

(2012) 07 MP CK 0072
In the Madhya Pradesh High Court
Case No : Writ Petition No. 206 of 2010

Prahlad Das Tandia

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 69, 86, 86(1)

Citation : (2013) ILR (MP) 279 : (2012) 3 MPLJ 580

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : V.K. Shukla, for the Appellant; Lalit Joglekar, Panel Lawyer For Respondent Nos. 1 to 4 and Jitendra Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Trivedi, J.—This petition is directed against the order dated 15-12-2009 passed by the Collector, Dindori, in an appeal preferred by respondent No. 7, by which the appointment of the petitioner as Panchayat Karmi in Gram Panchayat, Dullopur, Block Bajag, District Dindori, has been cancelled, on the ground that the appellate authority has not properly considered the fact that rightful consideration was done by the Chief Executive Officer of Janpad Panchayat, who was directed to take action for appointment of Panchayat Karmi, because the respondent Gram Panchayat was not taking any steps in this respect. The procedure of appointment was duly followed and as such the order of appointment of the petitioner is illegally interfered with by the appellate authority. Thus the order impugned is bad in law. It is contended that vide advertisement dated 8-5-2006, the Chief Executive Officer of Janpad Panchayat, Bajag, invited applications for appointment on the post of Panchayat Karmi categorically contending that since the direction was given in exercise of powers u/s 86(1) of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "Act") for making appointment of Panchayat Karmi to the Gram Panchayat and since the Gram Panchayat has failed to comply

with the directions, in exercise of powers under sub-section (2) of section 86 of the Act, the Chief Executive Officer was required to act in this respect. The qualification, eligibility conditions etc. were mentioned in the advertisement. The application was submitted by the petitioner, which was duly considered. A merit list was prepared in which the name of the petitioner was put at S. No. 1 as he has secured the highest marks in the qualifying examination. Considering the merits drawn by the Chief Executive Officer, the matter was referred to the higher authorities for approval and an order of appointment was issued in respect of the petitioner. Such an order was called in question before the Collector but instead of considering the entire procedure as laid-down, mechanically the Collector reached to the conclusion that the preference was required to be given to the reserved category candidate. Further it was wrongly considered that since the petitioner was holding the post of Panch in the very same Gram Panchayat, he could not have made an application for his selection as Panchayat Karmi, therefore, it is held that the order of appointment of petitioner was illegal. It is contended that since the petitioner had already tendered the resignation, which was subsequently accepted, the candidature of the petitioner was not to be rejected. This being so, the findings were incorrectly recorded by the Collector and as such the order impugned is bad in law and is liable to be quashed.

2. Upon notice of the writ petition, the respondents have filed return. The respondent-State has contended that the writ petition is not maintainable in view of the fact that there is a statutory remedy of revision available under the Madhya Pradesh Panchayat (Appeal and Revision) Rules, 1995, which has not been resorted to by the petitioner and as such the petition is liable to be dismissed. It is further contended that fact relating to holding of post of Panch by the petitioner in very same Gram Panchayat was found proved. Admittedly, the application was submitted by the petitioner pursuant to the advertisement well before the date of tendering the resignation. Even if resignation submitted by the petitioner subsequently was accepted, it cannot be said that the petitioner was not holding the post of Panch on the date when he made application for selection on the post. In view of the aforesaid, the Collector has rightly interfered in the order of appointment of petitioner and has rightly set aside the same by allowing the appeal of respondent No. 7. It is contended that entire petition being based on misleading and misconceived facts, is liable to be dismissed.

3. Respondent No. 7 has filed a separate return and has categorically contended that apart from the facts as have been stated by the respondent-State in its return, the fact remains that the petitioner submitted his resignation only when he was appointed. Since he was holding the post of Panch at the relevant time, he could not have made the application for selection as Panchayat Karmi. Further the Gram Panchayat has already indicated that the Gram Panchayat was interested in appointment of a reserved category candidate as Panchayat Karmi for the purposes of his notification as Secretary of the Gram Panchayat because 90% population of the said Gram Panchayat was Scheduled Tribe. This being so,

the petitioner, who was belonging to other backward class, was not acceptable to the Gram Panchayat. Further, it was to be seen that the petitioner was not eligible to be permitted to take part in the selection as he was holding the post of Panch, an office bearer of the very same Gram Panchayat and, therefore, was not eligible to take part in selection. The resignation from the post of Panch was submitted by the petitioner only when he was duly selected and appointed as Panchayat Karmi. Thus, in view of law laid-down by this Court in the case of Ramphal, son of Shri Karmu Singh Maravi vs. State of M.P., W. P. No. 7245/2008, decided on 27-4-2010, the writ petition is liable to be dismissed.

4. Heard learned Counsel for the parties at length and examined the record.

5. It is not in dispute that the petitioner, who was holding the post of Panch in the very same Gram Panchayat, had made an application pursuant to the advertisement dated 8-5-2006. The cutoff date for making such an application was 10-5-2006. The application was made within this time by the petitioner. Admittedly he had not tendered resignation before this date, which was submitted by him only on 31-10-2006. Specific provisions have been made under the Act for not allowing any person to join the services or to notify him as Secretary of the Gram Panchayat u/s 69 of the Act where it is specifically said that a person shall not hold charge of Secretary of Gram Panchayat if such a person happens to be the relative of any office bearer of the concerned Gram Panchayat. If a relative of the office bearer of Gram Panchayat is not to be permitted to hold the charge of the post of Secretary of the Gram Panchayat, how could a Panch of very same Gram Panchayat be appointed on the post as Panchayat Karmi, which is meant only and only for notifying such a person as Secretary of the Gram Panchayat. The bar itself created under the Act was there against the petitioner and accordingly he was ineligible to take part in selection for appointment on the post of Panchayat Karmi. The Chief Executive Officer of Janpad Panchayat concerned while making selection has not taken note of these facts and committed an illegality in making selection of the petitioner. This was rightly examined by the Collector and he has rightly held that the petitioner was ineligible to be appointed on the post of Panchayat Karmi.

6. Apart from the fact whether on the cutoff date the petitioner was office bearer of the Gram Panchayat or not, it is to be seen on what date the petitioner has relinquished the post of Panch of the concerned Gram Panchayat. Specific Rules have been made for the purposes of tendering resignation by an office bearer of the Panchayat known as Madhya Pradesh Panchayat (Resignation by Office Bearer) Rules, 1995 (hereinafter referred to as "Resignation Rules, 1995"). The resignation is to be submitted by giving a notice as prescribed under Rule 3 of the Resignation Rules, 1995. The same is to be submitted in Form-A prescribed before the Sarpanch of the concerned Gram Panchayat and the said notice is also to be sent to the Secretary or Chief Executive Officer. The notice is to be forwarded to the District Deputy Director, Panchayat and Social Welfare and the Collector as per Rule 4 of the aforesaid Rules. A special meeting of the Gram

Panchayat concerned is to be called and in the said meeting the Panchayat is to ascertain from the member concerned whether he desires to withdraw his resignation or not. If the resignation is not withdrawn, the same is to be accepted by the Panchayat and the information would be sent to the concerned Collector of the District and to the District Deputy Director, Panchayat and Social Welfare. A Panch ceases to be the Panch of the Gram Panchayat from the date the resignation is accepted by the Gram Panchayat. The petitioner upon his own has mentioned that he gave the notice of resignation on 30th October, 2006 whereas his selection was finalized on 21-7-2006. Prior to this date, the resignation was not submitted. The resignation was accepted sometime after this date and thereafter an order of appointment was issued in respect of the petitioner on 30-12-2006. This itself is enough to indicate that on the date when the application was made by the petitioner for appointment on the post of Panchayat Karmi and, on the date when his selection was finalized and recommendation for his appointment was made as Panchayat Karmi, the petitioner was holding the post of Panch of the Gram Panchayat concerned. This being so, in view of the settled position of law, the petitioner was ineligible to be appointed as Panchayat Karmi. The order was rightly passed by the Collector setting aside illegal appointment of the petitioner.

7. This Court has considered these aspects on various other occasions and has also given a definite finding in the case of Ramphal, son of Shri Karmu Singh Maravi (*supra*). This being so, the findings recorded by the Collector cannot be said to be illegal or unjust. There is no force in this writ petition, which deserves to be and is hereby dismissed. However, there shall be no order as to cost.