
(2002) 10 MP CK 0011
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4424 of 2000

Pawan Kumar Singh

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Citation : (2003) ILR (MP) 396 : (2003) 1 MPHT 468 : (2003) 1 MPLJ 450

Hon'ble Judges : Saraswati Prasad Khare, J

Bench : Single Bench

Advocate : Malti Dadariya, for the Appellant; A. Singh, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is a writ petition under Articles 226 and 227 of the Constitution of India challenging the order dated 13-6-2000 by which the services of the petitioner have been terminated by the respondent No. 2.

It is not in dispute that the petitioner was appointed as Driver on daily wages by order dated 15-5-1992 to drive the vehicle of respondent No. 2 District Panchayat, Shahdol. He was appointed in the regular pay-scale as Driver by order dated 9-12-1996. He was served with the show-cause notice dated 24-5-2000 (Annexure P-7) by which his services were proposed to be terminated on the grounds that--(a) the names were not called from the Employment Exchange, (b) advertisement was not issued, (c) Selection Committee was not constituted, and (d) interview was not taken. The petitioner submitted its reply on 29-5-2000 as per Annexure P-8 stating therein that he was appointed in the regular pay scale taking his work and conduct into account during the last four years. It is also stated therein that the appointing authority was fully satisfied about his competence to drive the vehicle and then a resolution was passed by the District Panchayat for his appointment. The petitioner claimed that he belongs to Scheduled Caste. His services were terminated by the impugned order

dated 13-6-2000 (Annexure P-1). Two additional grounds were added for his termination which were not set up in the show-cause notice. These grounds were that--(a) the petitioner has wrongly written the name of his father and the place of his residence as Shahdol, and (b) there was no post of the driver in the District Panchayat. The basis for the termination of the services has been pointed out as circular dated 14-2-2000 (Annexure R-2) of the State Government.

The petitioner's case is that the sanctioned post did exist and it was not mentioned even in the show-cause notice that there was no such post. The circular dated 14-2-2000 was not applicable to his case as he was a regular employee and not a daily-wage worker. The name of his father was wrongly written through inadvertence and the place of residence cannot be a ground for discrimination. He was appointed by the competent authority after following the proper procedure and the termination of his services is illegal.

The case set up by the respondent No. 2 in its return is that the petitioner has been removed from service as on scrutiny it was found that the proper procedure for his recruitment was not followed. His services have been terminated in conformity with the circular dated 14-2-2000 (Annexure R-2). It is also stated that there was no "vacant post" of the driver in the District Panchayat. It is also stated that the petitioner belongs to "backward class" and not "Scheduled Caste".

After hearing the learned Counsel for both the sides this Court is of the opinion that the impugned order must be quashed. The basic reason for the termination of the services of the petitioner is said to be circular dated 14-2-2000 (Annexure R-2) of the State Government for termination of the services of those employees who were appointed on daily wages after 31-12-1988. A perusal of this circular shows that according to its "subject" and contents it related to daily wage employees and not to regular employees. The petitioner was initially appointed on daily wages in the year 1992 but he was a regular employee on 14-2-2000 when the circular of the State Government was issued. Therefore, this circular does not apply to his case.

It is stated in the return that there was no "vacant post" of the driver when the petitioner was appointed in regular pay scale in the year 1996. This ground was not taken in the show-cause notice dated 24-5-2000 (Annexure P-7) issued to the petitioner. Therefore, he could not show any cause in this respect. Even otherwise it is for the respondent No. 2 to show why there was no post. The petitioner was admittedly engaged in the year 1992 to drive the vehicle of the District Panchayat and then he was appointed in the regular pay scale in the year 1996. Thus he worked for four years on daily wages and for four years in the regular pay scale. In such a situation it can be reasonably presumed that there was vacant post of the driver.

It is not specifically mentioned in the return which rule was violated in the appointment of the petitioner. It was the duty of the appointing authority to call the names from the Employment Exchange or issue an advertisement for inviting

the applications. This could not be a ground for termination after four years of the appointment in the regular pay-scale. The action should have been taken against the officer who did not call the names from the Employment Exchange and did not issue the advertisement. No one else has come forward to challenge the appointment of the petitioner. He cannot be made to suffer because the names were not called from the employment exchange. That factor does not vitiate the appointment. [Basavaraj R. Patil and Ors. v. The State of Karnataka, 2001 SCC 87. .

The petitioner had already worked for about four years on daily wages. Therefore, the appointing authority must have been satisfied about the suitability of the petitioner to work as Driver. His work and conduct must have been found upto the mark. Therefore, there was no need of forming a Selection Committee or undergoing the formality of interview. It appears that some grounds have been dug up to remove the petitioner. It is against the rule of "fairness" in the administration. As the circular dated 14-2-2000 (Annexure R-2) is not attracted in the present case the termination of services of the petitioner is illegal.

The petition is allowed. The order dated 13-6-2000 (Annexure P-1) by which the petitioner has been removed from service is quashed. The respondent No. 2 will reinstate him on the post of driver within a month and pay him the costs which are computed at Rs. 1000/-. No back wages are allowed if the reinstatement order is passed within a month failing which 50% back wages shall also be paid to the petitioner by the respondent No. 2.