
(2006) 10 MP CK 0010
In the Madhya Pradesh High Court

Pankaj Saxena

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 13-10-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2006) 4 MPLJ 449 : (2007) 3 SLJ 298

Hon'ble Judges : S.S. Jha, J;P.K. Jaiswal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J.

Heard.

Counting of ad hoc period of service of the appellant, for the purpose of seniority is the main issue which falls for adjudication in this appeal.

This appeal is directed against the judgment and order dated 5.7.2006 passed in Writ Petition No. 308/2006(S) by which the learned Single Judge dismissed the petition of the petitioner on the ground that ad hoc period cannot be counted for the purpose of seniority.

Brief facts which are necessary to dispose of the appeal are recapitulated as under.

The appellant was appointed on ad hoc basis vide order dated 3.2.1984 (Annexure P/I) as an Asstt. Teacher for the period of 89 days. After expiry of the above period, his service has been discontinued, and therefore, he filed an application u/s 19 of the Administrative Tribunal Act, 1985 before the M.P. State Administrative Tribunal. The matter was decided by the Tribunal on 3.11.1993 (O.A. No. 457/01). By the said order the respondents were directed to consider the case of the petitioner for appointment on the post of Asstt. Teacher and also directed to relax the age of the petitioner and preference be given to him for his

appointment on the post of Asstt. Teacher.

In the year 1994 the petitioner applied for appointment on the post of Asstt. Teacher. His application was considered and vide Annexure-P/2 dated 17.6.1994 he was called for interview and thereafter he was appointed on the post of Asstt. Teacher vide order dated 11.7.1994 and his seniority was counted with effect from 11.7.1994. The appellant after a period of 12 years filed a writ petition and prayed for issuance of writ of mandamus, directing the respondents to permit the petitioner in employment since the year 1984 and for fixing the seniority and increments and all the notional benefits be granted to him from the date of his ad hoc appointment which was made in the year 1984.

The learned Single Judge dismissed the writ petition by holding that petitioner was earlier appointed on ad hoc basis for a fixed period and thereafter his services was discontinued and as per recruitment Rules, he was appointed on the post of Asstt. Teacher vide order dated 11.7.1994 and he was assigned the seniority from the aforesaid date and therefore, the ad hoc period cannot be counted for the purpose of seniority with effect from the year 1984.

Learned Counsel for the appellant has submitted that he made a representation before the respondent No. 4 on 14.9.2005 and therefore, prayed that the respondent No. 4 be directed to consider his representation within a specified period. The petition has already been dismissed on merits by the learned Single Judge and therefore, no direction can be made to the respondent No. 4 to consider the representation of the appellant and decide it in accordance with law.

It is not in dispute that the ad hoc appointment of the petitioner was de hors to the M.P. Non-Gazetted Class-II Educational Service (Non-Collegiate) Recruitment Rules. No advertisement was issued nor the mode of selection provided in the said Rules were followed by the authorities at the time of appointment of the appellant in the year 1984. The appellant was appointed contrary to the Recruitment Rules, and therefore, in view of the Division Bench decision of this Court in the case of Bherusingh Vala Bamniya v. State of M.P. and Ors. 1986 MPLJ 617, no relief as claimed by the appellant can be granted and learned Single Judge rightly dismissed the writ petition of the appellant. The Division Bench of this Court in the case of Bherusingh (supra) has held that the ad hoc appointment means for any special or particular purpose or to last for a particular period. Here in the present case the services of the appellant was discontinued and no direction was issued by the Tribunal for considering the period of discontinuation for counting his seniority, nor petitioner challenged the order of the Tribunal dated 3.11.1993 by filing a writ petition before this Court, and therefore, the order passed by the learned Tribunal has attained finality.

The Constitutional Bench of the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, has observed as under:

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper

selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission.

The initial appointment of the appellant is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiating in such post cannot be taken into account for considering the seniority. The basic principle underlying this proposition of law is to avoid back door entry and the consequential prejudice to the candidates appointed on regular basis through proper channel and in accordance with the rules.

The appellant failed to point out any provision by which if any ad hoc appointment was made contrary to the Rules and services of the employee was discontinued then also he is entitled for counting his service for the purpose of seniority from the date of ad hoc appointment.

In view of the above we do not find any merit in this intra Court appeal which is filed under Clause 2 of Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005. There is no legal error in the impugned order passed by the learned Single Judge, and therefore, we are not inclined to interfere in the matter and accordingly the appeal is dismissed in limine.