
(2006) 02 MP CK 0009

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 1878, 3101, 11708 of 2004, 7176, 5842 of 2002, 694, 2237, 3925, 4256 of 2003

M.P. Public Service Commission

APPELLANT

Vs

Dashrath Singh and others

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 29
Constitution of India, 1950 — Article 226, 309

Citation : (2006) 3 MPLJ 355

Hon'ble Judges : S.K. Pande, J; Dipak Misra, J

Bench : Division Bench

Advocate : Hemant Shrivastava, S.K. Yadav, Dy. A.G., Vivek Rusia, Rajendra Tiwari, Atul Choudhari, Praveen Chourasiya, Kishor Shrivastava, Jagdish Sakalle and J.K. Pillai S.K. Yadav, Dy. A.G, for the Appellant; N. Kotecha, Kishore Shrivastava and S. Tamrakar, for the Respondent

Judgement

Dipak Misra, J.

The factual score and question of law being similar to all these writ petitions they were heard analogously and disposed of by this singular order. It is worth noting here that the order passed by the M.P. State Administrative Tribunal (in short "the Tribunal") has been challenged by the State of M.P., M.P. Public Service Commission and also by the incumbents. For the sake of clarity and convenience we shall advert to the facts put forth in Writ Petition No. 1878/2004 which has been preferred by M.P. Public Service Commission.

Shorn of unnecessary details, the facts which are imperative to be stated are that one Dashrath Singh along with two others had knocked at the doors of this Court under Article 226 of the Constitution of India which stood transferred to the Tribunal by operation of law forming the subject-matter of Transfer Application No. 1808/1988. The applicants therein had appeared for the selection to the post of Assistant Engineer pursuant to the advertisement issued by the

Commission on 30-10-1982. The result was declared on 10-7-1984 and they were not selected by the PSC. It is not disputed at the Bar that the said Dashrath and two others were working on ad hoc basis on the post of Assistant Engineer in the Department of Irrigation. Their non-selection was the subject-matter before the High Court in M.P. No. 2094/1984. This Court quashed the selection on 15-3-1985. The matter travelled to the Apex Court forming the subject-matter of Civil Appeal No. 2255/1985 and other connected appeals. The Apex Court set aside the order of this Court on the ground that the persons who were necessary parties had not been impleaded party before the High Court and accordingly the matter was remanded to the High Court. After the matter was remanded the Administrative Tribunals Act, 1985 came into force and thereafter the State Administrative Tribunal was constituted on 8-2-1988. In pursuance of section 29 of the aforesaid enactment the matter stood transferred to the Tribunal. Before the Tribunal the applicants impleaded as many as 64 persons who were in the select list.

It is not disputed before us that the applicants in the Original Application were regularized as per M.P. Regularisation of Ad hoc Appointments Rules, 1986 (for brevity "the Rules"). The question that emerged before the Tribunal pertained to seniority of the selected candidates by the PSC and person who were regularized under the Rules. In addition the Tribunal also adverted to the issue whether the selection by the PSC is valid or not. In paragraph 35 of the order the Tribunal set forth its conclusions in seriatim as under :

In view of the above discussion this petition (TA No. 1808/88) is disposed off with the following directions -

- (i) The selection process undertaken by the Public Service Commission pursuant to advertisement notice (Annexure "A") dated 30-10-1982 i.e. written examination and the interview (personality test) is upheld.
- (ii) The impugned select list issued by the PSC on 10-7-1984 applying the criteria of minimum pass/qualifying marks for individual subject papers of the written examination and the interview (personality test) is quashed.
- (iii) A fresh select list shall be drawn out in the order of merit based on the aggregate of the marks secured by the candidates at the written examination and the interview (personality test) and issued/notified by the PSC within 15 days of the receipt of this order by it.
- (iv) The fresh select list so issued/notified by the PSC shall determine the inter-se-seniority of the candidates included therein irrespective of the dates of their appointment on ad hoc basis in case they were ad hoc appointees that is to say, candidates at the higher positions shall be senior to those at lower positions in the list.
- (v) All candidates included in the fresh select list shall be senior to and placed in the seniority list above the remaining ad hoc appointees given regular

appointment by the order dated 14-5-1987 under the provisions of the Madhya Pradesh Regularisation of Ad hoc Appointment Rules, 1986, the seniority of such remaining ad hoc appointees being reckoned from the date of their regular appointment under the said rules i.e. 14-5-1987 in terms of Rule 12 of the said rules. These remaining persons would obviously be those who are either unsuccessful in being placed on the fresh select list or are those who did not participate in the selection for whatever reason but who were in service as on 31-3-1986.

(vi) The inter-se-seniority determined as per directions at (iv) and (v) above shall form the basis for drawal of the gradation lists of the subsequent years. A gradation/seniority list shall accordingly be issued reflecting the latest position within two months of receipt of this order by the respondent State.

(vii) Consequential benefits as a result of the upward revision of seniority of officers who gain in seniority as a result of the above direction shall be extended to such persons such as promotion/grant of higher time bound pay scales etc. if any of their junior has been extended such benefits.

(viii) Allocations of the different officers of this cadre to the successor States consequent upon reorganisation of the State of Madhya Pradesh shall also be made on the basis of the revised seniority list as per the directions given above.

We have heard Mr. Hemant Shrivastava, learned counsel for the Public Service Commission, Mr. S. K. Yadav, learned Deputy Advocate General for the State of M.P. Mr. Rajendra Tiwari, learned senior counsel along with Mr. D. K. Khadka, Mr. Kishore Shrivastava learned senior counsel along with Mr. Sunil Batra and Mr. Tamrakar, Mr. B. N. Mishra, Mr. A. Ojha and Mr. M. N. Choubey, learned counsel for the respondents.

The learned counsel for the parties raised fundamentally three questions, namely, whether the Tribunal is correct as regards its opinion to mode and method of determination of the seniority of the applicants, whether the Tribunal is justified in directing redrawal of the select list in a case of this nature and whether the gradation list has to be completed in all aspects. Quite apart from the above a question has been raised with regard to allocation to the State of Chhattisgarh.

Be it placed on record that the written examination was held on 1-3-1983 and the Tribunal has quashed the select list on 10-7-1984 and issued the direction for redrawal of the list. We are of the considered opinion the direction of the Tribunal in that regard is absolutely unwarranted as that was not the lis before the Tribunal and none of the candidate of the select list had approached the Tribunal questioning the seniority. The Tribunal, as we are disposed to think, transgressed its boundaries and directed for redrawing of the merit list. The applicants who had approached the Tribunal were not selected by the PSC and they only questioned the selection process and hence, at their instance direction for redetermination of the merit list was not warranted. There being absolutely

transgression of the relief sought and unnecessary in the obtaining factual matrix we quash the said direction issued by the Tribunal.

The second aspect is with regard to determination of seniority. Mr. Choubey, learned counsel for the only contesting respondent herein, very fairly conceded that Dashrath who was selected under the Rules which were framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Rule 5 of the Rules provides for eligibility for regularisation and Rule 12 deals with the seniority. The said Rule reads as under :

Seniority.- (1) A person appointed under these rules shall be entitled only from the date of the order of regular appointment and shall be placed below the persons appointed in accordance with the relevant recruitment rules prior to the appointment of such person under these rules.

(2) If two or more persons are appointed together, their seniority inter-se shall be determined in the order mentioned in the order of appointment." On a scanning of the anatomy of the aforesaid Rule it is clear as noon day that seniority of a person who is regularized under these rules is to be computed from the date of regularisation. Dashrath was regularized on 14-5-1987. Thus, there cannot be any scintilla of doubt that his seniority shall be computed from that date. The persons selected by the PSC were selected on 10-7-1984 and they are definitely to be treated regular appointees under the prevalent recruitment rules and Dashrath cannot put forth a case that he is senior to them. Submission of Mr. Choubey is that he should be placed before the persons appointed under recruitment rules after appointment of such persons under these rules. Mr. Hemant Shrivastava, learned counsel for the PSC and Mr. S. K. Yadav, learned Deputy Advocate General for the State have no quarrel over the same.

At this juncture, we would like to deal with the submission put forth by Mr. Kishore Shrivastava, learned senior counsel along with Mr. Sanjay Tamrakar appearing for the petitioner in W.P. No. 5842/2002 that his name should be incorporated in the gradation list as the same has not been done. It is beyond disputation that there is no reason why his name should not be incorporated in the gradation list. We direct the said incorporation to be done. Keeping in view the aforesaid analysis we proceed to enumerate our conclusions in seriatim :

(i) The conclusion of the Tribunal upholding the selection undertaken by the PSC pursuant to the advertisement dated 30-10-1982 is given the stamp of approval.

(ii) The opinion expressed by the Tribunal in quashing the select list by applying the criteria of minimum pass/qualifying marks in the written examination and the interview (Personality test) is held incorrect and unsound inasmuch as none of the persons who were selected by the PSC approached the Tribunal.

(iii) The direction of the Tribunal to prepare a fresh select list on the basis of aggregate marks secured by the candidates in the written examination and at the interview (personality test) is declared invalid and erroneous as that was not

the list before the Tribunal and accordingly all related directions in that regard, as a natural corollary, stand quashed.

(iv) The seniority of Dashrath, the applicant before the Tribunal, would be determined from the date of his regularisation i.e. 14-5-1987 as per Rule 12 of the 1986 Rules.

(v) As the direction given by the Tribunal to draw a different kind of merit list has been quashed by us, the select list prepared by the PSC on 10-7-1984 would prevail and seniority list of these candidates shall be drawn accordingly treating them as valid appointees.

(vi) Any candidate selected by the PSC by virtue of the select list prepared on 10-7-1984 cannot be deprived of the benefit because there was a further order regularizing his services as the matter was subject to final order passed in the controversy in question.

(vii) The name of the petitioner in W.P. No. 5842/02 Vasudev Jotwani shall be incorporated in the gradation list as he was selected by the PSC. No opinion is expressed about his placement in the gradation list excepting directing that his name should be included.

Ordinarily we would have parted with the case after enumerating our conclusions. But at this juncture, the learned counsel for the parties submitted that when the matter was subjudice before the Tribunal as well as before this Court allocation to State of Chhattisgarh was not given effect to as the same was dependant on the final drawal of the seniority list. Mr. Ojha, learned counsel for the State of Chhattisgarh and Mr. S. K. Yadav, learned Deputy Advocate General for the State of M.P. fairly submitted that the allocation shall take place after the seniority list is drawn up. In view of the aforesaid, it is directed that the seniority, as indicated above, shall be drawn within a period of three months and thereafter exercise for allocation be carried out under the provisions of M.P. Reorganisation Act, 2000.

Accordingly, the writ petitions are disposed of. However, there shall be order as to costs.