
(2013) 10 MP CK 0048
In the Madhya Pradesh High Court
Case No : MCC No. 466 of 2003

Ram Bhadur Sharma and Others

APPELLANT

Vs

Smt. Mala Shrivastava and Others.

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0048

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Vivek Jain, for the Appellant; D.P. Singh, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Disposed Off

Judgement

Sujoy Paul, J.—This Petition u/s 17 R/w section 27 of the Administrative Tribunals Act, 1985 was filed before M.P. Administrative Tribunal, Gwalior Bench which was registered as MA No. 34/2000. On abolishment of Tribunal, the MA No. 34/2000 was transferred to this Court. On transfer it is re-registered as MCC No. 466/2003. At the outset, Shri D.P. Singh, Advocate for the respondent No. 2 raised preliminary objection. By relying on Mohammad Anwar Qureshi Vs. State of M.P. and Others, , It is contended that this petition is not maintainable before this Court. Shri Vivek Jain, Advocate for the petitioner submits that this Court in M.A. Qureshi (supra) has not considered the relevant statute as well as the provision of contempt of Court Act. On the strength of this, it is contended by Shri Jain that the judgment is distinguishable.

2. I have heard the parties on this aspect.

3. A bare perusal of the judgment of M.A. Qureshi (supra) shows that The Madhya Pradesh Rajya Prashasanik Adhikaran (Lambit Evam Nirakrat Avedano Ka Antaran) Adhyadesh, 2003, hereinafter referred as "2003 Adhiniyam", was not brought to the notice of this Court. Section 3(4) of the said Adhiniyam reads as under:-

3. (4) Every proceeding relating to contempt execution or review of final order or interim order pending before the Tribunal on the appointed day shall stand transferred to the High Court.

A bare perusal of this provision makes it clear that all proceedings including contempt proceeding stood transferred to High Court on appointed day. It goes without saying that once pending matter is transferred, jurisdiction is vested with the High Court to continue with the proceeding. Any other interpretation will lead to absurdity. If argument of Shri Singh is accepted, it will lead to the situation where despite transferring of matter on abolishment of State Administrative Tribunal to High Court, High Court will not be in a position to adjudicate and ensure that the basic order passed in OA is implemented. This could not be the intention of the Legislature while bringing 2003 Adhiniyam into force. The basic purpose of bringing 2003 Adhiniyam is to ensure that the litigant is not kept remedy less and his pending matters are transferred to High Court or any other Court to enable those Courts to decide those matters in accordance with law. Since, Adhiniyam was not brought to the notice of this Court, the judgment in M.A. Qureshi (supra) is distinguishable. The Apex Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, opined that a decision is an authority for which it is decided and not what can logically be deduced therefrom. A Little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Since, the Adhiniyam of 2003 was not brought to the notice of this Court, this Court proceeded on the basis of provisions of Administrative Tribunal Act. Thus, said judgment is distinguishable.

4. Coming to the merits, it is contended by Shri Jain that he is pressing this petition only for petitioner No. 1, Ram Bahadur Sharma. The Tribunal has passed the order on 13.05.1999 in OA No. 389/1993. The petitioner Ram Bhadur was 34 years of age at the time when he filed the said OA seeking regularization on the basis of the assertion that similarly situated persons have been regularized. Tribunal disposed of the application with the direction to the respondents that they shall consider the application for appointment on regular basis as LDC as against first available vacancies like the employees who had been engaged in election work and declared as surplus. This order of Tribunal was sought to be reviewed by filing review application. The said review application was rejected. Against the order passed in OA and review aforesaid, the State filed WP No. 1284/2002 before this Court. The Division Bench on 31.01.2003 rejected the said petition. Thus the order passed by the Tribunal in OA No. 389/1993 has attained finality.

5. The respondents did not implement the order and therefore, the Tribunal in the instant case passed the order on 12.02.2002. A bare perusal of the said order shows that the respondent No. 2 Mukesh Varshnay was held guilty of contempt of Court u/s 17 of the AT Act, 1985 R/w section 2(b) of the Contempt of Courts Act, 1971. The matter was fixed on the next date to hear the contemnor on the question of quantum of punishment. Learned counsel for the

parties submit that after order dated 12.02.2002 whereby respondent No. 2 was held to be guilty of contempt, no order imposing any sentence could be passed because Tribunal was abolished. The matter was although transferred to this Court, the file was not traceable for a considerable long time. Therefore, after order of this Court the file was reconstituted.

6. Shri Vivek Jain, learned counsel for the petitioner submits that after respondent No. 2 was held to be guilty by this Court on 12.02.2002, the respondent passed the order dated 8th August, 2002 (page 80) whereby petitioner's claim for regularization was rejected on the ground that the petitioner's date of birth is 03.06.1956. At the time of consideration, petitioner's age was assessed as 46 years with further finding that at the time of judgment of Tribunal, his age was 43 years. It is stated that the maximum age for appointment in Government service is 30 years and since on the date of judgment the petitioner crossed that age, he is not eligible for appointment as Govt. servant.

7. Shri Jain submits that on the same date, the claims of other petitioners were also rejected. Attention is drawn to the rejection order of Pushpa Dixit (page 81) wherein maximum age is stated as 40 years. In the rejection order of Sukhram Taank (page 82) the maximum age is shown as 30 years, whereas in the order of Urmila Shrivastava the maximum age is shown as 40 years. Shri Jain submits that consideration means "meaningful consideration". Once the respondents were directed to consider the case of the persons said consideration should be fair, transparent and meaningful consideration. By drawing attention of this Court on Annexure R-2-1 passed by respondents, it is contended that respondents have taken different stand with regard to maximum age for appointment, while considering representations of similarly situated employees. It is submitted that at the relevant point of time the petitioner was well within age limit and rejection is improper and is not outcome of fair and lawful consideration.

8. Shri Jain submits that it is important to note that the basic ground for seeking review of the order of the Tribunal and in the writ petition was that the petitioner No. 1 is over aged. Putting it differently, it is contended by Shri Jain that para 5.4 of the writ petition makes it clear that the main ground of attack in the writ petition was that petitioner No. 1 is over age and Tribunal has erred in directing his consideration for regularization. He submits that once said review petition and writ petition of State is dismissed, the effect of it would be that the ground so advanced by the State, was not accepted by this Court. Therefore, same ground could not have been a reason for rejecting the claim for regularization.

9. Shri Jain submits that respondents are bound to follow the order of the Tribunal in its correct spirit. Therefore, petitioner No. 1 needs to be reconsidered for regularization by treating him to be within age limit. Shri Vivek Jain, Advocate for the petitioner contends that respondent No. 2 is guilty of the contempt and proper punishment be imposed on him for willful disobedience of Court orders. Shri D.P. Singh submits that respondent No. 2 was Collector, Bhind, only from

June, 1999 to July, 2001. During this time post was not lying vacant. He submits that his affidavit may be examined to appreciate that he is not guilty of contempt.

10. I have heard learned counsel for the parties and perused the record.

11. The Tribunal Directed to consider the case of the petitioners. The said direction was required to be implemented forthwith. The order was not implemented and therefore, by order dated 12.02.2002 Tribunal held the respondent Mukesh Varshnay as guilty of contempt. Only thereafter, by order dated 8th August, 2002 the claim for regularization/appointment was decided.

12. In other words, MA No. 34/2002, which was filed before the Tribunal stood transferred and renumbered as MCC No. 466/2003. The order passed by the Tribunal dated 12.02.2002 holding the respondent No. 2 as guilty is not called in question by the respondents in any proceedings. In the same proceedings, on transfer, it is not open for this Court to go beyond or behind the order dated 12.02.2002. Thus, the contention of Shri D.P. Singh cannot be accepted that respondent No. 2 was not guilty of contempt. He was already held guilty by order dated 12.02.2002.

13. The only question remains is regarding sentence/punishment to be inflicted on respondent No. 2. Another question is as to whether petitioner No. 1 is entitled for any relief. The respondent No. 2 was under a legal obligation to consider the case of the applicant for appointment on regular basis. This specific direction of the Tribunal dated 13.09.1999 was not implemented till 8th August, 2002. The respondent No. 2 was holding the post of Collector from June 1999 to July 2001. Thus, during that period, he was obliged to follow and implement the order of the Tribunal. The respondents have not shown any order of any competent forum to show that at any point of time the order of the Tribunal dated 13.05.1999 was stayed. In absence of any such interim order from higher Court, the respondent No. 2 was obliged to implement it. WP No. 1284/2002 was also dismissed by the High Court and it is not shown that in that writ petition also any interim order was prevailing. In this view of the matter, there is a serious flaw in not considering the case of the petitioners by respondent No. 2.

14. The ultimate result of consideration is rejection of claim of the petitioners. This is settled in law that when direction is issued by the Court for consideration, without expressing any opinion on merits and without determining the entitlement, it is open to the respondents to consider the claim on merits and pass appropriate order. Validity of such order cannot be examined in contempt proceeding. This view is taken by the Supreme Court in Director of Education, Uttaranchal and Others Vs. Ved Prakash Joshi and Others, .

15. The contention of Shri Jain is that since contention of State in its review application and writ petition regarding over age of petitioners is not entertained, it must be presumed that such contention/stand of State is impermissible.

I am unable to accept this contention. The Tribunal in Review and High Court in

Writ Petition, have not given any finding on the question of age of the present petitioner. Thus, it cannot be said that Courts have given any finding on that aspect. Any erroneous finding in the rejection order dated 8th August, 2002 may be a ground for a fresh challenge in appropriate proceeding, but correctness of such consideration or reasons cannot be gone into in the present contempt proceedings.

16. As analyzed above, no contempt can be drawn or contemptnor can be punished for passing the order dated 8th August, 2012. In other words, the respondents cannot be punished for passing the order dated 8th August, 2012. However, correctness of this order can be challenged in appropriate proceedings. The respondent No. 2 was held guilty by the Tribunal by order dated 14.03.2002. The only question remaining is as to what punishment/sentence can be imposed on the respondent No. 2.

17. At the cost of repetition, in the opinion of this Court, respondent No. 2 has erred in not considering the petitioners for a considerable long time when he was occupying the position/post. For this disobedience, for which he was already held guilty on 12.02.2002, I deem it proper to warn the respondent No. 2 to be careful in future. It is expected from an administrative authority to act with promptitude and implement the orders of the Court. This is necessary to maintain majesty of law. Thus, I warn the respondent No. 2 to be careful in future.

Resultantly, this petition is disposed of. Liberty is reserved to the petitioner to assail the rejection order in appropriate proceedings. Petition is disposed of.