of 1967'). Under the 1967 Rules, the post of Sub-Auditor and Auditor was an Executive

post. To appoint on the post of Auditor, one had to pass the departmental examination. After formation of the new Directorate, the employees

continued to be governed by 1967 Rules. There was one post of Auditor in the District, therefore, the post of Auditor was also known as District

Auditor in the Panchayat and Social Welfare Department. The promotional channel has also been prescribed under the Rules of 1967 and Upper

Division Clerk was entitled to be promoted to the next higher post. The petitioner has applied to the department for appointment on the post of Auditor

as he fulfilled all the eligibility test for promotion on the said post. Consequently, the petitioner was promoted to the post of Auditor by an order dated

25.04.1987. In July 1987, the petitioner became entitled to get the increments, but the same was not granted to the petitioner. It was informed to the

petitioner after completion of the departmental examination, he would be entitled to get the increments.

Consequently, the petitioner passed all the departmental examinations as prescribed under the Panchayat and Social Welfare Department in the year

1989 and thereafter he was given the increments. In the year 1987, the Panchayat & Rural Development Department published a Draft Rules namely

Madhya Pradesh Women and Child Development Department (Class III Executive) Recruitment Rules, 1987 (hereinafter referred to as the 'Draft

Rules'). In this Draft Rules, the post of Auditor was named as District Auditor and it was included as an Executive post. The promotional channel was

also provided and Auditor was entitled to be promoted to the post of Assistant Statistical Officer and so on. Thus, by these Draft Rules also all the

Auditors in all the Districts of Madhya Pradesh continued to be kept under the hope that the Auditors would be an Executive post and it would not be

under the Ministerial Cadre.

3. In the year 1988-89, the department has called the employees of other department on deputation for promotion to the various posts. The bio-data of the petitioner was also called and the same was submitted in the prescribed form by the department on 07.05.1988. Therefore, ACRs of the Auditors have also been called for the purpose of promotion to the higher post. Thereafter, seniority list was published by the Women and Child Development Directorate of Class-III (Ministerial) Employees on 30.03.1990 showing the seniority as on 01.03.1990. The name of the petitioner was not included it because he did not belong to the Ministerial Cadre. No Auditor was included in this gradation list. The petitioner, therefore, submitted an objection to the respondents on 05.04.1990. During the pendency of the said petition, respondent Nos. 5 and 6 were promoted to the post of Superintendent vide order dated 22.08.2000 and 05.10.2006 respectively, however, the name of the petitioner was not considered for promotion. The Women and Child Welfare Department further published a promotion list on 22.08.1990, in which the name of respondents No. 5 and 6 who were juniors to the petitioner have been shown. Respondent Nos. 5 and 6 were also in the Panchayat and Rural Development Department and was junior to the petitioner. The Panchayat and Social Welfare Department issued an order dated 21.01.1987 showing the District Auditors and notification dated 13.07.1989 showing Sub-Auditors as forming part of Executive Cadre of Class-III employees. Thus, it is clear that the petitioner is holding the post of Auditor i.e. of Executive Cadre. The Association of the Auditors thereafter submitted a representation to the department on 04.10.1990 demanded that the post of Auditors be also declared as forming part of Executive Cadre and they should be given the pay scale of Rs. 1400-2340 and further demanded that the promotional channel be also provided, but nothing has been done in the matter. The petitioner has also submitted a representation. Thereafter, on 28.12.1993, the Collector Jabalpur (Women and Child Welfare Department) published another gradation list of Class-III (Ministerial Employees) and in this list the name of the petitioner has also not been included. Thus, the petitioner came to know that the respondents have included the post of Auditor in the Ministerial Employees. In the said gradation list the name of the petitioner is shown below to respondents No. 5 and 6. The petitioner, therefore, again submitted a representation to the respondents. The State of Madhya Pradesh has again framed a Rules known as Madhya Pradesh

Women and Child Development Class-III (Ministerial) Service Rules, 1992. These Rules have been published in the Madhya Pradesh Raj Patra on

14.07.1993. In these Rules, the post of Auditor has also included in the Ministerial Staff. Being aggrieved by this, the petitioner has filed the present petition.

Â 4. Learned counsel for the petitioner submits that the entire action of the respondents in not including the post of Auditor in the Executive Cadre as

well as not promoted the petitioner on the same post is illegal and arbitrary. He submits that other similarly situated Auditors in the department, the

post of Auditors would be an Executive Post and would also form a separate cadre providing promotion channel separately to the Executive posts. In

the Panchayat and Social Welfare Department also, the post of Auditors was an Executive Post. The petitioner continued to work as an Auditor in the

Women and Child Development Department, therefore, the respondents are now estopped under the law of estoppel treating the post of Auditor as

Ministerial one. In other department also, the post of Auditor is an Executive post, therefore, the action of the respondents in including the post of

Auditor is bad in law and, therefore, the Gradation list dated 28.12.1993 be quashed.

Â 5. The respondents have filed their reply and in the said reply, the respondents have stated that the State Government has taken a decision to

transfer the scheme relating to Women and Children being carried out from different Department and a new Department was proposed to be set up

with Women and Child Development which came into existence in the year 1986. By an order dated 06.11.1986, the Deputy Director, Panchayat &

Social Welfare Department, Jabalpur had issued an order dated 06.11.1986 whereby certain posts under the Panchayat & Social Welfare Department

were transferred and the list of the employees were also published. In the said list, the name of the petitioner has also been shown as UDC. At the

relevant time, on the establishment of New Women & Child Development Department, an order was issued by the Secretary Panchayat and Rural

Development Department dated 21.08.1986 whereby posts were created at the Directorate level and the post of UDC and Auditor were kept in one

pay Scale i.e. 575-845. Thereafter, by way of interim arrangement, as per the direction contained in letter dated 21.08.1986, an order was issued on

25.04.1987 by which the petitioner was posted on the post of Auditor in the pay scale of Rs. 575-925. This was not promotion on the post of Auditor,

this was posting by the Collector as per the direction for interim measure issued by the then Panchayat and Rural Development Department on

21.08.1986. There were no recruitment rules at the relevant time and the pay scale of the Auditor and UDC were same. The respondents have

further submitted that the Draft Rules of 1987 on which the petitioner is relying they never been brought into force and, therefore, the same cannot be

relied on by the petitioner. The Rule 1993 were came into force on 15.04.1993. Till the publication of the said Rules, the post of Auditor was not made

clear. The petitioner was not promoted to the post of Auditor, therefore, he was posted by Collector as Auditor in the Pay Scale of Rs. 575845. After

enforcement of the Recruitment Rules of 1992, the gradation list was published showing the position as on 01.04.1993 of the Ministerial Staff and in

the said list the name of the petitioner was shown at Sr. No. 6. In the meantime, the gradation list of Ministerial Staff was also published in the year

1990 by the Collector, but since the Rules were not framed, therefore, the name of the petitioner was not shown in the list of Ministerial Staff.

Therefore, two persons who were junior to him were given promotion to the post of Office Assistant. Thereafter, by an order dated 20.04.1995, the

petitioner was promoted to the post of Office Assistant. The petitioner did not accept the said promotion order and approached to the Tribunal by filing

an original application. By way of an interim order dated 15.05.1995, this Court has directed that the petitioner was continued to work at the present

post. The respondents have further submits that the post of Auditor should be declared in Executive Cadre as it is within the Panchayat and Rural

Development Department. The petitioner was not working as Auditor in the Panchayat Department. He was working as UDC when his services

were absorbed. The order of the Collector is not an order of promotion and in the recruitment also there is no channel of promotion to the post of

Auditor from the post of UDC. In view of the aforesaid, the petitioner was not entitled to get any relief in the said writ petition. Accordingly, the

petition is deserved to be dismissed.

6. Heard learned counsel for the parties and perused the record.

7. From perusal of the record, it reveals that the petitioner was appointed as LDC

in the year 1982 under the Panchayat and Social Welfare

Department. In the year 1985 he was promoted as UDC in the same department. The State Government has taken a decision to transfer the schemes

relating to Women and Children being carried out from different Department to a new Department was proposed to be set up with the Women &

Child Development. This came into existence in the year 1986. Thereafter, Deputy Director, Panchayat and Social Welfare Department, Jabalpur had

issued an order dated 06.11.1986 where by certain posts under the Department were transferred to the Women and Child Development Department

and list of employees were also published. In the said list, the name of the petitioner has been shown as UDC. Thereafter, vide order dated 21.08.1986

certain posts were created at the Directorate level and the posts of UDC and Auditor were kept in one pay scale i.e. 575-845. Thereafter, vide order

dated 25.04.1987, the petitioner was posted on the post of Auditor in the District Women and Child Development Department, Jabalpur by Selection

Committee. The respondents have stated that the order dated 25.04.1987 is not a promotion order of the petitioner but it is a posting order of the

petitioner on the post of Auditor. This contention of learned counsel for the respondents cannot be accepted because from perusal of the order

Annexure-P/2, It is clear that the petitioner has been posted on the post of Auditor as per the decision taken by the selection committee. Further from

the order dated 20.04.1995 it is also clear that, the petitioner was promoted on the post of Auditor.

8. So far as, recruitment rules are concerned, at the relevant time the pay scale of Auditor and UDC were same and the rules of 1987 on which the

petitioner is relying they are only the Draft Rules and never been brought into force. The respondents have admitted in the written that the post of

Auditor was not made clear till the publication of the Rules and, therefore, the petitioner was not promoted to the post of Auditor. In the Gradation list

on 01.04.1993 which is published by the respondents after coming into force of the recruitment Rules of 1992, the name of the petitioner was shown at

Sr. No. 6 in the Ministerial Staff. Thereafter, the list Ministerial Staff was also published in the 1990, but as the Rules were not framed in the year

1990, therefore, the name of the petitioner was not shown in the list of Ministerial Staff and, therefore, two persons who were juniors to the petitioner

have been promoted to the post of Office Assistant. The petitioner was also promoted to the Office Assistant on 20.04.1995. The petitioner has not accepted the said promotion order and approached to this Court by filing an original application which was consequently transferred to this Court and registered as Writ Petition. In the said writ petition this Court has granted an order of status quo in favour of the petitioner. In the Panchayat Social Welfare Department also, the post of Auditor was an Executive post. The Rules of 1967 continue to govern the employees of Women and Child Development till this new Rules of 1992 were framed. As the petitioner was working on the post of Auditor which is a post of Executive Cadre, the petitioner or any other Auditors have included in the list of Ministerial Cadre. The list of 1990, the names of respondents No. 5 and 6 who were junior to the petitioner either in the service or on the post of UDC was promoted. The respondent Nos. 5 and 6 were also in the Panchayat and Ruler Development Department and was junior to the petitioner. Respondent Nos. 5 and 6 remain in the Ministerial Staff. Vide order dated 21.01.1987 and notification dated 13.07.1989 the post of Sub-Auditor was showing as forming the part of the Executive Cadre of Class-III employees. Thus, it is clear from the various orders passed by the respondents from time to time that the petitioner is holding the post of Auditor. The post of UDC and Auditor is placed in the same pay scale which shows that the post of UDC and Auditor are equivalent.

9. In the Gradation List of 1993 of the Ministerial Staff, the name of the petitioner has also not been included at that time, the petitioner came to know that the post of Auditor has been included in the Ministerial Staff and in the said gradation list, the name of the petitioner has been shown as junior to respondent Nos. 5 and 6 whereas, he is much senior to them in the length of service and also on the post of UDC. The petitioner, therefore, submitted representation to the respondents, but nothing has been done in the matter. In the Rules of 1993 also, the post of Auditor is included in the Ministerial Staff. During the pendency of this petition, respondents No. 5 and 6 vide order dated 22.08.2000 and 05.10.2006 was promoted on the post of Superintendent but the name of the petitioner does not considered for promotion. Respondents No. 5 and 6 they were working on the post of UDC along with the petitioner in the Panchayat and Social Welfare Department. The petitioner was senior to respondents No. 5 and 6 in the said

department. Thereafter, after formation of the separate Women and Child Welfare Department, the services of the petitioner along with respondents

No. 5 and 6 were transferred to Women and Child Welfare Department. The New Recruitment Rules of 1993 were came into force and after coming

into force of these new Rules, the gradation list was published in which, the names of respondents No. 5 and 6 were shown senior to the petitioner

although they were appointed and promoted to the post of UDC later them the petitioner. On the basis of the said seniority list, respondent Nos. 5 and

6 were further promoted to the post of Office Assistant. Thus, this action of the respondents in promoting respondent Nos. 5 and 6 to the post of

Office Superintendent superseding the petitioner is illegal and arbitrary and discriminatory.

10. The petitioner being senior to respondent Nos. 5 and 6 his name should have been appeared in the seniority list above to respondent Nos. 5 and 6

and he should have been granted promotion as per his seniority. So far as, declaring the post of Auditor as an Executive post or Cadre, it is not within

the jurisdiction of this Court it is for the respondents whether to declare particular post as an Executive Cadre.

11. In view of the aforesaid, this writ petition is partly allowed. Respondents are directed to revise the seniority list of Ministerial Staff published in

1993 placing the petitioner at proper place in the seniority list above to respondent Nos. 5 and 6 and grant him all the benefits and promotions which

has been granted to respondents No. 5 and 6 for promotion on the post of Officer Superintendent. The respondents are directed to convened review

DPC within a period of three months from the date of receipt of certified copy of this order and if the petitioner is found eligible, then respondents

shall promote him to the post of Office Superintendent along with his juniors by granting him notional seniority.