
(2005) 08 MP CK 0129

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3676 of 2003

Rama Shrivastava

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 25-08-2005

Acts Referred:

Citation : (2005) 4 MPLJ 378

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : M.I. Khan, for the Appellant; Umesh Gajankush, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava , J.

This petition was originally filed by the deceased petitioner Krishna Kumar Shrivastava in the Tribunal on 9-1-1989. On abolition of Tribunal this petition has been received in this Court for its adjudication.

During the pendency of this petition original petitioner Krishna Kumar Shrivastava breathed his last on 25-7-1993. The present petitioner Smt. Rama Shrivastava is the L. R. and widow of the petitioner. For convenience, hereinafter the word "petitioner" would mean original petitioner.

By this petition the petitioner is seeking following relief's :

(i) A writ in the nature of Mandamus be issued against the respondents quashing the proceedings of the D.P.C. with a direction to the respondents to include the name of the petitioner in the select list of regular C. M. Os. of Class "C" Municipality on the basis of the provisions of the rules abovesaid. W. P. No. 3676 of 2003 decided on 25-8-2005. (Indore)

(ii) A further writ in the nature of Mandamus/prohibition be issued directing the respondents not to revert the petitioner to Municipal service by order Annexure-

A/7. Annexure A/7 is liable to be quashed by issuance of a Writ of Certiorari.

(iii) Any other writ, order or direction as may be deemed fit in the circumstances of the case may also be kindly issued with the award of costs and these proceedings.

The contention of the learned counsel for petitioner is that petitioner is claiming promotion on the post of Chief Municipal Officer (CMO). The feeder cadre of this post is Revenue Inspector. The petitioner filed writ petition before the Gwalior Bench of this Court and it was registered as M.P. 19/81, Krishna Kumar Shrivastava v. State of M.P. and Ors. and same was disposed of by Division Bench of this Court on 12-1-1987. Learned counsel for petitioner invited my attention to para 3 of the decision and submitted that during the pendency of that petition, petitioner was assigned the post of Incharge C.M.O. and therefore it was directed by the Division Bench of this Court to the department for his proper placement in the Gradation List of the cadre of Revenue Inspector. Eventually, the petitioner vide Annexure A2 and A3 dated 28-12-1987 and 30-9-1988 respectively submitted representation but the same was kept in cold storage and no order was passed by the department on his representation. Thereafter on 9-2-1989 vide Annexure A4 petitioner was again asked to discharge duty of as Incharge C.M.O. and he was posted in Municipality Badarwas. After having served for about three years as Incharge CMO, at Badarwas, vide order dated 30-7-1987 the petitioner was transferred from Badarwas to Singoli as Incharge CMO. Thereafter all of a sudden, by a stroke of pen, vide order dated 29-12-1988 (Ann. P.7) petitioner along with similarly situated other co-employees were directed to be posted on their substantive post of Revenue Inspector. The contention of learned counsel is that the impugned order Annx. A.7 is arbitrary in law since the petitioner served for considerable period on the post of Incharge CMO.

It has been also canvassed by learned counsel for petitioner that looking to the seniority of the petitioner, he was entitled for promotion on the post of CMO. However, the D.P.C. which was convened on 2nd and 3rd December, 1988 did not find petitioner fit for promotion to the post of CMO. The contention of learned counsel is that no reason has been assigned that why he was not found fit for promotion. On these premised submissions it has been submitted by learned counsel for petitioner that this petition be allowed and respondents may kindly be directed to give notional promotion to the petitioner to the post of CMO and all benefits may be given.

Per contra, Shri Umesh Gajankush, learned Government Advocate appearing for respondents submitted that petitioner was assigned to discharge the duty of CMO and he was only Incharge CMO. If, under the stop gap arrangement an employee is assigned to discharge duty of some higher post, would not mean that any right has been conferred to him on that higher post. Thus, according to Government Advocate the department did not commit any error by passing the impugned order Annx. A. 7 directing petitioner to discharge his duty of his substantive post

i.e. Revenue Inspector. It is also put forth by learned Government Advocate that petitioner was considered for promotion by the D.P.C. which was convened on 2nd and 3rd December, 1988. However, considering A.C.Rs. of petitioner, as they were not found upto the mark, he was not found fit for promotion and, therefore, department did not commit any error in not promoting petitioner to the post of CMO. On this premised submission, according to learned Government Advocate this petition sans substance and the same be dismissed.

After having heard learned counsel for parties, I am of the view that this petition deserves to be partly allowed.

There is merit in the contention of the learned Government Advocate that an employee who is discharging the duty on some higher post, if directed to discharge duty of his substantive post, it cannot be said to be a reversion. Thus, the impugned order dated Annx. P. 7 dated 29-12-1988 by which petitioner was directed to discharge his duties on substantive post i.e. R. I. cannot be said to be arbitrary in nature or faulty. Relief which was sought by petitioner with regard to quashment of Annx. A. 7 dated 29-12-1988 cannot be accepted and the same is hereby rejected.

However, there is some merit in the contention of learned counsel for petitioner that in the return it has not been mentioned that how and in what manner ACRs of petitioner were not found upto the mark. On bare perusal of the averments made in the return it is revealed that it has not been at all mentioned that how and in what manner ACRs of year 1983 to 1987 were not upto the mark, what was the criteria fixed by the D.P.C. in assessing the A.C.Rs. and what was the grade of the A.C.Rs. of the petitioner. The view of this Court is that all these averments ought to have been there in the return. In absence of these material in the pleadings it is difficult to hold that petitioner rightly was not found fit for promotion to the post of CMO. Since the matter is quite old and was filed on 9-1-1989 i.e. more than 16 years ago and now petitioner is also not in the world in order to reap the fruits of order, it would be appropriate to direct respondents to convene a review DPC, to consider the case of deceased petitioner for promotion to the post of CMO by ignoring the ACRs of year 1983 to 1987. If deceased petitioner is otherwise found suitable for promotion, a notional promotion order till the date of his death may be passed with all consequential benefits including reifixation of pensionary benefits and retiral dues, including reifixation of family pension of the present petitioner, who is the widow of deceased petitioner.

With the aforesaid observation, this petition is allowed in part. No order as to costs.