
(2015) 04 MP CK 0120

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 2328, 2353, 2354 and 2460 of 2015

Ram Singh Yadav and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 04 MP CK 0120

Hon'ble Judges : Sheel Nagu, J

Bench : Single Bench

Advocate : Dharmendra Nayak, for the Appellant; B. Raj Pandey, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sheel Nagu, J.—All the above said Writ Petitions involving similar questions of fact and law and raising identical grounds and praying for the same relief have been heard analogously and are decided by this common order.

2. The facts from Writ Petition No. 2328/2015 are being referred to.

3. A small but important question that arises for consideration in these petitions is as follows:-

whether the power of judicial review under Article 226 of the Constitution of India can be exercised to assail the order appointing the private respondent as Assistant Secretary of Gram Panchayat and giving him charge of the post of Secretary, Gram Panchayat which till passing of impugned order was being held as additional charge by the petitioner who continues to hold the substantive charge of Secretary of another Gram Panchayat.

4. Learned counsel for the petitioner while assailing the impugned order dated 31.03.2015 primarily contends thus

1. There is no post of Assistant Secretary in the establishment of Gram

Panchayat and therefore, Annexure P/1 appointing the private respondent as Assistant Secretary is unlawful.

2. The petitioner holding the additional charge of the post of Secretary, Gram Panchayat Singhpurchalda District Ashoknagar cannot be divestive of this assignment by passing of the impugned order.

3. By virtue of holding the additional charge of Secretary, Gram Panchayat Singhpurchalda District Ashoknagar the petitioner has been entrusted with number of important works/projects which cannot be performed by inexperienced and ineligible private respondent.

4. The power of Secretary of Gram Panchayat cannot be vested in any other person except a person who has been duly and substantively pointed on the said post.

5. The undisputed facts are that the petitioner holds the substantive post of Secretary, Gram Panchayat Navni, Janpad Panchayat Chanderi District Ashoknagar. Presumably on account of the post of Secretary of adjoining Gram Panchayat of Singhpurchalda District Ashoknagar being vacant, the petitioner was given the additional charge of this vacant post by order dated 30.10.2014. By the impugned order dated 31.03.2015 the above said arrangement of bestowing additional charge of vacant post of Secretary of Gram Panchayat to the substantive Secretaries of adjoining Gram Panchayat was amended by invoking the power under Section 69(1) of M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 and appointing persons (private respondents herein) who were Gram Rozgar Sahayak as Assistant Secretaries and handing over the charge of the Secretary of the vacant post of Secretary which were earlier manned by substantively appointed Secretary of the adjoining Gram Panchayat of the like of the petitioner.

6. The above said arrangement made on the direction of the State may or may not justify the test of judicial review but this Court refrains from entertaining into that question since the order impugned, even if the same is not lawful, does not in any manner affect any vested right or any service conditions of the petitioners.

7. The grant and taking away of additional charge does not bestow or deprive the person concerned of any substantive right so long as the service conditions attached to the post held substantively by the said person are not adversely effected. Additional charge is a temporary and ad hoc arrangement made to cater to an emergent eventuality of casual vacancy etc having no connection with the substantive post.

8. Law does not give any right to seek additional charge and correspondingly there is no infringement of any right when such additional charge is taken away. The following paragraph of the decision of the Apex Court in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), AIR 1958 SC 36 : (1958) 1 LLJ 544 : (1958) 1 SCR 828 profitably need to be referred to thus:-

11.... An appointment to officiate in a permanent post is usually made when the incumbent substantively holding that post is on leave or when the permanent post is vacant and no substantive appointment has yet been made to that post. Such an officiating appointment comes to an end on the return of the incumbent substantively holding the post from leave in the former case or on a substantive appointment being made to that permanent post in the latter case or on the service of a notice of termination as agreed upon or as may be reasonable under the ordinary law. It is, therefore, quite clear that appointment to a permanent post in a Government service, either on probation, or on an officiating basis, is, from the very nature of such employment, itself of a transitory character and, in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment, under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of an appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time....

(Also see *The State of Bombay Vs. F.A. Abraham*, AIR 1962 SC 794 : (1963) 6 FLR 148 : (1963) 2 LLJ 422 : (1962) 2 SCR 92 Supp ; *The State of Rajasthan Vs. Ram Saran*, AIR 1964 SC 1361 : (1965) 1 LLJ 103 : (1964) 2 SCR 982 ; *Gurdev Singh Vs. State of Punjab*, AIR 1971 SC 1580 : (1971) LabIC 956 : (1971) 3 SCC 324 : (1971) 3 SCR 550 : (1971) 3 UJ 226 ; *Union of India (UOI) and Another Vs. Gajendra Singh, etc., etc.*, AIR 1972 SC 1329 : (1973) 26 FLR 241 : (1973) 3 SCC 797 : (1972) 3 SCR 660 : (1972) 4 UJ 764 ; *State of Orissa and Another Vs. Dr. Pyari Mohan Misra*, AIR 1995 SC 974 : (1995) 70 FLR 821 : (1995) 2 JT 54 : (1995) 1 SCALE 401 : (1995) 3 SCC 123 : (1995) 1 SCR 104 : (1995) 1 UJ 535 ; *B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others*, AIR 2006 SC 3106 : (2006) 8 JT 293 : (2006) 8 SCALE 710 : (2006) 11 SCC 731 : (2006) 6 SCR 462 Supp : (2006) AIRSCW 4515 : (2006) 7 Supreme 4

9. The aforesaid decision in *P.L. Dhingra's case* (supra) continues to hold the field in view of the decision in the case of *State Bank of India and Others Vs. Palak Modi and Another etc.*, (2013) 136 FLR 303 : (2012) 12 JT 321 : (2012) 11 SCALE 542 : (2013) 3 SCC 607 : (2013) 1 SCT 387 : (2013) 1 SLJ 264 .

10. The entire petitions of the petitioners do not contend that there is any adverse affect to the service conditions attached to the substantive post of Secretary Gram Panchayat held by them.

11. It is trite principle of service jurisprudence that a service matter in shape of Writ Petition seeking issuance of writ of certiorari as sought in these petitions cannot be successfully contested in a court of law unless the impugned order or the grievances, directly or indirectly cause adverse affect to any of the service conditions of the petitioner.

12. Holding of additional charge is not one of the concomitant of service conditions unless the recruitment rules or any other relevant statute provides otherwise, which is not the case herein.

13. In view of the above discussion, it is evident that none of the grounds raised by the petitioner are found to be tenable.

14. Consequently, all the Writ Petitions i.e. Writ Petition No. 2328/2015, Writ Petition No. 2353/2015, Writ Petition No. 2354/2015 and Writ Petition No. 2460/2015 being sans merit are dismissed in limine at admission stage with no order as to cost.