

(2024) 08 MP CK 0034

In the Madhya Pradesh High Court

Case No : Writ Petition No.2013 Of 2017

**Rahman Khan And Others @APPELLANT @ Hash State Of Madhya Pradesh
And Others**

Date of Decision : 23-08-2024

Acts Referred:

Madhya Pradesh High Court Rules, 2008 &mdash, Chapter II Rule 30A

Citation : (2024) 08 MP CK 0034

Hon'ble Judges : Sanjay Dwivedi, J

Bench : Single Bench

Advocate : Anjali Banerjee, Amit Seth

Final Decision : Dismissed

Judgement

Sanjay Dwivedi, J

Although, this petition has already been decided by this Court vide order dated 24.01.2024, but an application i.e. I.A. No.6350/2024 for recalling of the said order has been filed by respondent No.2.

2. A reply to the said application has also been filed by the petitioners denying and disputing the averments made in the said application.

3. However, after perusal of the order and the averments made in the application i.e. I.A. No.6350/2024, it is clear that the application is in the shape of review petition asking that the order dated 24.01.2024 be recalled.

4. The counsel for respondent No.2 has submitted that this Court has allowed the petition directing the respondents to regularize the services of the petitioners after completion of two years period of contract appointment and this relief according to him, has been granted by this Court relying upon a condition contained in the Circular dated 29.11.1996 (Annexure-P/1). According to Shri Seth, the order dated 24.01.2024 has been obtained by fraud by the petitioners suppressing the material fact that Clause-6 of the Circular dated 29.11.1996 (Annexure-P/1) has already been deleted vide order dated 20.12.1999 due to the objection raised by the General Administration Department, Government of

M.P. in respect of insertion of said clause and that order dated 20.12.1999 is filed by the respondents as Annexure-IA/1 along with the application for recalling of the order.

It is also submitted by the counsel for respondent No.2 that the petitioners deliberately did not file their order of appointment because the said condition of regularization was not there in the appointment order. On the contrary, the order of appointment very clearly reveals that the same is purely on contractual basis and no claim for regularization of the services would be entertained. The appointment order of the petitioners has also been filed by respondent No.2. Shri Seth, learned counsel appearing for respondent No.2 has submitted that the similarly situated persons on earlier occasion had filed petitions i.e. W.P. Nos.71 of 1999 and 5379 of 2001 in which some of the present petitioners were also included i.e. petitioner Nos.2, 7, 11, 13, 15 and 22 claiming same relief for retrospective regularization on completion of two years of contractual services on the strength of Circular dated 29.11.1996 (Annexure-P/1). As per Shri Seth, in those writ petitions, the ground of parity with other persons already regularized was also pleaded. Those writ petitions were disposed of by the Coordinate Bench of this Court vide order dated 07.01.2004 wherein the Court took cognizance of order dated 20.12.1999 cancelling Clause-6 of earlier Circular dated 29.11.1996 and rejected the claim of the petitioners therein for retrospective regularization of their services on the strength of Circular dated 29.11.1996. The order passed by the Coordinate Bench has also been placed on record by respondent No.2 along with the application pointing out that the ground raised by the petitioners had already been rejected by the Court.

Shri Seth has submitted that the petitioners, particularly petitioner Nos.2, 7, 11, 13, 15 and 22 have made false declaration in paragraph-2 of the petition that no proceeding on the same subject matter has been previously instituted in any Court, Authority or Tribunal by them. Thus, it is clear that the petitioners have tried to mislead the Court and therefore, the order dated 24.01.2024 deserves to be recalled.

It is also contended by the counsel for respondent No.2 that after accepting regularization which was made by order dated 06.01.2016, no question arises to challenge the said order. Shri Seth has also submitted that it is settled principle of law that regularization comes into force with effect from the date of passing the order, but retrospective regularization in the service is not permissible.

5. In support of his contentions, learned counsel for respondent No.2 has placed reliance upon the judgments reported in (2015) 14 SCC 382 (Surendra Kumar and others Vs. Greater Noida Industrial Development Authority and others), (2007) 4 SCC 221 (A.V. Papayya Sastry and others Vs. Govt. of A.P. and others), (2019) 3 SCC 203 (Municipal Corporation of Greater Mumbai and another Vs. Pratibha Industries Limited and others) and W.P. No.13900 of 2022 (Ms. Swagatika Impex Pvt. Ltd. Vs. State of Madhya Pradesh and others).

6. Ms. Banerjee, learned counsel appearing for the petitioners has opposed the submissions made by the counsel for respondent No.2 and filed reply to the application for recalling of order stating therein that the application is not maintainable under Chapter II Rule 30A of the Madhya Pradesh High Court Rules, 2008 seeking recall of order dated 24.01.2024. As per Ms. Banerjee, Rule 30A is being misconstrued by the respondents and under the garb of that provision, they are asking the Court to re-appreciate the material available on record and want to consider the new documents brought by them along with the application and those documents could have been filed earlier, but they did not file the same.

It is contended by Ms. Banerjee that by moving the application, the respondent/ authority want to fill-up the lacuna on their part as they did not contest the matter in proper manner and lapses, therefore, cannot be rectified saying that the petitioners suppressed the material fact. She has further contended that it is not a case in which the respondents have not filed any return, but even after filing the return, they did not file the documents which could have been filed at that time and now by filing those documents asking the Court to appreciate the impact of those documents and to take the cognizance of the same, is not proper and according to her, it is not permissible.

It is submitted by Ms. Banerjee that the Circular dated 20.11.1999 is not applicable for the petitioners because it has prospective effect and the benefit of regularization was granted to them in pursuance of the Circular dated 29.11.1996 (Annexure-P/1). As per the counsel for the petitioners, the document dated 20.11.1999 came into force w.e.f. November, 1999 whereas at that time all the petitioners had already completed their respective 4 and 5 years of service on contract appointment. The petitioners have submitted that when the Circular dated 20.12.1999 was in force then as to how the benefit of Circular dated 29.11.1996 was given to respondent Nos.3 and 4 regularizing their services and the action of the respondents was, therefore, discriminatory. It is further clarified by the petitioners that W.P. No.71 of 1999 was filed by Class-III employees whereas the present petition has been filed by Class-IV employees and another petition i.e. W.P. No.5379 of 2001 was filed by one Lalmani Patel for different cause of action.

It is submitted that the present petition i.e. W.P. No.2013 of 2017 was filed by the petitioners against the cause of action accrued in their favour as respondent Nos.3 and 4 were given the benefit of Circular dated 29.11.1996 and the petitioners were deprived from the same. As such, Ms. Banerjee has tried to establish that the relief of present petition i.e. W.P. No.2013 of 2017 was not similar to that of W.P. No.5379 of 2001, therefore, the question of suppressing the material fact does not arise. She has submitted that on the date of hearing, as per the vakalatnama filed by respondent No.2, it can be seen that Shri Tabrez Sheikh and Shri Amit Seth, Advocates, both were representing them and as such, the application for recalling of order is misconceived and liable to be dismissed.

7. To substantiate her stand, Ms. Banerjee has placed reliance upon the judgments reported in 2015 SCC OnLine MP 7490 (Pratap Narayan Vishwakarma Vs. State of M.P. and others), (2014) 10 SCC 432 (Union of India and others Vs. Atul Shukla and others), (2005) 7 SCC 627 (Hindustan Petroleum Corpn. Ltd. Vs. Darius Shapur Chenai and others) and 2015 SCC OnLine MP 5012 (Brij Mohan Sharma Vs. State of M.P. and another).

8. I have heard the rival contentions of learned counsel for the parties and perused the record.

9. Reply to the petition i.e. W.P. No.2013 of 2017 was also filed by respondent No.2 that too after closing their right to file reply by order dated 18.09.2017 and thereafter an application for recalling of the said order was filed, which was allowed and the reply was accepted. The said reply was taken note of by the Court at the time of deciding the petition i.e. W.P. No.2013 of 2017. In the reply of respondent No.2, nowhere they have stated about the said document which is now being placed by them by moving the application for recall of order dated 24.01.2024.

10. Not only this, but a rejoinder to the reply was also filed by the petitioners stating therein that a correspondence made between respondent No.2 and the State, in which, there was a reference of order dated 20.12.1999 whereby condition No.6 of Circular dated 29.11.1996 was also mentioned and it is further mentioned that even that order dated 20.12.1999 does not come in the way of the petitioners as they have already completed their requisite services of regularization prior to coming to the said order and as such, the State has granted sanction to regularize the services of the petitioners.

11. A communication dated 31.05.2022 (Annexure-RJ/2) is also on record, therefore, it is not proper on the part of respondent No.2 to say that the said condition was suppressed by the petitioners and that was not taken note of by this Court. A further communication dated 13.09.2022 (Annexure-RJ/3) is a letter by the State Government to Respondent No.2 and further a letter dated 15.12.2020 (Annexure-RJ/4) is also filed by the petitioners along with the rejoinder showing that the W.P. No.2013 of 2013 is pending in the High Court and the decision with regard to regularization and grant of benefit shall be considered as per the decision of the Court in the said writ petition.

12. It is also clear that the issue pending before the Court was very much in the knowledge of respondent No.2 and they were seeking guidance from the State Government as to how the demand raised by the petitioners could be resolved. Neither in the reply nor in the application for recall of the order it is stated by respondent No.2 as to why the benefit of regularization after completion of two years of service on contract appointment was granted to respondent Nos.3 and 4 because the said relief was the foundation of petitioners' claim as has been raised in W.P. No.2013 of 2017.

13. Considering the submissions made by learned counsel for the parties and

perusal of record and looking to the relief claimed in the petition though the petitioners have been granted the benefit of regularization vide order dated 06.01.2016, but they are claiming that the benefit of regularization and pay scale of the same shall be given to them from the date of completion of their two years services on contract appointment because the said benefit has already been granted to respondent Nos.3 and 4 and therefore, they are also entitled to get the said benefit, I am of the opinion that it is not a case of suppression of material fact. It is also not a case that on earlier occasion the petitions were filed and relief was denied. But, it is a case in which the petitioners were claiming relief that they are entitled to get the same benefit as has been granted to respondent Nos.3 and 4. The order passed by the writ Court on earlier occasion, in which, the counsel for respondent No.2 is placing reliance was much prior to the order of regularization granted in favour of the petitioners by the respondents and as such, they cannot take the benefit of that order at this stage. If that was the position, no order of regularization should have been passed by the respondents regularizing the petitioners' services by order dated 06.01.2016 specifically mentioning therein that the employees are entitled to be regularized after completion of two years of services on contract appointment. Even otherwise, the guidance was also sought for through communication in which it has been clarified that the condition which has been deleted vide order dated 20.12.1999 would not come in the way of the petitioners because they have already completed the requisite services of their regularization on contract basis prior to enforcement of the said order. When the State itself has clarified that position, respondent No.2, at this stage, cannot raise such an objection.

14. The judgment i.e. Surendra Kumar (supra), on which, the counsel for respondent No.2 has placed reliance saying that retrospective regularization is not permissible, the Supreme Court has observed as under:-

"14. The appellants were initially engaged on contractual basis and they were not appointed against any sanctioned post before they were substantially appointed on the said post on 6-8-2010. Even though advertisement dated 20-11-2002 indicated that there were vacancies, the policy of regularisation of contractual employees was approved by the State Government only on 5-3-2008. The appellants were appointed on the post of Assistant Manager (Civil) only pursuant to the policy decision of the respondents for regularisation of contractual employees and thus, the appellants cannot seek for regularisation with retrospective effect from 20-11-2002, that is when the advertisement was issued, because at that time regularisation policy was not in vogue. By policy of regularisation, it was intended to give the benefit only from the date of appointment. The Court cannot read anything into the policy decision which is plain and unambiguous. Having accepted the appointment orders dated 6-8-2010 and also joined the post, the appellants cannot turn round and claim regularisation with retrospective effect."

15. However, in the present case, the petitioners were though appointed in the

respondent-department on contract basis, but in view of the policy decision of the State Government dated 29.11.1996 (Annexure-P/1) that additional posts were sanctioned in the department subject to the condition that if any contract appointment is made then after completion of two years of service, they will be regularized, meaning thereby, the policy of the State Government was very specific and regularization was being claimed by the petitioners under the said scheme of the State Government. The respondents nowhere have denied the situation that the said policy was not there in the department and therefore, the legal position as claimed by respondent No.2 that retrospective regularization is not permissible, does not apply in the present case because the decision has been taken as per the policy and even thereafter a communication was made and guidance was sought for from the State Government and the department has clarified that it is a policy decision and the issue is pending before the Court and whatever decision is taken by the Court, the benefit shall be provided accordingly.

16. The case of Ms. Swagatika Impex Pvt. Ltd. (supra) does not help the counsel for respondent No.2 because the facts of that case are altogether different from the case in hand. There was no question of suppression of material fact because the cause of action arose in favour of the petitioners only when the order dated 06.01.2016 (Annexure-P/6) was passed by the authority regularizing them in pursuance of their contract appointment, but not granting them the benefit of regularization from the date of completion of two years of service whereas some of the private respondents were granted the said benefit after completion of two years service and as such, asking the benefit of policy dated 29.11.1996 (Annexure-P/1) on the ground of discrimination, the instant petition has been filed. However, in the case on which the counsel for respondent No.2 has placed reliance, the Supreme Court has observed as under:-

"23..... Thus, we are unable to agree with learned counsel for the petitioner that suppression is a bonafide mistake on the part of the petitioner.

24. In view of this conduct of petitioner, a sizable amount of precious time of court is being wasted. We deem it proper to observed that suppression of facts cannot be termed as 'advocacy'. If a litigant discloses all the facts correctly and then able to convince the court, it can be treated as skill of advocacy. The litigation is neither a game of chess nor a hide and seek game but a search for truth and parties must place their cards on the table [See: Vatal Nagraj v. R. Dayanand Sagar, (1975) 4 SCC 127].

25. In view of suppression of facts and conduct of petitioner, we deem it proper to dismiss this petition with exemplary cost. We quantify the cost as Rs.50,000/- (Rupees Fifty Thousand Only). The said cost shall be deposited before the Secretary, State Legal Services Authority, Jabalpur within 30 days from today failing which the said authority shall apprise the court regarding non-compliance of the order. However, we are not inclined to make the petitioner remediless and, therefore, deem it proper to reserved liberty to approach the Debt Recovery Tribunal against the impugned auction notice (Annexure P/16). The petition is

dismissed with cost by reserving aforesaid liberty.”

17. In case of A.V. Papayya Sastry (supra), the order of recall which was obtained by fraud had been considered, but here in this case, in my opinion, no fraud has been played by the petitioners. The respondents have been given full opportunity to defend the case; they appeared before the Court; and filed reply, but not pointed out any fraud or past litigation as is being pointed out before this Court by moving an application for recalling of the order. Although, it is also explained that the cause of action in favour of the petitioners arose only in the year 2016 when the order of regularization was passed by the respondents in their favour.

18. In case of Pratibha Industries Limited (supra), the Supreme Court has observed that the High Court is a Court of record and has power to recall its order. However, recall of order in every occasion is not proper. So far as the power of High Court is concerned, there is no dispute about the same, but there must be justiciable reason for recalling of order, which according to this Court, is not available in the present case.

19. In view of the issue involved in the case, the basic question raised by the counsel for respondent No.2 is that the clause on which the petitioners’ claim is founded was not existing after 1999 and, therefore, relief of regularization cannot be granted to them. But, this submission of the counsel for respondent No.2 does not have any substance for the reason that this issue was very much before the State Government and perusal of document which is a communication made between respondent No.2 and the State Government, makes it clear that even after knowing such an order dated 20.12.1999, they issued the order of regularization dated 06.01.2016 and never recalled the same, therefore, at this stage, the benefit of order dated 20.12.1999 cannot be granted to the respondents, especially in view of the settled principle of law that the right already accrued in favour of a person cannot be taken back by way of subsequent order and circular. The right as per Annexure-P/1 accrued in favour of the petitioners for regularization after completion of two years of services on contract appointment and undisputedly the right accrued in favour of the petitioners prior to order dated 20.12.1999 and that has been considered by the State Government in a communication filed by the petitioners along with their rejoinder.

20. Thus, I do not find any substance in the submissions made by the counsel for respondent No.2 for recalling of order dated 24.01.2024. I.A. No.6350/2024 is accordingly dismissed.

21. Consequently, I.A. No.6352/2024, which is an application for staying the operation of order dated 24.01.2024, is also dismissed.