

(2013) 02 MP CK 0127

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3144 of 2011 (S)

Narendra Kumar Gautam

APPELLANT

Vs

Devkaran Pathak and Others

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Citation : (2013) 3 MPLJ 710

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : S.R. Tamrakar, for the Appellant; Sanjay Sarwate for respondent No. 1, Swapnil Ganguli, Panel Lawyer for respondent Nos. 20, 21 and 23 and Mrs. Vandana Shroti for respondent No. 22, for the Respondent

Final Decision : Allowed

Judgement

Alok Aradhe, J.

Mr. S. R. Tamrakar, learned counsel for the petitioner.

Mr. Sanjay Sarwate, learned counsel for the respondent No. 1.

Mr. Swapnil Ganguli, learned Panel Lawyer for the respondents 20, 21 and 23.

Mrs. Vandana Shroti, learned counsel for the respondent No. 22.

In view of the order dated 17-2-2011 passed by a Bench of this Court, respondents 3 to 19 were treated as formal parties therefore, no notice was issued to them.

With the consent of learned counsel for the parties the matter is heard finally.

1. In this petition, the petitioner inter alia has challenged the validity of the order dated 3-2-2011 passed by the Additional Commissioner. The petitioner also seeks a direction to the Gram Panchayat to consider the applications afresh for appointment on the post of panchayat karmi as on 17-7-2007. The background facts leading to filing of the writ petition, briefly stated, are that an

advertisement was issued for appointment on the post of Panchayat Karmi in Gram Panchayat, Goraiya, Block-Maihar, district-Satna. In response to the aforesaid advertisement, the petitioner and the respondent No. 1 as well as twelve other candidates submitted their applications. On scrutiny of the applications it was found that the petitioner and the respondent No. 1 secured equal marks. It is not disputed that the wife of the respondent No. 1 at the relevant time was a Panch of the aforesaid Gram Panchayat. Thereafter a decision was taken to fill up the post of Panchayat Karmi on the basis of voting. It is the case of the petitioner that nine members had voted in favour of the petitioner whereas eight members had voted in favour of the respondent No. 1. Accordingly, a proposal was made. However, as per version of the petitioner, the respondent No. 1 in connivance with the secretary of the Gram Panchayat changed the proposal. Thereupon on 18-7-2007 nine Panchas of the Gram Panchayat made a complaint to the Chief Executive Officer, Janpad Panchayat, Maihar with regard to change of the proposal.

2. The petitioner thereafter challenged the order dated 17-7-2007 by which the respondent No. 1 was appointed as Panchayat Karmi in an appeal before the Sub-Divisional Officer. The Sub-Divisional Officer on perusal of the record of the Gram Panchayat came to the conclusion that the procedure prescribed for filling up the posts in Gram Panchayat was not followed and neither the select list as per merit was prepared nor the same was sent for approval of the Collector. The appointment on the post of Panchayat Karmi was made on the basis of majority of votes and an order of appointment in favour of the respondent No. 1 was issued. Accordingly vide order dated 30-11-2007 the order of appointment of the respondent No. 1 was quashed and the matter was remanded to the Gram Panchayat with a direction to make appointment on the post of Panchayat Karmi in accordance with the procedure prescribed in this behalf.

3. Being aggrieved by the aforesaid order, the respondent No. 1 filed a revision before the Additional Commissioner. The Additional Commissioner vide order dated 3-2-2011 allowed the revision preferred by the petitioner on the ground that the orders dated 27-1-2006 and 13-8-2007 issued by the State Government for filling up the post of Panchayat Karmi, do not have retrospective operation and the respondent No. 1 was already appointed on the post of Panchayat Karmi on 17-7-2007. It was further held that the order passed by the Sub-Divisional Officer is in violation of the order dated 13-8-2007 passed by the State Government. Accordingly, the same was quashed. In the aforesaid backdrop, the petitioner has approached this Court.

4. Learned counsel for the petitioner submitted that at the time when the resolution was passed on 17-7-2007, admittedly, the wife of the respondent No. 1 was functioning as Panch and, therefore, in view of the proviso to section 69(1) of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (in short "the Act") the respondent No. 1 could not have been appointed as Panchayat Secretary. In support of his submission, learned counsel for the petitioner has

placed reliance on the decision in Ganesh Singh Rawat Vs. State of M.P. and Others, . It is further submitted that the Additional Commissioner grossly erred in holding that the order passed by the Sub-Divisional Officer is contrary to the order passed by the State Government dated 13-8-2007. In support of the aforesaid submission, learned counsel for the petitioner has invited attention of this Court to the order passed by the Division Bench in Suresh Vs. Chief Executive Officer, Zila Panchayat, Barwani, . It is also submitted that the revision preferred by the respondent No. 1 before the Additional Commissioner was not maintainable as the respondent No. 1 ought to have filed an appeal before the Collector. It is also urged that the order passed by the Additional Commissioner is cryptic and suffers from non-application of mind.

5. On the other hand, learned counsel for the respondent No. 1 submitted that the revision preferred by the respondent No. 1 was maintainable before the Commissioner as the order was passed by the Sub-Divisional Officer in appeal. In support of the aforesaid submission, learned counsel for the respondent No. 1 has placed reliance on the decisions in Abdul Hasan Qureshi and Smt. Rani Chandra Vs. State of M.P. and Others, and Ramkinkar Vishwakarma Vs. State of M.P. and Others, . It is also submitted that the orders dated 17-1-2006 and 13-8-2007 do not have retrospective operation prior to coming into force the order dated 13-8-2007 the respondent No. 1 was already appointed on the post of Panchayat Karmi. In this connection, learned counsel for the respondent No. 1 has referred to the decision rendered by single Bench of this Court in Kalpnath Mishra Vs. State of M.P. and Others, . It is further submitted that even though in view of the proviso to section 69(1) of the Act, the respondent No. 1 cannot be notified as Panchayat Secretary, yet he cannot be prevented from working as Panchayat Karmi. Learned Panel Lawyer supported the stand taken by the petitioner and submitted that the order passed by the Sub-Divisional Officer is perfectly just and legal and, therefore, the Additional Commissioner grossly erred in interfering with the same.

6. I have considered the respective submissions made by learned counsel for the parties. The orders dated 17-1-2006 and 13-8-2007 came up for consideration before the Division Bench of this Court in Suresh (supra). The Division Bench held that as per the scheme of appointment of Panchayat Karmi, the merit was required to be observed even as per the circular dated 27-1-2006 which was in vogue. The Division Bench repelled the contention that in respect of the appointment made prior to 13-8-2007, the merit was not required to be considered. Thus, in view of the law laid down by the Division Bench of this Court it is apparent that the merit was required to be considered while making appointment even prior to the order dated 13-8-2007 by the State Government. From perusal of the order passed by the Additional Commissioner it is apparent that the Additional Commissioner has set aside the order passed by the Sub-Divisional Officer merely on the ground that the same is contrary to the order dated 13-8-2007 passed by the State Government and the orders dated 27-1-2006 and 13-8-2007 do not have retrospective operation. The aforesaid

finding of the Additional Commissioner is contrary to the law laid down by the Division Bench of this Court. The Sub-Divisional Officer in the order has held that neither the merit list was prepared nor the same was sent for approval by the Collector. The appointment of the respondent No. 1 was made on the basis of the voting in which the wife of the respondent No. 1, who was panch, had also participated. Accordingly, the matter was remanded by the Sub-Divisional Officer to the Gram Panchayat. Thus, in the facts of the case, the order passed by the Additional Commissioner cannot be sustained in the eye of law as the same is contrary to the law laid down by the Division Bench of this Court in Suresh (supra). In view of the preceding analysis, the order dated 3-2-2011 passed by the Additional Commissioner is hereby quashed. In the result, the writ petition is allowed.