(2009) 07 MP CK 0032

In the Madhya Pradesh High Court

Munna Lal Karosiya APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 94(1), 94(2), 95

Citation : (2009) ILR (MP) 2854 : (2009) 3 JLJ 426 : (2010) 1 MPHT 360 : (2010) 3 MPJR 163 : (2009) 3 MPLJ 697

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Gupta, J.

Present petition is filed by the petitioner challenging the order (Annexure P-1), dated 30-10-2002, by which the State Government has directed that the respondent No. 4 shall be given promotion on the post of Revenue Inspector and he be posted along with lien with Municipal Council, Sabalgarh. By this order, it is also directed that till the respondent No. 4 is not retired from the services of the Municipality or promoted to next higher post, the post of Revenue Inspector shall not be treated as vacant for any purpose.

Facts leading to the present case are that the petitioner is working on the post of Revenue Sub Inspector and is an employee of Municipal Council, Sabalgarh. So far as the respondent No. 4 is concerned, he is working as Revenue Sub-Inspector at Municipal Council, Kannod. The State Government has posted respondent No. 4 by granting promotion on the post of Revenue Inspector with Municipal Council, Sabalgarh with a direction that he will continue to hold the lien with the Municipal Council, Sabalgarh and the post of Revenue Inspector would not be treated as vacant for the purpose of promotion.

The petitioner who is working as Revenue Sub Inspector at Municipal Council, Sabalgarh aggrieved by the State Government''s decision on the ground of posting of respondent No. 4 along with lien because the promotion avenues of the petitioner are adversely affected.

By virtue of Section 94 of Sub-section (1) of M.P. Municipalities Act, 1961, every Council having an annual income of five lakhs of rupees or more shall, subject to rules framed u/s 95, appoint a Revenue Officer and an Accounts Officer and may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties. Sub-section (2) of Section 94 of the Act provides that every Council not falling under Sub-section (1) shall, subject to rules framed u/s 95, appoint a Sanitary Inspector, a Sub-Engineer, a Revenue Inspector and an Accountant and may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties. Sub-section (7) of Section 94 of the Act further empowered the State Government to transfer any officer or servants of a Council mentioned in Sub-sections (1) and (2) and in receipt of total emoluments exceeding one hundred rupees to any other Council. Sub-sections (1), (2) and (7) of Section 94 of the Act makes crystal clear that power of appointment is vested with very Council and by virtue of Sub-section (1) if the annual income of five lakhs of rupees or more and by virtue of Sub-section (2) if the annual income is less than five lakhs of rupees then the power to appoint is vested with the Council on the basis of it power to appoint such officers.

In the present case, respondent No. 4 was an employee of Municipal Council, Kannod, therefore, in view of Section 94 of the Act, Sub-section (1) and Sub-section (2), the power to appoint by way of promotion is vested with the Municipal Council framed u/s 95 of the Act and no power is vested with the State Government to promote any employee on the post of Revenue Inspector.

On behalf of respondent No. 4, learned Senior Counsel Shri Gupta heavily relied on Rule 12 of Madhya Pradesh Municipal Employees Recruitment and Conditions of Service Rules, 1968. According to this Rule, method of recruitment is provided that the recruitment by promotion shall be made on consideration of merits, seniority being taken into account where merits are equal. By virtue of Sub-section (2) of Rule 12 of the Act promotion shall be given on the basis of followings:

(i) tact and energy;

(ii) intelligence and ability;

(iii) integrity; and

(iv) previous record of service.

On the basis of this, it is contended by learned Senior Counsel for the respondent No. 4 that by virtue of Rule 12, the respondent No. 4 is fit for promotion to the post of Revenue Inspector and respondent No. 4 has rightly been promoted on the said post at Municipal Council, Sabalgarh.

Rule 12 of the Act which provides method of recruitment shall alone be applicable to the incumbent who is within the zone of consideration for his promotion to the post of Revenue Inspector after consideration by the Council to which he belongs. Thus, Rule 12 plays an important and effective role. Meaning thereby, even for a person who does not belong to Municipal Council and yet another Municipal Council will have no right to promote such an incumbent on the higher post. The aforesaid Rules has to be applied by the same Municipality . If an employee is said to be considered for higher post of promotion and is working on the feeder post and promotion to an employee be considered within the same Municipal Council. It has to be understood in the light of the word "every Council" applied to Sub-section (1) and Sub-section (2) of Section 94 of M.P. Municipalities Act, 1961.

The arguments are to be appreciated of the learned Senior Counsel for respondent No. 4 that every Council has to be understood in the context that where the promotion are to be effected then any Council will have right to consider the case of such incumbent, and not the Council to which he belongs. The arguments as such would result in anomalous situation because even though on the feeder post an employee not belonging to such Municipal Council where he was appointed and if promotion is to be effected as Revenue Inspector, then the employee who belongs to another Municipal Council then the word "every Municipal Council" would become redundant. In Sub-section (2) of Section 94 of the Act reasonable meaning of the word "every Municipal Council" has to be understood with reference to the employee of such Municipal Council to which he belongs and not to any other Municipal Council.

It is also to be understood that the power with the State Government under Sub-section (7) of Section 94 of the Act is only with respect to transfer of the employee from one Municipal Council to another Municipal Council. Sub-section (7) of Section 94 of the Act does not empower the State Government to direct for absorption of the incumbent but only provides for transfer. The word "transfer" itself connotes and carry the meaning of temporary and not permanent posting along with lien.

Learned Senior Counsel for the respondent No. 4 in this reference has also relied upon Rule 8 of Municipal Services (Scale of Pay and Allowances) Rules, 1967. This rule is made with reference to Sub-section (4) of Section 94 of M.P. Municipalities Act, 1961. Sub-section (4) of Section 94 of the Act provides that the appointment of Revenue Officer, Accounts Officer, Sanitary Inspector, Revenue Inspector and Accountant shall be subject to confirmation by the State Government and no such post or the post of any other officer or servant as may be specified by the State Government in this behalf shall be created or abolished and no alteration in the emoluments thereof shall be made without the previous approval of the State Government, and every appointment to, and dismissal from such post, shall be subject to a like approval. If this Rule 8 is considered in the light of Sub-section (4) of Section 94 of the Act then the power to absorb is with the State Government in pursuance to Rule 7 is available subject to equation of the post. In the present case, the petitioner is not absorbed on the equal post. On the contrary, in the present case, it is directed for the promotion of respondent No. 4 on the post of Revenue Inspector and then it is also directed to absorb him in Municipal Council, Sabalgarh.

Rule 8 of Municipal Services (Scale of Pay and Allowances) Rules, 1967 also provides that the absorption of an employee would depend upon the applicability of the Rule. No other Rule has been shown on behalf of the respondent No. 4 wherein the State Government is empowered under M.P. Municipalities Act, 1961 to absorb a person by giving him promotion to a Municipal Council to which he does not belong.

In view of the aforesaid discussions, it is difficult to give legal sanction to the order (Annexure P-1, dated 30-10-2002. Consequently, the order (Annexure P-1), dated 30-10-2002 passed by the State Government is hereby quashed. Respondent No. 3 Municipal Council is directed to consider the case of the petitioner and other eligible candidates by constituting DPC and holding the meeting to consider the cases of promotion to the post of Revenue Inspector and the continuation of respondent No. 4 shall not come in a way of respondent No. 3 for not holding DPC for promotion to the post of Revenue Inspector.

Accordingly, petition stands allowed.

