

(2014) 11 MP CK 0170
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 806/2014

Mohanlal Chandravanshi

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2015) 2 MPHT 391 : (2015) 3 MPLJ 365

Hon'ble Judges : P.K. Jaiswal, J;D.K. Paliwal, J.

Bench : Division Bench

Advocate : L.C. Patne, Advocate, for the Appellant; Sudhanshu Vyas, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

1. They are heard.

By this writ appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, the appellant/writ petitioner is praying for setting aside of the order dated 10-10-2014 passed in Review Petition No. 682/2013 filed by Om Prakash Dangi s/o. Bapulal Dangi.

Brief facts of the case are that an advertisement was issued inviting applications for the post of Panchayat Karmi and the appellant, who is a physically handicapped person, having disability of 60%, had also submitted his application. No merit list was prepared by the Gram Panchayat and the Gram Panchayat, on the basis of majority of votes, passed resolution on 10-8-2007. The appellant received 245 marks out of 500 marks in the High School Certificate Examination and respondent No. 5 (Yogesh Paliwal s/o. Ramdayal Patiwal) received 230 marks out of 500 marks in the High School Certificate Examination. Learned Writ Court considering the order dated 25-4-2013, passed in the case of Vishal Jat Vs. State of M.P. and others, Writ Petition No. 5351/2011 (S), set aside the impugned order dated 10-8-2007 (Annexure P-6 and Annexure P-7 in the writ petition) and

order dated 31-8-2007 (Annexure P-8 in the writ petition), and directed the respondents to issue appropriate order, in accordance with law, in case of the appellant, as he was the most meritorious candidate. The appellant shall also be entitled for all consequential benefits, except the back wages/honorarium.

2. The respondent No. 5 (Yogesh Paliwal) challenged the aforesaid order by filing Writ Appeal No. 961/2013, which was dismissed by order dated 28-10-2013; relevant part of the order reads, as under:--

"The appellant before us was respondent No. 5 before the Writ Court. He submitted his reply wherein he stated that a resolution was passed on 10-8-2007 whereby the respondent No. 1 (petitioner before the Writ Court) was appointed as Panchayat Karmi. The said resolution was challenged by filing a writ petition on 1-2-2008, and therefore, the said writ petition was liable to be dismissed on the ground of delay and laches. It was further submitted that there was no relevance with regard to being the handicapped person on the contrary being the handicapped person he is not in a position to perform the work of Panchayat Karmi. It was further submitted that the resolution passed in favour of the appellant was proper and except the petitioner no one has challenged the said resolution, which has become final. It was further submitted that as per circular dated 13-8-2007 the criteria of merit cannot be made applicable retrospectively. The grounds taken in this appeal by the appellant are that the process of appointing the appellant by the Gram Panchayat was as per the procedure and that the appellant had been in service for about 6 years on the strength of the resolution passed by the Gram Panchayat. It is also submitted that by taking a decision the learned Single Judge has not considered the factum of seniority of the appellant who not only cleared the Higher Secondary Examination in the year 2000 whereas respondent No. 1 has cleared the Higher Secondary Examination in the year 2004 and as such he was senior to respondent No. 1.

We have considered the submissions made on behalf of the appellant. We are of the considered opinion that in this case when the resolution was passed in his favour, the Panchayat has not considered the merits inasmuch as respondent No. 1 being meritorious admittedly has been appointed, which has been held in the case of Suresh (supra) was the correct procedure.

We, therefore, find no infirmity in the order of the learned Single Judge and dismiss the appeal."

3. A review application (R.P. No. 682/2013) was filed by one Om Prakash Dangi for reviewing the order dated 4-10-2013. Learned Court allowed the review application and modified the order dated 4-10-2013 passed in Writ Petition No. 1040/2008, with direction to the Gram Panchayat to issue an appropriate order, in accordance with law, in case of the present review petitioner Om Prakash Dahgi, as he is the most meritorious candidate. The aforesaid exercise be concluded within a period of thirty days from the date of the order. The relevant part of the order dated 10-10-2014 passed in Review Petition No. 682/2013

reads, as under:--

"The present case reveals that one Mohanlal Chandravanshi being aggrieved by the appointment of Shri Yogesh Paliwal has preferred a writ petition before this Court and the same was registered as Writ Petition No. 1040/2008 and it was stated in the writ petition that Mohanlal, the petitioner was the most meritorious candidate and on the basis of majority of votes, the respondent No. 5-Yogesh Paliwal therein was appointed by the Gram Panchayat on the post of Panchayat Karmi. This Court in the light of the aforesaid statement and the return filed by the respondents has allowed the writ petition and directed the respondents to appoint the petitioner-Mohanlal Chandravanshi on the ground that he was the meritorious candidate. The review petitioner has filed the merit list prepared by the Gram Panchayat and the same reveals that the present review petitioner Omprakash has received 380 marks out of 500 marks, Mohanlal has received 245 marks out of 500 marks and Yogesh Paliwal has received 230 marks out of 500 marks, meaning thereby it was Omprakash the present review petitioner who was the most meritorious candidate.

The aforesaid facts have not been disputed by the other side.

The order dated 4-10-2013 passed in Writ Petition No. 1040/2008 is modified. The Gram Panchayat is directed to issue an appropriate order in accordance with law, in case of the present review petitioner Omprakash, as he is the most meritorious candidate. The aforesaid exercise be concluded within a period of 30 days from today.

This order shall be read conjointly with the earlier order dated 4-10-2013 passed in Writ Petition No. 1040/2008.

A copy of this order be kept in the file of Writ Petition No. 1040/2008.

With the aforesaid, the present review petition stands disposed of."

4. It is this order by which the appellant (Mohanlal Chandravanshi) is aggrieved and has filed this writ appeal.

5. His contention is that the review petitioner had the knowledge about the pendency of the appeal before the Sub-Divisional Officer. It is also submitted that notices were served to all the persons, who were party to the proceedings before the Sub-Divisional Officer (Nos. 2 to 26). They were absent. He also drew our attention to the affidavit, which is at page 70 of the writ appeal and submitted that the aforesaid affidavit was sworn on 27-11-2013 by Om Prakash Dangi in support of Review Petition No. 682/2013, and thus, the application for condonation of delay, which was filed along with review application and which was considered and allowed on the ground that Om Prakash Dangi was not a party to the writ petition and he came to know about the order from villagers, as mentioned in Para 2 of the application for condonation of delay, is incorrect. He also submitted that respondent Om Prakash was overage, and therefore, was not qualified for appointment on the post of Panchayat Karmi, and therefore, no such

direction can be issued.

6. He also placed reliance on the following decisions of Division Bench of this Court and the Supreme Court:--

(1) The Registrar, Devi Ahilya Vishwavidhyalaya and another Vs. Kailash Sajonia s/o. Bhawan Singh Sajonia and others, LPA No. 55/2001, decided by a Division Bench of this Court on 23-11-2004;

(2) Kunhayammed and Others Vs. State of Kerala and Another, ;

(3) M/s. Thunabhadra Industries Limited Vs. The Government of Andhra Pradesh, AIR 1964 SC 1373;

(4) Mohammad Imran Siddique Vs. State of M.P. and others, 2012 (1) MPLJ 719; and

(5) State of Orissa and Others Vs. Shri Arun Kumar Patnaik and Others, .

7. With the aforesaid, he submitted that the impugned order passed by the Review Court be set aside.

8. We have heard learned Counsel for the appellant at length.

9. On due consideration of the decisions cited by the learned Counsel for the appellant and the material available on record, so also the fact that the appointment of the appellant was made on the basis of the majority of votes, contrary to the procedure prescribed by the State Government and as per the merit list prepared by the Gram Panchayat, review petitioner (Om Prakash Dangi) received 380 marks out of 500 marks, present appellant (Mohanlal Chandravanshi) received 245 marks out of 500 marks and respondent No. 5 (Yogesh Paliwal) received 230 marks out of 500 marks, it was Om Prakash Dangi, who was the review petitioner in Review Petition No. 682/2013, was the most meritorious candidate.

10. The learned review Court allowed the review application because review petitioner (Om Prakash Dangi) was the most meritorious candidate amongst the appellant (Mohanlal Chandravanshi) and respondent No. 5 (Om Prakash Dangi). Considering the aforesaid, the Writ Appeal No. 806/2014 has no merit and is accordingly dismissed.