
(1966) 01 MP CK 0002
In the Madhya Pradesh High Court

Ras Bihari Pandey

APPELLANT

Vs

Municipal Corporation and Others

RESPONDENT

Date of Decision : 21-01-1966

Acts Referred:

Constitution of India, 1950 — Article 12, 16, 226, 227, 320

Citation : (1967) JLJ 415 : (1967) 2 LLJ 234 : (1966) 11 MPLJ 427

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhavé, J

Bench : Division Bench

Judgement

P.V. Dixit, C.J.

By this application under Articles 226 and 227 of the Constitution, the petitioner questions the legality of the appointment by respondent 4, the standing committee of the Municipal Corporation, Jabalpur, of respondent 3, Ramakrishna Upadhyay, as lecturer In Economics in L. N. Yadav Higher Secondary School, Jabalpur, alleges that he is usurping the office of lectureship, and contends that he, that is the petitioner, himself should have been appointed to the post. The applicant prays that a writ in the nature of quo warranto be issued against respondent 3 to show cause as to by what authority he is functioning and acting as lecturer In Economics In the aforesaid school, that the resolutions passed by respondent 4, the standing committee, with regard to the appointment of respondent 3 be quashed by writs of certiorari, and respondent 3 be restrained from functioning and acting as lecturer, and further that a direction be issued to the Municipal Corporation, Jabalpur, and its standing committee to appoint him to the post.

The material facts are that the L. N. Yadav Higher Secondary School, Jabalpur, is an institution run and managed by the Municipal Corporation, Jabalpur. The applicant, Ras Bihari Pandey, was at the material time, that is, on 20 March 1963, holding the post of a teacher in the pay-scale of Rs. 60?120 and was undergoing training in B. Ed. course. At that time, respondent 3, Ramakrishna, Upadhyay was a teacher in "modern (subjects)" in Sanskrit Vidyapeeth, also an

institution run and managed by the Corporation. He was in the pay-scale of Rs. 100?200. Early in 1963, the post of lecturer in Economics in the L. N. Yadav Higher Secondary School fell vacant. On 20 March 1963, the sanding committee of the Corporation passed a resolution promoting Ramakrishna Upadhyay to the post on the basis of "seniority," and further resolved to obtain the consent of the State Public Service Commission to the promotion. It appears that after the passing of this resolution the Corporation took no step for obtaining the consent of the Public Service Commission. On 1 October 1963, the standing committee passed another resolution saying that the committee had appointed Ramakrishna Upadhyay to the post of lecturer temporarily for a period of six months and had directed that "Sis case" should be referred to the Public Service Commission, and that inasmuch as the matter had not been referred to the Public Service Commission, the period of the appointment of Ramkrishna Upadhyay was extended till the consent of the Public Service Commission to his appointment was obtained. On behalf of the municipal corporation, It was stated before us that pursuant to the resolutions passed on 20 March 1963 and 1 October 1963 the matter of the appointment of Ramakrishna Upadhyay has been referred to the Public Service Commission and is pending for consideration before the Commission.

Sri Dharmadhikari, learned Counsel appearing for the petitioner, assailed the validity of the appointment of Ramakrishna Upadhyay to the post of lecturer in Economics on four grounds. First, It was said that according to the memorandum issued by the Divisional Superintendent of Education on 22 March 1963 to the managers of all non-Government higher secondary schools of Jabalpur division drawing their attention to the qualifications which persons for appointment as principals, lecturers and teachers should fulfill, Ramakrishna Upadhyay was not qualified to be appointed as lecturer whereas the petitioner was; that the said memorandum also required that the appointments of principals, lecturers and teachers in non-Government higher secondary schools should be approved by the Divisional Superintendent of Education, Jabalpur; and that no such approval of the Divisional Superintendent of Education was obtained to the promotion or appointment of Ramakrishna Upadhyay. Secondly, It was urged that u/s 58 of the Madhya Pradesh Municipal Corporation Act, 1956, permanent appointment to the post of a lecturer carrying a salary exceeding Ra. 150 could be made only by the standing committee in consultation with the State Public Service Commission in the manner prescribed; that under Sub-sec (2) of Section 58 the standing committee could make a temporary appointment without consulting the Public Service Commission only for a period not exceeding six months; and that as the effect of the aforesaid two resolutions was to appoint Ramakrishna Upadhyay temporarily for a period exceeding six months without consulting the Public Service Commission, the appointment was invalid and Ramakrishna Upadhyay could not continue in the post virtually on a permanent basis when the Commission was no, consulted." Thirdly, it was submitted that the resolutions passed by the standing committee with regard to the appointment of

Ramakrishna Upadhyay were invalid also for the reason that Sri Vijay Shankar Upadhyay, the father of respondent 3, Ramakrishna Upadhyay, who was a member of the standing committee, voted and took part In the discussion of the matter of his son's appointment when it came up before the meeting of the standing committee contrary to the provision contained in Section 35 of the Madhya Pradesh Municipal Corporation Act, 1956, prohibiting a councillors from voting or taking part in the discussion of any matter In which directly or indirectly he has any interest. Lastly, it was contended that the standing committee did not at all consider the question whether the petitioner, who was qualified for the appointment, should be promoted to the post of lecturer In Economics, and thus there was a "denial of equal opportunity" as between him and respondent 3 in contravention of Article 16(1) of the Constitution.

In our opinion, all these objections to the validity of the appointment of Ramakrishna Upadhyay are without any merit. Taking first the objection resting on the memorandum issued by the Divisional Superintendent of Education, Jabalpur Division, on 22 March 1963 with regard to the qualifications of persons for appointment as principals, lecturers and teachers, that memorandum had not the effect of prescribing any statutory qualifications for appointment of principals, lecturers and teachers in non-Government higher secondary schools so as to render invalid any appointment made contrary to the specified qualifications. The memorandum said:

Consequent to the implementation of the revised scales of pay in non-Government institutions, It is implied that conditions prevalent in Government educational institutions for appointment of principals, lecturers and teachers should be strictly adhered to while making appointments. It is, therefore, brought to your notice that this office will not admit any principal, lecturer, teacher or other personnel with effect from 1962-63 session unless the appointments are got approved by me. A copy of the categories Laid clown for appointments of lecturers is enclosed herewith. Attention is also Invited to the regulations contained in Chap. XI of the Board of Secondary Education, Madhya Pradesh. Strict adherence to these regulations is a condition precedent to earn recognition and grant-in-aid.

The memorandum has to be read with Regn. 1 of Chap. -XI of the regulations made under the Madhya Pradesh Secondary Education Act, 1959, which lays down that regulations in that chapter shall not apply to the educational institutions maintained by statutory local bodies. Chapter XI of the regulations deals with the matter of staff in private educational Institutions. So read it la obvious that the purpose of the memorandum was only to impress on the managers of all non-Government higher secondary schools the desirability of appointing only these persons as principals, lecturers and teachers who fulfill the Qualifications indicated in the "categories" annexed to the memorandum and of following the regulations contained in Chap. XI of the Board of Secondary Education, Madhya Pradesh Regulations, 1959. As is clear from the

memorandum, it said that non-compliance of the Instructions contained therein by the manager of any non-Government higher secondary school would result in non-recognition of the school or withdrawal of the grant-In-aid or refusal by the Government educational authorities to admit "any principal, lecturer, teacher or other personnel." It did not invalidate the action of the manager of a non-Government higher secondary school in appointing a person contrary to the instructions given by the memorandum. It is also noteworthy that the memorandum was issued two days after the standing committee resolved on 20 March 1963 to appoint Ramkrishna Upadhyay to the post of lecturer. It cannot, therefore, be contended with any degree of force that the appointment of Ramkrishna Upadhyay as lecturer was invalid inasmuch as he did not fulfill the qualifications which, according to the memorandum dated 22 March 1963, were necessary for the appointment of a person as lecturer.

Equally untenable is the contention that the appointment of Ramkrishna Upadhyay was invalid as it was not made in consultation with the State Public Service Commission in the manner prescribed. It is true that the appointment of officers specified in Section 68 of the Madhya Pradesh Municipal Corporation Act, 1956, and of "such other officers and servants as are necessary for the efficient carrying out of the purposes of this Act" has to be made in accordance with Section 58 of the Act, and the power of appointing an officer falling u/s 58 on a salary exceeding Rs. 150 vests in the standing committee. It is also true that permanent appointment of such an officer by the standing committee has to be made "in consultation with the State Public Service Commission In the manner prescribed." Subsection (2) of Section 58 provides that notwithstanding anything contained in Sub-section (1), the standing committee may make appointments for a period not exceeding six months without consultation with the State Public Service Commission. The question whether the appointment of a lecturer in a higher secondary school managed by the Corporation is governed by Section 58 of the Madhya Pradesh Municipal Corporation Act, 1956, is a debatable point. A lecturer in a higher secondary school run by the Corporation is clearly not one of these officers expressly specified in Section 58. Section 58 (1) no doubt also speaks of appointment of "such other officers and servants as are necessary for the efficient carrying out of the purposes of this Act." Now, in Section 66, which prescribes the obligatory and mandatory duties of the Corporation, the establishment and maintenance of higher secondary schools is not Included. Clause (s) of Section 66 (1) only makes the establishment and maintenance of primary schools an obligatory duty of the Corporation. In the discretionary functions of the Corporation, enumerated in Section 67 of the Madhya Pradesh Municipal Corporation Act, 1956, also is not included the establishment and maintenance of higher secondary schools. Clause (kk) of that section refers only to the establishment and maintenance of pro-primary schools. Thus the running and maintenance of a higher secondary school appears to be neither a mandatory nor a permissive function of the Corporation. If the establishment and maintenance of a higher secondary school is not under the Act a function of the

Corporation, then it can be argued with considerable force that in the appointment of principals, lecturers and teachers in such a school Section 53 is not attracted.

We, however, do not wish to express any concluded opinion on the matter. Even without deciding that question and assuming that the matter of appointment of a lecturer in a higher secondary school run by the Corporation is one falling u/s 68 of the Madhya Pradesh Municipal Corporation Act, 1956, the appointment made by the standing committee of Ramakrishna Upadhyay without consulting the State Public Service Commission is not invalid. The effect of a provision requiring consultation with the Public Service Commission in making an appointment has been considered by the Supreme Court in many cases. Clause (3) of Article 320 of the Constitution prescribes that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted in regard to the matters enumerated in that clause. The Supreme Court has ruled in *State of U.P. Vs. Manbodhan Lal Srivastava*, and *A. N. D'Silva v. Union of India* A.I R. 1962 3.0. 130 that the words "shall be consulted" occurring in Clause (3) of Article 320 cannot be construed in the sense that in default of consultation the action of Government under any of the sub-clauses of Clause (3) would be null and void and that the status of the Public Service Commission is merely advisory. On the same principle, it must be held here that if there was a failure on the part of the standing committee to consult the State Public Service Commission in making the appointment, the appointment is not rendered invalid. If consultation with the Public Service Commission in the making of a permanent appointment is not essential for its validity, then a fortiori it would follow that if the standing committee made a temporary appointment of Ramakrishna Upadhyay for a period exceeding six months, or after having made the appointment for a period of six months allowed him to continue beyond that period without consulting the Commission, then the appointment or the continuance of Ramakrishna Upadhyay in that appointment is not rendered invalid.

The objection that Ramakrishna Upadhyay's appointment was invalid inasmuch as his father as a member of the standing committee voted and took part in the discussion of the matter of appointment of a lecturer in Economics when it came up before the meeting of the standing committee, must also fail. Section 35 (1) no doubt prohibits a councillor from voting or taking part in the discussion of any matter before a meeting in which he has, directly or indirectly, by himself or his partner, any share or interest in any contract, grant or employment with, by or on behalf of, the Corporation. Sub-section (2) of Section 36 requires every councillor having such interest to disclose as soon as practicable after the commencement of the meeting, his interest and not to take part in consideration or discussion of or vote on the question. But there is no provision in the Madhya Pradesh Municipal Corporation Act, 1956, invalidating the proceedings of a meeting of the Corporation or of the standing committee in which a councillor having interest has taken part or voted, or invalidating for that reason the decision arrived at by the Corporation or the standing committee. Here, the

resolution appointing Ramakrishna Upadhyay as lecturer was passed unanimously by the standing committee. Therefore, there is no room for argument that if the vote cast by Ramakrishna Upadhyay's father had been excluded, then the decision of the standing committee would have been otherwise. It has been said in the petition that Ramakrishna Upadhyay's father influenced the other members of the standing committee. There is, however, no material to support this allegation.

Learned Counsel for the petitioner referred us to the decision of a Division Bench of this Court In *Tarachand Damu Sutar Vs. The State of Maharashtra*, , and contended that even if Section 35 did not contain a specific provision invalidating the proceedings of a meeting in which a councillor having an interest has taken part or voted, Section 35 should be so construed as to have that effect. We are unable to accede to this contention. The decision relied of by the learned Counsel is not in point. In that case, the question arose whether the nomination paper of a candidate at a municipal election proposed by a municipal teacher was invalid. The matter turned on Section 25B of the Central Provinces and Berar Municipalities Act, 1922, which was as follows;

(1) No officer or servant employed under this Act shall?

(c) canvass or otherwise interfere or use his influence in connexion with, or take part in, any election to a legislative body or local authority otherwise than in the exercise of his vote or in the discharge of any duty assigned to him officially.

The Division Bench held that the conduct of the school teacher in proposing: the nomination was against Section 25B, and the nomination was invalid. It was observed by the Division Bench:

We are unable to agree with the learned single Judge that the action of Kailash Chandra did not fall within the clause quoted above. He took part in the election and also used his influence in connexion therewith by proposing a candidate. It is common knowledge that candidates set much store by the proposers and seconders they can get. Provisions of this character, which are quite obviously designed for furthering purity of elections, must receive a construction which furthers the objects of the law, even though penal consequences attend such action see *Satyendra v. Municipal Chiarmen, Dacca* (A.I.E. 1931 Cal. 288). But even If the section be strictly construed, as was claimed, we are quite clear that the words thereof are wide enough to cover a case like the present. The conduct of " Kailash Chandra thus was against Section 25B.

It is clear from the above observations, as also from the observations contained In Para. 9 of the judgment in *Tarachand Damu Sutar Vs. The State of Maharashtra*, that the Division Bench held the nomination paper to be invalid because it found that the teacher had taken part in the election and had used his influence In connexion therewith by proposing the candidate and this act of the teacher offended Rules 1 (b) and 1 (c) of the rules made u/s 176 (2)(11) of the Act of 1922. The Division Bench did not lay down in *Tarachand Damu Sutar Vs.*

The State of Maharashtra, any such proposition, namely, that whenever a statutory provision prohibits a certain act to be done In certain proceedings, then the entire proceedings or the result thereof is vitiated.

Though the appointment of Ramkrishna Upadhyay is not invalidated because his father took part and voted at the meeting of the standing committee at which a resolution with regard to his appointment was unanimously passed, it must be observed that the conduct of Sri Vijay Shankar Upadhyay in participating in the meeting of the standing committee at which the matter of his son's appointment came up for consideration was not only contrary to Section 35 of the Madhya Pradesh Municipal Corporation Act, 1956, but also offended all canons of propriety. It is essential that no councillor should even be exposed to the suspicion that in the discharge of his duties his conduct may be influenced by any personal consideration, and that though the proceeding may not have been actually affected by such consideration, there must not be any room for the operation of any such motive. It needs little imagination to visualize the danger in which the local administration would stand if by conduct, such as the one shown by the respondent 3's father, of councillor having interest of the type indicated in Section 35 of the Madhya Pradesh Municipal Corporation Act, 1956, the well-being of the public and the rate-payers were liable to be betrayed for the advantage of the person or persons entrusted with certain duties by the voters electing such councillors.

The contention that the standing committee promoted and appointed Ramakrishna Upadhyay as lecturer without considering the claim of the petitioner for promotion and thus violated Article 16 of the Constitution is unsubstantial. It is true that having regard to the definition of "the State" in Article 12 of the Constitution, Article 16(1) applies to any matter relating to employment or appointment to any office under the Corporation. It is also settled that equality of opportunity for all citizens in matters relating to employment or appointment to any office under the "State" is not confined only to initial appointment, but includes also the matter of promotion see *The General Manager, Southern Railway Vs. Rangachari*, and *Kishori Mohanlal Bakshi Vs. Union of India*, . But what is guaranteed under Article 16 of the Constitution is that in matters relating to employment or appointment, the State should apply the same standard to all persons similarly situated. Here the petitioner and the respondent Ramkrishna Upadhyay were not similarly placed when the question of filling the post of lecturer in Economics came up for consideration before the standing committee. At that time Ramkrishna Upadhyay was holding the post of a teacher in the Sanskrit Vidyapeeth in the scale of Rs. 100?200 and the petitioner was a middle school teacher in the pay-scale of Rs. 60?120. He was also at that time taking the B. Ed. training course. If, therefore, in these circumstances the standing committee resolved to promote and appoint as lecturer the respondent Ramakrishna Upadhyay, who was in a higher scale of pay, and did not consider for promotion the petitioner, who was in a lower scale of pay and not available, it cannot be said that there was a "denial of equal opportunity" as between him

and the respondent Ramkrishna Upadhyay, in contravention of Article 16(1) of the Constitution.

For the foregoing reasons, our conclusion is that this petition must be and is dismissed with costs. Counsel's fee for the respondents 1, 2 and 4 is fixed at Rs. 100. The counsel's fee for respondent 3 shall be Rs. 75. The outstanding amount of security deposit, if any, after deduction of costs, shall be refunded to the petitioner.