
(2004) 07 MP CK 0027

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 641 of 2003

Ratan Deep Gupta and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 27-07-2004

Acts Referred:

Madhya Pradesh Panchayat Act, 1981 — Section 63, 63(1)

Madhya Pradesh Panchayat Raj Adhiniyam, 1990 — Section 68(1)

Citation : (2004) 4 MPHT 126 : (2005) 1 MPLJ 149

Hon'ble Judges : R.V. Raveendran, C.J;K.K. Lahoti, J

Bench : Division Bench

Advocate : Dinesh Kaushal and K.C. Gildhiyal, for the Appellant; Sanjay Yadav, Government Advocate, for the Respondent

Judgement

Appellants were working as Assistant Grade III in various Janpad Panchayats in Shahdol district. Their cases were considered for promotion by a Selection Committee and they were promoted as Assistant Grade II-cum-Accountants on 14-3-1991. About 10 months thereafter, the second respondent passed an order dated 8-1-1992 directing cancellation of their promotions and reverting them as Assistant Grade III on the ground that the promotions violated Section 68 (1) of the M.P. Panchayat Act, 1990. The said order dated 8-1-1992 was challenged by the appellants in M.P. No. 196/92. The learned Single Judge, by order dated 7-8-2003 dismissed the petition on the ground that there was no infirmity in the said order dated 8-1-1992. The said order is challenged in this Letters Patent Appeal.

Section 63 (1) of the M.P. Panchayat Act, 1981 provides that every Panchayat may with the previous approval of the prescribed authority appoint such other officers and servants as it considers necessary for the efficient discharge of its duties. The said Act was replaced by the M.P. Panchayat Raj Act, 1990 which came into effect in August, 1991. Section 68 of the 1990 Act also contains a similar provision. It is not in dispute that as on 14-3-1991 when appellants were

promoted, the 1981 Act was in force. u/s 63 (1) of the Act, the prescribed authority for Janpad Panchayats was the Collector/Additional Collector. It is also not in dispute that previous approval of the prescribed authority as required u/s 63 (1) was not obtained for promoting the appellants from Assistant Grade III to Assistant Grade II-cum-Accountants. The learned Single Judge, therefore, found no reason to interfere with the order dated 8-1-1992, directing cancellation of the promotion.

Learned Counsel for the appellants contended that as the appellants were promoted and working in the higher post, the action of the second respondent reverting them to the post of Assistant Grade III, without affording them a hearing or an opportunity to show cause was invalid as it violated the principles of natural justice.

It is true that normally the Collector ought to have been given an opportunity to show cause to the appellants. But on the facts of the case, we feel that failure to give such opportunity need not lead to the quashing of the order dated 8-1-1992. We requested the learned Counsel for the appellants to point out whether any view, other than the view taken in the order dated 8-1-1992, could have been taken having regard to the provisions of Section 63 (1) of the Act even if an opportunity to show cause is given. We also requested him to point out any infirmity in the order. We found that his objection was more in regard to the form rather than the substance. He contended that it is not necessary to consider the merits of the order dated 8-1-1992 when there is a blatant violation of principles of natural justice. We do not agree. Where even after giving an opportunity to show cause, there can be only one view, which is the view expressed in the impugned order, then the Court can itself give a hearing and decide the matter.

In *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , the Supreme Court, observed thus :--

"Normally, we would have directed the Municipal Commissioner to afford an opportunity to the petitioners to show why the encroachments committed by them on pavements or footpaths should not be removed. But, the opportunity which was denied by the Commissioner was granted by us in an ample measure, both sides having made their contentions elaborately on facts as well as on law. Having considered those contentions, we are of the opinion that the Commissioner was justified in directing the removal of the encroachments committed by the petitioners on pavements, footpaths or accessory roads. As observed in *S.L. Kapoor Vs. Jagmohan and Others*, "..... where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs". Indeed, in that case, the Court did not set aside the order of supersession in view of the factual position stated by it. But, though we do not see any justification for asking the Commissioner to hear

the petitioners, we propose to pass an order which, we believe he would or should have passed, had the granted a hearing to them and heard what we did."

In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, , the Supreme Court held as follows :--

"When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a per version of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is anti thetical to justice."

The appellants next submitted that Section 63 (1) should have been applied only to fresh appointments and not in regard to promotion of officers who are already in service. Alternatively, it was contended that Section 63 (1) will apply only to ex-cadre posts or supernumerary posts.

On a careful reading of Section 63 (1), we find the contention untenable. Section 63 of the Act makes it clear that "all appointments by Panchayat shall be with the previous approval of the prescribed authority". It is not possible to read the word "appointment" as either excluding "promotions" or as referring only to appointments to posts other than cadre posts. Keeping in view the spirit behind the provision, we are of the view that all "appointments" required the previous approval of the prescribed authority. Admittedly, such approval was neither sought nor obtained.

The order promoting the appellants was illegal and, therefore, the second respondent was justified in cancelling the same. We, therefore, do not propose to interfere with the order passed by learned Single Judge.

We, however, would like to make two observations. Firstly, if the appellants have been paid higher salary attached to the post of Assistant Grade II-cum-Accountant from the date of promotion till the date of their reversion, the difference should not be recovered as the appellants had in fact worked in the higher post and having regard to the principle laid down in *Sahib Ram Vs. State of Haryana and Others*, and *Shyam Babu Verma and Others Vs. Union of India*

(UOI) and Others, . Secondly, the cases of appellants should be reconsidered for promotion in accordance with law as their promotion has been cancelled only on a technical ground, subject to availability of vacancies in higher cadre, if they are not already promoted in the meanwhile. A period of four months, from the date of receipt of this order, is fixed for such consideration.

The appeal is accordingly disposed of subject to the said observations.