
(1991) 10 MP CK 0014
In the Madhya Pradesh High Court
Case No : L.P.A. No. 84 of 1985

Ramdas Chourasia and Others

APPELLANT

Vs

Vijay Kumar Pathak and Others

RESPONDENT

Date of Decision : 26-10-1991

Acts Referred:

Madhya Pradesh Co-operative Central Bank Employees Services (Terms of Employment and Working Conditions) Rules, 1965 — Rule 10, 22(iv), 23(iii)

Citation : (1992) 37 MPLJ 875 : (1992) MPLJ 875

Hon'ble Judges : S.K Jha, C.J;K.M. Agrawal, J

Bench : Division Bench

Advocate : R.C. Khare, for the Appellant; S.L. Saxena, Addl. A.G., for the Respondent

Judgement

K.M. Agarwal, J.

Twenty-one out of fifty-seven respondents in the writ petition have preferred this Letters Patent Appeal against the order passed on 26-4-1985 in Misc. Petition No. 305/78 by learned Single Judge of this Court. (Reported in 1986 MPLJ 347)

Bikal Bihari Soni, Vijay Kumar Pathak and Mandla Zila Sahakari Kendriya Bank Karmachari Sangh, Mandla, filed a writ petition challenging the selection of respondents 5 to 57 in the writ petition to the posts of Managers for Tribal Service Co-operative Societies at village level made by the appellant No. 21 in pursuance of instructions issued on 25-2-1978 (Annexure R-2) by Registrar, Co-operative Societies, Madhya Pradesh. Bikal Bihari Soni was initially joined as respondent No. 1 in this Letters Patent Appeal but his name was struck out. Similarly the names of respondents 7 to 39 in this Letters Patent Appeal were also struck out, though they were parties to the writ petition as respondents. It appears that their names were struck out either because their whereabouts were not known for purposes of service of notice of appeal or because they had given up their employment with the Tribal Service Co-operative Societies (in short "Service Societies") affiliated with the Kendriya Bank, Mandla, the appellant No.

21. Bikal Bihari Soni and Vijay Kumar Pathak were also applicants for the post advertised as per advertisement dated 19-3-1978 (Annexure-F), but were not called for interview as they did not fulfil the requisite qualifications for the posts advertised. Respondents 5 to 57 in the writ petition were also applicants for the said posts. They were selected and appointed by Kendriya Bank, Mandla, the appellant No. 21. Being aggrieved by the selection and appointment of the respondents 5 to 57 in the writ petition, Bikal Bihari Soni, Vijay Kumar Pathak and Mandla Zila Sahakari Kendriya Bank Karmachari Sangh filed the said writ petition, challenging the selection and appointment of the respondents 5 to 57 on the ground that they were in violation of the Recruitment Rules. The petition was allowed by the impugned order of the learned Single Judge. Hence this Letters Patent Appeal has been preferred by 21 respondents out of 57 respondents in the writ petition.

Having heard the learned counsel for the appellants and for that of the State, we are of the view that the impugned order made by the learned Single Judge is not sustainable in law. The selection and appointment of the respondents 5 to 57 in the writ petition for the post of Managers were challenged on the ground that they were not in accordance with the provisions of the Recruitment Rules, known as M. P. Co-operative Central Bank Employees Services (Terms of Employment and Working Conditions) Rules which came into force on 1-4-1977. According to the writ petitioners, Rules 10, 22(iv) and 23(iii) of the Recruitment Rules are violated. These rules are as follows : -

Rule 10:

"All vacancies falling within the purview of the Employment Exchange (Notification of Vacancies) Act, 1959 shall be duly notified to the Employment Exchange concerned. The post/posts may also be advertised in the local newspapers at the option of the appointing authority. The advertisement should give scales of pay, dearness allowance, if any, the duration of vacancies, the essential and preferential qualifications, age limits etc. :

Provided that the above provision shall not apply to vacancies filled up by promotion of employees from the lower grade."

Rule 22(iv):

"Candidates for all the posts excepting the drivers, peons and choukidars shall have to undergo a written test in the manner prescribed by the Registrar. Candidates qualifying in the test shall only be eligible for final selection by the Selection Committee."

Rule 23(iii) :

"In making appointments excepting the posts of Peons/Watchmen/Drivers and Lower Division Clerks the Bank would be able to fill a maximum of 40 posts by direct recruitment."

In paragraph 9 of his impugned order, the learned Single Judge came to the conclusion that the provisions of Rule 10 of the Recruitment Rules were substantially complied with while making selection and appointment of the respondents 5 to 57 in the writ petition for the said posts but those of Rules 22(iv) and 23(iii) were not complied with. Accordingly their selection and appointment were quashed. We may, therefore, proceed to examine the case in reference to Rules 22(iv) and 23(iii) of the Recruitment Rules so as to test the correctness or otherwise of the impugned order passed by the learned Single Judge of this Court.

Rule 22(iv) speaks of "Written test in the manner prescribed by the Registrar". The impugned order, or the record of the case, does not show that the manner or the procedure for any written test was even prescribed by the Registrar on or before the date of selection and appointment of the respondents 5 to 57 in the writ petition. If there was no procedure laid down for the written test contemplated in Rule 22(iv), the particular instructions issued by the Registrar by his letter dated 25-2-1978 (Annexure R-2) for making the selection of candidates for filling up the vacant posts could not be said to be illegal or in contravention of Recruitment Rules. We find nothing in the Co-operative Societies Act, or in the Recruitment Rules to warrant a conclusion that so long as the procedure for written test was not prescribed by the Registrar, no vacancy could be filled in the manner done in the present case. Written test not only contemplates the procedure of test, but also the subjects on which such test is to be conducted. The subjects for test were also not prescribed either in the Act or in the Rules. The instructions issued by the Registrar by his letter dated 25-2-1978 for the selection of candidates was in conformity with State Level Selection Committee and could not be demonstrated to be unreasonable. We are, therefore, of the view that the selection and appointment of the respondents 5 to 57 of the writ petition to the said posts could not be said to be illegal on the ground that such selection was made without holding any written test.

The proceedings of the State Level Committee filed as Annexure R-3 would show that the organisation of Adimjati Sewa Sahkari Societies was newly established with the objective of carrying out Tribal Development Projects of the State in the context of the Tribal Sub-Plan. 19 Block Level and 252 Hat Level Lamps were registered. In order to enable these societies to function properly, it was necessary to appoint Managing Directors/Managers for such societies. It also appears that as per this decision of the State Level Committee and the qualifications and pay scales fixed, the posts were first advertised by M. P. State Co-operative Bank as per Annexure R4. However, as all the posts could not be filled in for want of suitable candidates, the remaining posts were directed to be filled in the manner mentioned in the Registrar's letter dated 25-2-1978 (Annexure R-2). It would, thus, appear that the recruitment was for the newly created posts of Managers of newly established Service Societies. Under these circumstances, the quota fixed under Rule 23(iii) for direct recruitment could not be implemented for all practical purposes. Rule 23(iii) speaks of appointment of

40 posts by direct recruitment. This, by necessary implication, means that the remaining 60 posts are to be filled in by promotion. The record does not show that there was any channel of promotion for the post of a Manager. Even if a channel of promotion is assumed, no promotion could be made to the post of Manager in the absence of candidates for that purpose, because Service Societies were newly established societies. Neither the Act, nor the Recruitment Rules contemplate that in such a case 60 per cent seats for promotees should remain vacant. We are, therefore, of the view that the selection and appointment of the respondents 5 to 57 for the said posts of Manager could not be set aside on the ground of violation of Rule 23(iii) of the Recruitment Rules.

It may also be mentioned that according to their own showing, the writ petitioners 1 and 2 had also applied to the said posts of Manager but were not called for interview, because they did not fulfil the requisite qualification as per advertisement (Annexure-F). The process of selection begins soon after the last date fixed for making the application. By making applications for the post, the writ petitioners 1 and 2 must be deemed to have participated in the process of selection and appointment in pursuance of advertisement (Annexure-F). They cannot, therefore, be allowed to challenge the selection and appointment of the respondents 5 to 57 of the writ petition on the ground that they were not in accordance with the Recruitment Rules.

For the foregoing reasons, this Letters Patent Appeal succeeds and it is hereby allowed. The impugned order dated 26-4-1985 passed by the learned Single Judge of this Court in M. P. No. 305/78 is set aside, (Reported in 1986 MPLJ 347) with the result that the writ petition filed by Bikal Bihari Soni, Vijay Kumar Pathak and Mandla Zila Sahakari Kendriya Bank Karmachari Sangh, Mandla, stands dismissed. However, in the circumstances of the case, we direct the parties to bear their costs as incurred throughout.