

(1997) 08 MP CK 0013

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2040 of 1997

Prabhu Dayal Pandey

APPELLANT

Vs

M.P. State Agricultural Marketing Board and Another

RESPONDENT

Date of Decision : 30-08-1997

Acts Referred:

Citation : (1998) 2 JLI 98

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : R.N. Singh, for the Appellant; A.G. Dhande, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.—The order in this petition shall also decide the connected writ petition (W.P. No. 2169/97- Vinod Kumar Jain v. M.P. State Agricultural Marketing Board and Anr.) as the points arising for decision in both the petitions are common.

2. Both the Petitioners are assailing the orders Annexure-P/1 (in both the cases) of the same date i.e. 24.4.1997 passed by the Director of Mandis in his capacity as Secretary of M.P. State Agricultural Marketing Board (hereinafter referred to as "the Board" for short). The Petitioner initially were members of the State Marketing Services and later on were appointed/absorbed in the services of M.P. Agricultural Marketing Board. The State Marketing Services and the Board are constituted under the provisions of M.P. Krishi Upaj Mandi Adhiniyam, 1972 (No. 24 of 1973). By the two impugned orders, marked as Annexure-P/1 in both the petitions, the Petitioners who were working as Deputy Secretaries in the Board have been reverted and repatriated to their parent department in the State Agricultural Marketing Service. The impugned action against the two Petitioners has been taken on the grounds stated in the impugned orders that their absorption as Assistant Secretaries in the Agricultural Board and their promotion to the post of Deputy Secretary in the Board were contrary to the Service

Regulations framed by the Board as both of them did not possess the prescribed minimum six years of service as employee in Class I Mandi.

3. Before considering the contentions advanced by the counsel appearing for the parties, a brief service history of the two Petitioners leading to the passing of the impugned orders may first be stated. Admittedly, the two Petitioners were working as Secretaries Grade-II in the State Agricultural Marketing Service. By order issued on 4.3.1985, Petitioner Prabhudayal Pandey was promoted as Secretary Grade-I and by order passed on 20.8.1985 Petitioner Vinod Kumar Jain was also so promoted w.e.f. 1.2.1985. By orders issued on 7.3.1990 in favour of Vinod Kumar Jain and on 8.5.90 in favour of Prabhudayal Pandey, the Board appointed them in their services on the post of Assistant Secretary on ad hoc basis subject to approval by the selection committee for their absorption.

4. The above ad hoc appointment of the Petitioners on the post of Assistant Secretary was regularised and they were temporarily posted by a common order issued on 14.12.1990. Subsequently, by another common order issued on 11.10.1991, both the Petitioners were promoted by the Board from the post of Assistant Secretary to the post of Deputy Secretary. By another common order issued on 16.4.1992 in favour of six employees who were appointed in the Board from the State Agricultural Marketing Service including the two Petitioners and Shri R.R. Yadav and Shri Abdul Rashid Khairani (who were Petitioners respectively in W.P. No. 1814/97 and W.P. No. 1834/97), the services of the Petitioners and other employees mentioned in the order were absorbed in the services of the Board and their lien in State Marketing Service was terminated. In case of all the six employees including the four named above, by common order issued on 16.4.1992, they were finally absorbed with their past services, in the Board.

5. From the returns filed in the two petitions, it is revealed that a question was raised in the State Legislature in the year 1993 on the validity of appointment, promotion and absorption of the Petitioners and other concerned employees in the services of the Board. The Director of Mandi was directed by the Government on 13.12.1993 to take necessary remedial action in the matter. On the basis of the instructions of the State Government, the Director of Mandis in dual capacities as Director and Ex-officio Secretary of Mandi Board, then initiated action against the Petitioners. The first step in that direction was to send them queries by letters issued between March 1996 and March 1997 which are filed with the return in W.P. No. 2169/97 cumulatively marked as Annexure- R/2. The Petitioners were demanded proof of their educational qualifications and period of their service. After completing the necessary enquiries the impugned orders of reversion-cum-repatriation which are under challenge in these two petitions came to be passed.

6. Shri R.N. Singh, learned Counsel appearing for both the Petitioners, has assailed the two orders on several grounds. Firstly, it is contended that the Petitioners have been finally absorbed in the services of the Board and their lien

having been terminated in the State Marketing Service, it was grossly illegal on the part of the Board to revert and repatriate them. The second ground urged is that the entire action has been taken merely after making some enquiry about the qualification of the Petitioners and they were not given any effective opportunity to show cause against the action. The action, therefore, is in breach of principles of natural justice. The learned Counsel for the Petitioner then contends that in fact the points for consideration arising in the two petitions are squarely covered by the decision of the learned Single Judge (S.K. Kulshreshta, J.) in W.P. No. 1814/97 (R.R. Yadav v. M.P. State Agricultural Marketing Board) and W.P. No. 1834/97 (Abdul Rashid Khairani v. M.P. State Agricultural Marketing Board) decided by common order dated 7.5.1997. It is pointed out that the learned Single Judge has quashed the similar action taken of reversion-cum-repatriation against R.R. Yadav and A.R. Khairani and that judgment has been approved by the Division Bench in L.P.A. No. 126/97 decided on 28.6.1997 whereby the appeal preferred by the Board was dismissed.

7. Shri A.G. Dhande, learned Counsel appearing for the Respondents, does not dispute that some of the points which are common in these petitions and in the petitions filed by R.R. Yadav and A.R. Khairani stand decided by the judgment of the learned Single Judge which has been approved by the Division Bench in L.P.A. He, however, contends that the said judgment of the learned Single Judge is distinguishable in so far as the present two petitions are concerned. It is urged that the stand taken by the Board in their returns in these two petitions has not been considered and needs decision in these cases. The learned Counsel elaborated his stand by arguing that as per the regulations laying down minimum educational qualifications and experience, both the Petitioners were unqualified for being either appointed as Assistant Secretary or promoted as Deputy Secretary. The minimum prescribed qualifications for promotion to the post of Assistant Secretary are minimum six years' service as Second Grade Secretary in State Marketing Service with degree from any university of Madhya Pradesh in Agriculture or Science or Economics. He should possess a graduate degree in Arts or Commerce. Apart from the above educational qualifications, the candidate should have been absorbed on the post of Technical Assistant in the Agricultural Board. Similar educational qualifications have been prescribed for promotion to the post of Deputy Secretary. On behalf of the Board, it is submitted that the enquiry made from the Petitioners revealed that Prabhudayal Pandey possesses only a degree of Sahityaratna in the subject of Economics from Hindi Sahitya Sammelan, Prayag which is a Hindi University. So far as Vinod Kumar Jain is concerned, according to him, he was unable to obtain the testimonials of his educational qualifications for want of sufficient time and opportunity. He has, however, stated in his rejoinder that he possessed the degree of B.A. and this fact was duly verified and considered by the D.P.C. in its proceedings. In the seniority list maintained in the department, he is duly described as a holder of degree of B.A. Apart from B.A., he also had training as Secretary Mandi in the Institute at Lucknow. According to him, he had given his

educational testimonials in original before joining the services of the Board and he could not re-submit the same when on the basis of Assembly questions queries were made from him.

8. On the above facts, the learned Counsel for the Respondents contends that since the two Petitioners lacked minimum prescribed educational qualifications, their appointment as Assistant Secretary and promotion as Deputy Secretary were ab-initio void and illegal. It was, therefore, open to the Board after true facts were revealed to annul their appointments in the Board and to repatriate them to their original posts in the parent department. It is argued that where the appointments are obtained by suppressing relevant materials and are found to be illegal, no principles of natural justice are attracted and the competent authorities have right to annul such illegal appointment. Reliance is placed on *Rita Mishra and Others Vs. Director, Primary Education, Bihar and Others etc.*, , *Rajendra Kumar Joshi and Ors. v. Town Improvement Trust* 1991 J LJ 159, and *Union of India and Ors. v. Kishan Gopal Vyas*, (1996) 7 SCC 134 .

9. This Court finds that almost all points urged in support of the action taken by the Respondents have been negated by the learned Single Judge (Kulshrestha, J.) in W.P. No. 1814/97 decided on 7.5.1997 (supra). It having received the seal of approval by the Division Bench in LPA, the decision is binding on this Court. The learned Single Judge has duly considered the ground urged on behalf of the Respondents with regard to lack of requisite years of experience. It has been noticed by the learned Single Judge that the laid down qualification of experience of six years in the Regulation was reduced to five years by amendment to the Service Regulations by the Board passed in its 42nd meeting dated 22.9.1990 and approved in its 43rd meeting dated 11.3.1991. Both the Petitioners in this case had requisite five years experience. The only new ground in these two petitions which is to be considered is lack of prescribed educational qualifications. Petitioner Prabhu Dayal Pandey possesses degree of Sahityaratna from Prayag University. Shri Vinod Kumar Jain claims that he had disclosed his educational qualification when his services were absorbed in the Board. He claims to have passed B.A. examination with training at Lucknow. Accepting the stand taken on behalf of the Respondents that both the Petitioners lacked in prescribed educational qualification for being appointed to the post of Assistant Secretary and promoted to the post of Deputy Secretary, the question is whether in the year 1991 it was permissible under law for the Board to annul their appointments and promotions and to repatriate them to the parent department. As has been noticed by the learned Single Judge (S.K. Kulshrestha, J.) with whose opinion this Court finds itself in respectful agreement, the order of absorption of the Petitioners in the Board and the orders terminating their lien in the State Marketing Services have not been set aside or annulled by the Board. In the absence of setting aside of those orders of absorption and termination of lien, it was not possible to respartriate the Petitioners to the State Marketing Service.

10. It is true that an illegality whenever discovered can be declared to be so. It is

contended on behalf of the Board that the Petitioners suppressed the fact of want of educational qualifications and obtained illegal appointments in their favour. At the time when they were appointed, absorbed and promoted in the services of the Board, it was open to the Board to make all enquiries and scrutinise all their testimonials for finding out their educational qualifications. That was not done at the relevant stage. There is no time limit or limitation for taking an administrative action. But, in cases of actions of a statutory body, so also in judging actions of the administrative authorities, the principle of reasonable period should be applied as a rule of fair play. An administrative action should also be taken within a reasonable time. If there are laches and unexplained delay on the part of competent administrative authorities, the Court may refuse to uphold their action. In the instant two cases, not only once but at several stages the authorities of the Board had occasions to scrutinise and examine the educational qualifications of the two Petitioners, but that was not done. It is only when an Assembly question was raised on some illegal appointments made in the services of the Board that the authorities of the Board were cautioned and necessary action was taken. By that time, the Petitioners had put in six years of service in the Board. They had worked on their respective posts and gained experience. To set up against them want of educational qualification and to reduce them to a post from which they began in the State Marketing Service cannot be countenanced as a fair play in action. In the Letters Patent Appeal No. 126/97, in rejecting the appeal of the Board against the judgment of the learned Single Judge, it has been observed thus:

We have perused the order passed by the learned Single Judge. It is unfortunate that the Government, having known that the appointment of the Respondent was illegally made, sat over the matter and woke up in 1997. This is too belated a stage to remove a person who have put in 6-7 years of service on a particular post. It is true that at the time of initial appointment, the Respondent was not eligible for appointment, but today he has completed more than 6 years' service and gained sufficient experience which should make good his initial lack of qualification.

In somewhat similar circumstances, the Supreme Court in case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, , has taken the view that initial lack of qualification can be made good by long experience. But in the present case, the initial lack of experience has been adequately made good as the Respondent has completed more than six years' services as Deputy Secretary, Mandi Board.

The view taken by the learned Single Judge does not call for any interference.

11. The plea based on alleged want of educational qualifications of the two Petitioners is not available to the Board after such long lapse of time. An illegal action or decision is not for ever so. Even a void decision will become valid unless it is challenged or set aside within a prescribed time limit or reasonable period. By inaction or consequent action, an illegal or void decision matures into validity.

Once the decision matures into "validity" as it were, acts already done in execution of it also mature into legality. Administrative decisions are expected to be taken reasonably and within a reasonable time. Where the administrative authorities do not take action within a reasonable time, even the illegal acts, by lapse of time and as a result of consequent action thereupon, mature into validity. That is the distinction between a void and voidable action. Nothing is void in the absolute sense. A void action is also required to be declared so by a competent forum in proceedings which should have been taken within limitation prescribed, if any, or within a reasonable time. The Court will refuse to declare an action void or illegal to which challenge is not made within a reasonable period. The Petitioners were appointed in the Board in the year 1990. They were promoted in the year 1991. They are absorbed and their lien was terminated in April 1991. After six years, in 1997, the Board's action to treat their appointments as illegal cannot be sustained.

12. Apart from the above, there is another reason for refusing to accept the stand of the Board. Minimum prescribed qualifications laid down in the Regulations are only for promotion. The Regulations prescribed three modes of appointment -- one is direct recruitment, other is promotion, and the third is transfer. The Petitioners appointment to the post of Assistant Secretary was not by mode of either direct recruitment or promotion, but has to be held to be by the mode of transfer. The Petitioners were in the services of the State Marketing Services and came to the services of the Board as Assistant Secretary only by the mode of transfer. The lack of educational qualifications prescribed for direct recruitment, therefore, cannot be held to be disqualifications for their appointment by transfer. Thus, the Petitioners' appointment as Assistant Secretary in the Board could not have been annulled on the ground of want of educational qualification. So far as their promotion to the post of the Deputy Secretary is concerned, the fact of the remedial action having not been taken within a reasonable period would be a good ground to reject the stand of the Board as discussed above.

13. For the aforesaid reasons, the two petitions succeed and are hereby allowed. The impugned orders (Annexure P-1 in both the cases) dated 24.4.1997 respectively in cases of the two Petitioners are hereby quashed. The Respondents are directed to reinstate the two Petitioners on the posts they held in the Board and grant them all consequential benefits within a period of two months from the date of receipt of a copy of this order. In the circumstances, parties shall bear their own costs.