
(2008) 06 MP CK 0009
In the Madhya Pradesh High Court

Nandkishore Narolia and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 24-06-2008

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2009) 2 MPHT 524

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Seth, J.—Being aggrieved by the selection and appointment of respondent Nos. 3 to 6 on the post of Laboratory Attendant, initially the petitioners invoked the jurisdiction of the M.P. Administrative Tribunal by filing an application u/s 19 of the Administrative Tribunals Act, 1985. Upon abolition of the Tribunal, under the provisions of Madhya Pradesh Rajya Prashasnik Adhikaran (Lambit Evam Nirakrat Avedano Ka Antaran) Adhyadesh, 2003, the matter has been transferred to this Court, i.e., how it has come up for hearing.

2. Facts for resolving the controversy lie in a narrow compass. It is not in dispute that respondent No. 2 selected and appointed respondent Nos. 3 to 6 on the post of Laboratory Attendant in the Government College. It is also not in dispute that before making the appointment, no advertisement was issued inviting applications from eligible candidates nor the names of registered unemployed eligible persons were solicited from the Employment Exchange.

3. The allegation of the petitioners is that respondent Nos. 3 to 6 are close relatives of persons already working in the Government College. It is also alleged that one of the selected candidate is close relative of Principal of the College who headed the Selection Committee. These allegations are denied and we do not propose to enter into this controversy in views of the order which we propose to pass.

4. As has been pointed out hereinabove, it is an undisputed fact that the appointment of respondent Nos. 3 to 6 were made without any advertisement or calling the names from Employment Exchange. Thus, in the considered opinion of this Court, the selection and appointment of respondent Nos. 3 to 6 is in clear violation of Article 14 and Article 16 of the Constitution of India which enjoin right of equality in all respects including matter of public employment to the citizens of India. Obviously, in absence of any advertisement or notification of vacancies to the Employment Exchange, the fundamental rights of petitioners enshrined under Articles 14 and 16 have been violated and on this ground alone, the selection and appointment of respondent Nos. 3 to 6 cannot be sustained in law.

5. Shri Sethi, learned Senior Counsel appearing for respondent Nos. 3 to 6 submitted that the originally the petition was preferred before the M.P. Administrative Tribunal and as such, it would be governed by the provisions of the Administrative Tribunals Act, 1985. His objection is that the petition was barred by limitation as prescribed u/s 21 of the Act, therefore, it could not be entertained. In support of this contention, he placed reliance on decisions of Supreme Court reported in *S.S. Rathore Vs. State of Madhya Pradesh, Secretary to Government of India and Ors. v. Shivram Mahadu Gaikwad*, 1995 Supp. (3) SCC 231 .

6. Prima facie, the contention of Shri Sethi appears to be attractive and appealing, but on a deeper probe, this Court is of the opinion that contention has no force. The petition was filed in the Tribunal and no doubt, it was not admitted, but nonetheless a show-cause notice against admission was issued by the Tribunal as is evident from perusal of the order-sheets of the case. During the pendency of show-cause proceedings, M.P. Administrative Tribunal was abolished and by virtue of provisions of Madhya Pradesh Rajya Prashasnik Adhikaran (Lambit Evam Nirakrat Avedano Ka Antaran) Adhyadesh, 2003, the pending cases stood transferred to this Court for adjudication. It is pertinent to point out that even before establishment and constitution of Tribunal, all service disputes were adjudicated upon by this Court on a petition under Article 226/227 of the Constitution of India, therefore, after the transfer of Original Applications to the High Court under provisions of 2003 Adhyadesh (supra), all such cases were registered as Writ Petition and have been disposed of treating them to be writ petition under Article 226/227 of the Constitution of India. Against the order of Single Judge, the party aggrieved had remedy of Letters Patent Appeal (LPA), and thereafter, Writ Appeal (WA) under the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005. This goes to show that for all practical purposes, Original Applications transferred from the Tribunal to this Court were registered and decided as Writ Petition under Article 226 of the Constitution of India. There is another aspect of the matter. The writ jurisdiction of this Court is not governed by the provisions of the Administrative Tribunals Act, 1985, therefore, Section 21 of the 1985 Act cannot curtail the jurisdiction of this Court conferred by Article 226/227 of the Constitution of India. In view of

this, in the considered opinion of this Court, the plea of limitation raised by Shri Sethi would not come in the way of the petitioners. To exercise jurisdiction under Article 226 of the Constitution of India, no period of limitation is prescribed under the law but a self imposed constraint not to entertain a petition on account of delay and laches has been evolved. There is another facet of the case which clearly shows that there has been violation of Articles 14 and 16 of the Constitution of India in the matter of public employment and, therefore, such technical plea of limitation should not come in the way of doing justice or protecting the fundamental right of the citizens. To accept the contention of Shri Sethi, it would be too parochial approach and would lead to defeat the justice on the wheels of statistics. It is the foremost duty of this Court to uphold the fundamental right. Thus, in this backdrop, we find that the appointments made in favour of respondent Nos. 3 to 6 are illegal, bad in law and are in violation of Articles 14 and 16 of the Constitution of India and as such, they are unsustainable.

7. In view of the aforesaid conclusion, this Court is left with no option, but to quash the appointment orders of respondent Nos. 3 to 6 and to further direct the respondents to hold fresh selection for the post of Laboratory Attendant. This be done at the earliest, within a period of four months from the date of communication of certified copy of the order.

8. At this stage, Shri Sethi, learned Senior Counsel appearing for respondent Nos. 3 to 6, submitted that in view of the aforesaid direction, the necessary consequence would be that respondent Nos. 3 to 6 would be thrown out of the job and having worked on the post for about 10 years, they have obviously crossed the upper age-limit prescribed for public employment. He submitted that in order to protect the interest of respondent Nos. 3 to 6, they may be allowed to continue in service till the fresh selection takes place and they may be allowed to participate in the selection process condoning the age-limit. In support of this contention, Shri Sethi relied on a decision of Supreme Court in the case reported in (1992) AC 292, H.C. Puttaswamy and Ors. v. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and Ors. and a decision reported in AIR 2004 SCW 5332, Pankaj Gupta and Ors. v. State of Jammu and Kashmir and Ors.

9. Per contra, Shri Patne, learned Counsel appearing for the petitioners, cited the decision of Supreme Court reported in : AIR2005SC2103 , Binod Kumar Gupta and Ors. v. Ram Ashray Mahoto and Ors. and a decision reported in (2008) 1 SCC 348, Nagendra Chandra and Ors. v. State of Jharkhand and Ors.

10. After having given considerable thought to the problem placed before this Court, we deem it proper in the light of law laid down by the Supreme Court in the above decisions and for the smooth functioning of the College, the respondent Nos. 3 to 6 may be allowed to continue in service till fresh selection and appointment is made in accordance with law by the respondent Nos. 1 and 2 after issuing advertisement or calling the applications from the Employment Exchange so as to enable eligible persons to participate in the recruitment

process. So far as petitioners and respondent Nos. 3 to 6 are concerned, if they wish to participate in the recruitment process, in that eventuality, respondent Nos. 1 and 2 shall not reject their application forms on the ground of age-limit and allow them to participate in the recruitment process provided, they possess requisite qualification and are eligible in all respect for appointment on the post of Laboratory Attendant.

11. In view of the foregoing discussion, this writ petition is allowed. It is once again reiterated that respondent Nos. 1 and 2 shall ensure that entire exercise is completed as early as possible, but not later than four months from the date of communication of certified copy of this order. No costs.