
(2014) 05 MP CK 0035
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 229/2012

Omprakash Meena

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 85(2)

Citation : (2014) 05 MP CK 0035

Hon'ble Judges : Shantanu Kemkar, J;J.K. Jain, J

Bench : Division Bench

Advocate : Piyush Mathur, learned Senior Counsel and Shri Kamlesh Mandloi, learned counsel, Advocate for the Appellant; Sudarshan Joshi, learned Panel Lawyer for Respondents No. 1, 2 and 3, Ms. Nidhi Bohra, learned counsel for Respondent No. 5 and Shri O.P. Sharma, learned counsel for Respondent No. 6, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—By filing this intra court appeal, the appellant has challenged the order dated 13.04.2012 passed by the learned Single Judge of this Court in Writ Petition No. 14469/2010, by which the learned Single Judge has set aside the order dated 16.11.2010 passed by the State Minister in revision and restored the order dated 07.04.2010 passed by the Collector and the order dated 16.04.2010 passed by the Commissioner.

2. Undisputedly, the appellant's appointment on the post of Panchayat Karmi was not made by the Gram Panchayat on the basis of merit and the resolution was passed in his favour, ignoring merits of all the other candidates. It is also undisputed that there were candidates available, who acquired more marks in the 10th Standard Examination than the present appellant. The Collector, Dewas, after noticing the aforesaid and also many other irregularities in passing the resolution for the appointment, cancelled the resolution by which the appellant was appointed and directed the Gram Panchayat to take necessary steps for

making appointment on the post of Panchayat Karmi, in accordance with rules. In appeal, the order passed by the Collector was maintained by the Commissioner. However, the State Minister vide orders dated 16.11.2010 set aside the order passed by the Collector as also the Commissioner.

3. The order of the State Minister, on being challenged in writ petition, the learned Single Judge vide impugned order set aside the order passed by the State Minister, taking into consideration the fact that the appointment of the appellant was being made by the Gram Panchayat, ignoring the merits of the candidates, who had applied for the post and noticing the fact that the appellant, who was less meritorious, was illegally appointed by the Gram Panchayat.

4. Learned Senior Counsel for the appellant has argued that the Collector could not have ordered for cancellation of the resolution and the appointment. According to him, u/s 85(2) of the MP Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, it was only for the State Government, or the officer nominated by the State Government, to have taken appropriate decision on the order of the Collector on being forwarded to it. On the other hand, learned counsel appearing for respondent No. 5 and 6 have supported the impugned order.

5. We have considered the submissions made by the learned counsel for the parties.

6. Admittedly, the resolution for appointment of the appellant was passed by the Gram Panchayat, ignoring the merits of the other candidates, who had better claim. In the circumstances, even assuming that the Collector had committed error in cancelling the resolution of the appellant's appointment and also in issuing directions to the Gram Panchayat for making fresh appointment, the fact remains that the learned Single Judge, in exercise of his jurisdiction under Article 226 of the Constitution of India, by quashing the order of the Minister had restored the order of the Collector and the Commissioner, which led to just result. The order passed by the learned Single Judge is for advancement of justice, and as such, this Court in intra court appeal will not interfere in the order passed by the Writ Court, which has led to rendering justice.

7. It has now been well settled that even if any wrong order is passed, but if it is leading to a just decision or has rendered justice, it has to be upheld. (See Writ Petition No. 6542/2002 State of MP & others v. Shriram Raghuvanshi decided on 29.10.2004 by Principal Seat, Jabalpur and Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another,). Here, in the present case, the orders of the Collector and the Commissioner may be said to be erroneous procedurally, but they had led to a just decision, and as such, the same were rightly restored by the learned Single Judge by quashing the order of the Minister. The Supreme Court in the case of Roshan Deen Vs. Preeti Lal, had observed that the power conferred on the High Court under Articles 226 and 227 of the Constitution of India is to advance justice and not to thwart it. The very purpose of such constitutional powers being conferred on the High Courts is that

no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

8. Having regard to the aforesaid position of law, in our considered view, no fault can be found in the order of the learned Single Judge, as it has led to setting aside of an unjust appointment, which was made ignoring the merits of the other more meritorious candidates.

9. Thus, no case for interference in the order passed by the learned Single Judge is made out. The appeal fails and is hereby dismissed.

C.c. within three days.