

(1968) 04 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 488 of 1966

M.L. Jinesh

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 02-04-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 227
States Reorganisation Act, 1956 — Section 115

Citation : (1968) 04 MP CK 0019

Hon'ble Judges : P.V. Dixit, C.J;A.P. Sen, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; K.K. Dubey, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A. P. Sen, J.

The petitioner, M.L. Jinesh, an Assistant Superintendent in the Printing and Stationery Department of the Government of Madhya Pradesh, has filed this petition under Articles 226 and 227 of the Constitution for an appropriate writ, direction or order, including writs of certiorari for quashing the Madhya Pradesh General Administration (Integration) Department Notification No. 1946-500-Integ., dated 26th May 1960 publishing the Final Gradation List of the establishment of Printing and Stationery Department, and Notification No. 9525-4817-VII-Estt-64 dated 8th September 1964, integrating Assistant Superintendents of Bhopal Region in an Isolated category, below in the list of Assistant Superintendents, for a writ of mandamus directing the Government to revise its list by equating him with other Assistant Superintendents drawn from other units and placing him at his appropriate place in the said list, keeping in view of the length of his service.

The material facts are that the petitioner and one R.P. Beri were serving as Assistant Superintendents in Bhopal region, on the appointed date, and they

were allocated to the new State of Madhya Pradesh, u/s 115(1) of the States Reorganisation Act, 1956 (Act No. XXXVII of 1956, w. e. f. 1st November 1956). The post of Assistant Superintendents of Bhopal unit was a non-gazetted post in a scale of Rs. 175-300. There was a similarly constituted cadre of Assistant Superintendents in old Mahakoshal region, i.e., non-gazetted with a similar scale, but no officers from that region opted for service to the new State of Madhya Pradesh. and, therefore, the cadre of Assistant Superintendents in Mahakoshal region could not be taken as a norm for preparation of the combined gradation list. The post of Assistant Superintendent in Madhya Bharat region was a gazetted post in a higher scale of Rs. 250-450, while that of Assistant Superintendent in Vindhya Pradesh although non-gazetted, was also carried in a higher scale of Rs. 225-500. After formation of the new State of Madhya Pradesh, the work of integration of services of officers drawn from all the four integrating units, was undertaken. By General Administration (Integ.) Deptt. Notification No. 3221-578-VII (Integ.) dated 27th August 1958, the Government published a provisional gradation list of the Printing and Stationery establishment of the Revenue Department. The Assistant Superintendents of M. B. unit were shown in an isolated category and their inter se seniority was provisionally determined. The Assistant Superintendents from Bhopal unit were not shown in this list. The petitioner, accordingly, made a representation dated 24th September 1958 to the Central Government against the omission of his name from the provisional gradation list seeking equation of his post with the gazetted officers of the establishment. In the meanwhile, the Government of Madhya Pradesh by General Administration (Integ.) Deptt. Memo No. 1946-500-Integ. dated 26th May 1960, published a final gradation list of the gazetted Government servants of the Revenue Department, in which apart from officers from Vindhya Pradesh unit (officers from M. B. Unit--sic) were also included, but the Assistant Superintendents from Bhopal region were left out. The petitioner's representation dated 24th September 1958 was rejected by the Government of India, in consultation with the Central Advisory Committee, and their decision was conveyed to him by GAD Integ.) Memo No. 1694/219A-Integ. dated 19th May 1951. Thereafter the Government in the Revenue Department by Notification No. 4866-1929- VII-Estt /Integ., dated 1st July 1961, provisionally decided to place the Assistant Superintendents from Bhopal unit in an isolated category below the gazetted officers, and determined their inter se seniority, inviting representations u/s 115(5) of the States Reorganisation Act. The petitioner, accordingly, made a representation dated 7th September 1961, but the same was rejected by the Government of India in consultation with the Central Advisory Committee vide Rev. (Estt.) Deptt. Memo No. 23379/VII/ Estt.64, dated 10th July 1964. Thereafter, the Government by the Rev. Deptt. Notification No. 9525-4817-VII-Estt-64, dated 8th September 1964, published a Final (Supplementary) Gradation List of Class III (Executive) Service of the Printing and Stationery establishment, relating to Assistant Superintendents from Bhopal unit treating them under an isolated category and determining their inter se seniority. This was in accordance with the provisional Combined Gradation List

I previously published. The petitioner appears to have made a representation against the Final gradation list, but the same was withheld by the State Government as nothing new was brought out.

It would thus appear that Assistant Superintendents of Bhopal unit were treated as belonging to a category of their own, being carried in scale of Rs. 175-300, which was lower than the scale of pay drawn by Assistant Superintendents of Madhya Bharat and Vindhya Pradesh regions before the appointed date. The Government, however, tried to soften the rigour by creating 2 supernumerary posts of two Assistant Superintendents (Non-gazetted), for the period from 1st November 1956 onwards, and prescribed a revised scale of Rs. 190-315 for them. Although, the petitioner was not eligible for absorption on the higher post of Assistant Superintendents (Gazetted) of the new set up, nevertheless, he was first absorbed in the post of Assistant Superintendent (Non-gazetted) in the new State of Madhya Pradesh and thereafter, he was promoted to the post of Assistant Superintendent (Gazetted) in the new State. The petitioner is now holding an equivalent post as the officers allocated from other regions, although his appointment for the present, is in an officiating capacity.

The only grievance that is now made is that the petitioner should have been equated with Assistant Superintendents drawn from Madhya Bharat unit and that he should have been placed above Shri W.D. Sawant in the Final gradation list. It is said that in other Departments as well, certain categories of posts were classified as Class III (Executive) in some constituent units and the same or similar categories of the post were classified as "Non-gazetted" or "class IV services in other units. In order that the claim of Government servants holding the same or similar posts in all units should be dealt with fairly and equitably, irrespective of designation and classifications of posts in different units, the Government had decided that classification as in vogue in old Madhya Pradesh, immediately before the appointed date, should be adopted as the norm for the purpose of preparation of Combined Gradation List. This practice was followed elsewhere, i.e., to prepare a common gradation list for each cadre/sub-cadres of old Madhya Pradesh and for cadres/ sub-cadres which were the same or fairly comparable thereto in other units, and, if in any unit there were no regularly constituted cadres to apply the principles in para I(ii) of the General Principles set out below. It was, therefore, urged that since posts of Assistant Superintendents were classified as Class III (Executive) in the old Madhya Pradesh, immediately before the appointed date, a Combined Gradation List of Assistant Superintendents in all the units should have been prepared accordingly, and there was no basis for any departure from this practice, in the case of Printing and Stationery establishment of the Revenue Department. It was also urged that, if the cadre of Assistant Superintendents in the old Madhya Pradesh could not be adopted as the norm for preparation of combined gradation list, there was no justification for not adhering to the principles laid down in para 1(ii) below. We are not impressed with any of these contentions for reasons which we shall presently state.

The following principles had been formulated for being observed, as far as may be, in the integration of Government servants allotted to the service to the new State of Madhya Pradesh:

"1. In the matter of equation of posts:

(i) Where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis; but

(ii) Where, however, there were no such similar cadres the following factors will be taken into consideration in determining the equation of posts--

(a) nature and duties of a post;

(b) Powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged;

(c) the minimum qualifications, if any, prescribed for recruitment to the post and;

(d) the salary of the post,"

Although, there was a regularly constituted cadre of Assistant Superintendent (Non-gazetted) in the scale of Rs. 175-300 in the old Madhya Pradesh, none of the officers from that unit had been allocated for service to the new State of Madhya Pradesh and therefore, that could not be adopted as the basis or norm for preparation of a combined gradation list of the establishment to which the petitioner belongs. The result was that Assistant Superintendents of Bhopal unit had to be placed in an isolated category of their own. That left out the first set of principles mentioned in part I(i), i.e., dealing with equation of posts, "where there are regularly constituted similar cadres in different integrating units". The cadres of Assistant Superintendents of Bhopal could not, therefore, be integrated on that basis. The Government was then left with the second set of principles laid down in para 1 (ii) viz. "where there were no such similar cadres in existence", and we are satisfied that the principles were strictly adhered to.

The nature and duties attached to the post of Assistant Superintendents in all the four integrating units were not one and the same. The powers exercised by officers holding the post in different integrating units, the extent of their territorial or other charge, or the responsibility discharged by them, were different. The qualifications for recruitment to the post in different regions were also different. The post of Assistant Superintendents in Madhya Bharat was Gazetted while in other regions it was Non-gazetted. The salary of the post in Madhya Bharat and Vindhya Pradesh regions was Rs. 250-450 (Gazetted), while in Bhopal was Rs. 175-300 (Non-gazetted), it would, thus, appear that Assistant Superintendents from Bhopal region who were non-gazetted officers drawing a lower scale of pay could not possibly be equated with the Gazetted officers from other regions drawing a higher pay-scale.

In accordance with the principles settled at the Chief Secretaries Conference for Integration of Services and Equation of Posts, the Government of Madhya

Pradesh rightly prepared the provisional common gradation list of Printing and Stationery establishment of the Revenue Department, leaving out the posts of Assistant Superintendents of Bhopal unit therefrom. The representation made by the petitioner for inclusion of his name in the Final gradation list and for equation of his post with those of Assistant Superintendents of Madhya Bharat and Vindhya Pradesh units was duly considered by the Central Government, in consultation with the Central Advisory Committee, that Government rejected his representation for valid reasons. The reasons for rejection of the representation are to be found in the following Explanatory note of the Central Advisory Committee, dated 26th February 1951, namely:

"Representations of Sarvashri M.L. Jinesh and R.P. Berry of the Printing and Stationery Department, M.P.

The Central Advisory Committee considered the representations relating to the Printing and Stationery Department in September, 1959. The Committee did not consider the representations of Sarvashri M. L. Jinesh and R. P. Berry who held the posts of Assistant Superintendents of Government Press, Bhopal, on the ground that they held non-gazetted posts. The representations have now been forwarded for further consideration in view of the change in the Committee's terms of reference under which representations of non-gazetted officers claiming equation of their posts with gazetted posts are also to be considered by the Committee.

The claim of Sarvashri Jinesh and Berry is that the nature and duties attached to the posts of Assistant Superintendents in all the four regions were the same and that the qualifications for recruitment were also similar. It was therefore argued that in spite of the lower scale of pay that the non-gazetted status, the posts in Bhopal should be equated with the gazetted posts of Assistant Superintendents in Madhya Bharat.

The State Government are of the view that the posts held by the applicants were of a lower status and could not be equated with the posts of Assistant Superintendents in Madhya Bharat.

It has been ascertained that the applicants were functioning as Assistant Superintendents in Bhopal, one to assist the Superintendent in regard to the distribution of stationery etc., and the other in the administration of Government Press.

The Madhya Bharat Posts of Assistant Superintendents were not of an adequate status to be equated with any of the gazetted posts in the other region but as they carried the scale of Rs. 250-400 and were gazetted they were shown in an isolated category. The posts held by the applicants were non-gazetted and were in the lower scale of Rs. 170-300. The functions and duties also differed somewhat from those of the Madhya Bharat Assistant Superintendents. There is therefore, no justification for equating their posts with the Madhya Bharat Assistant Superintendents or any of the other posts included in the combined

gradation list of Gazetted Officers.

The representations of Sarvashri Jinesh and Berry may accordingly be rejected."

The petition must fail on the short ground that the matter of equation of posts is purely an administrative function u/s 115 of the States Reorganisation Act. It has been left entirely to the Central Government as to how it has to deal with these questions. The Central Government established an Advisory Committee for purposes of assisting in proper consideration of the representations made to it. The representation made by the petitioner had received its due consideration by the Central Advisory Committee. The decision reached by the Central Government after consulting that Committee was strictly in conformity with the principles regulating equation of posts. Their Lordships of the Supreme Court in Union of India (UOI) and Another Vs. P.K. Roy and Others, , have stated that the usual procedure followed by the Central Government in the matter of integration of services generally is in order. That procedure was followed in this case.

In P.B. Mukerjee v. State of M. P., Misc. Petn. No. 567 of 1965, D/- 18-1-1967 (M. P.), this Court has stated:

"The Central Government has been constituted the final authority in the matter of integration under the States Reorganisation Act. That decision cannot be challenged before this Court so long as it is not without jurisdiction."

We find no compelling reasons to depart from that view.

Even otherwise the grievance of the petitioner that he has not been absorbed in an equivalent post of Assistant Superintendents of Madhya Bharat and Vindhya Pradesh units, no longer exists since he has already been promoted to the cadre of Assistant Superintendent (Gazetted) in the new State, and is admittedly drawing his salary in the higher scale of this grade. In view of this subsequent event the petition has really become infructuous, and must, accordingly, fail.

The result is that the petition fails and is dismissed with costs. Counsel's fee is fixed at Rs. 50/-.