
(2015) 07 MP CK 0017
In the Madhya Pradesh High Court
Case No : WP-5298-2007

Rekha Pandey

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Citation : (2016) LabIC 419 : (2015) 3 MPLJ 459

Hon'ble Judges : Ravi Shankar Jha, J

Bench : Single Bench

Advocate : Avinash Zargar, Learned Counsel, for the Appellant; Devesh Jain, Learned Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ravi Shankar Jha, J.—Heard the learned counsel for the parties on IA No. 8729/2014 for vacating stay but on the request of the learned counsel for the parties, the matter is heard and decided finally.

2. The petitioner has filed this petition being aggrieved by the order dated 17.2.2007 by which the appointment of the petitioner on the post of Samvida Shala Shikshak Grade-III has been cancelled. The learned counsel for the petitioner submits that the petitioner had filed an application pursuant to the advertisement issued by the respondents for filling up 158 posts of Samvida Shala Shikshak Grade-III in Janpad Panchayat Bankhedi. For this purpose, the eligibility entrance examination was conducted by the Madhya Pradesh Professional Examination Board. The petitioner appeared in the entrance examination and was thereafter called for counseling by vide communication dated 19.09.2006 on the strength of a certificate issued by the respondent no. 3 Annexure P2.

3. It is stated that the respondents on scrutiny of the petitioner's documents issued an order of appointment dated 28.9.2006. Pursuant to which, she joined her duties on 6.10.2006. The petitioner in the petition has alleged that when the

petitioner was continuously working on the post, she suddenly received an order dated 17.2.2007 by which her appointment was cancelled on the ground that she had not obtained minimum qualifying marks in the eligibility examination. The petitioner being aggrieved, had filed a representation before the higher authorities which was not considered and decided, hence the petitioner is constrained to file this petition.

4. It is submitted that the respondents authorities have passed the impugned order cancelling the petitioner's appointment without giving any opportunity of hearing to the petitioner and without taking note of the fact that the respondent no.3 Madhya Pradesh Professional Examination Board had issued a certificate to the petitioner Annexure P/2 certifying that she was eligible for appointment on the post of Samvida Shala Shikshak Grade-III. It is further stated that inspite of the aforesaid certificate of the Professional Examination Board and inspite of the fact that the petitioner had been granted appointment after scrutinizing all her papers, the impugned order of cancellation has been issued, which deserves to be quashed.

5. The respondents filed their return and have stated that though the petitioner was granted appointment on the post of Samvida Shala Shikshak Grade-III, however, subsequently on scrutiny, it was found that the petitioner had obtained only 42.64 marks out total 130 marks i.e. below the minimum qualifying marks of 40% which is statutorily prescribed and required by Rule 6 of the Madhya Pradesh Panchayat Samvida Shala Shikshak (Appointment and Conditions of Contract) Rules, 2001 (for short hereinafter referred as "Rules 2001") and therefore, the respondents authorities issued the impugned order cancelling the petitioner's appointment.

6. It is submitted by the respondents that the petitioner has not obtained the minimum qualifying marks which is statutorily prescribed and therefore her appointment was patently illegal and had been made by mistake and on that count, the impugned order was issued cancelling her appointment. It is submitted by the respondents that the fact that the petitioner had obtained less than 40% marks is undisputed and in such circumstances, the respondents on discovering the mistake have issued the impugned order and therefore no fault can be found with the same.

7. It is also apparent from the perusal of the order sheets of this Court that the respondent no.3 was specifically asked to clarify as to whether mentioning of 42.64 marks in Annexure P2 which the certificate issued by the respondent no. 3, is mention of marks obtained or the percentage of marks. A perusal of the order passed by this court on 28.4.2015 makes it clear that the respondent no. 3 had clarified this aspect and has stated that 42.64 figure mentioned in Annexure P2 are the marks that have been obtained by the petitioner out of total 130 marks and is not the percentage of marks obtained by her. This court on 24.4.2015 went on to state that the controversy regarding actual marks and percentage is put to rest in view of the clear and specific stand of the respondent

no.3.

8. Having heard, the learned counsel for the parties and in view of the aforesaid facts, it is clear and undisputed that the petitioner had infact not obtained the minimum qualifying marks of 40% which is statutorily prescribed by Rule 6 of Rules 2001. However, the respondents authorities by mistake treating 42.64 marks as the percentage of marks obtained by the petitioner, permitted her to participate in the counseling and have also granted an appointment. It is further clear that when this mistake was discovered, the respondent authorities issued the impugned order cancelling the petitioner's appointment.

9. Even before this court, the petitioner has not been able to point out that the petitioner had obtained more than 52 marks or 40% in the qualifying examination as statutorily prescribed in Rule 6 of the Rules.

10. In view of the aforesaid undisputed and admitted facts, I am of the considered opinion that no fault can be found with the act of the respondents authorities in not complying with the principles of natural justice or issuing any notice to the petitioner as even if such a notice would have been issued, no useful purpose would have been served as issuance of such notice would be a useless formalities.

11. In the similar circumstances, the Supreme Court in the cases of Gorkha Security Services Vs. Govt. of NCT of Delhi, (2014) AIRSCW 4586 : (2014) 9 SCALE 148 : (2014) 9 SCC 105 , Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, (2007) 6 JT 127 : (2007) 3 SCALE 517 : (2007) 4 SCC 54 : (2007) 2 SCC(L&S) 19 : (2007) 3 SCR 95 : (2007) 3 SLJ 420 , State of Manipur and Others Vs. Y. Token Singh and Others, (2007) 114 FLR 912 : (2007) 3 JT 606 : (2007) 3 SCALE 319 : (2007) 5 SCC 65 : (2007) 2 SCC(L&S) 107 : (2007) 2 SCR 965 and Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, (2008) 118 FLR 700 : (2008) 8 JT 70 : (2008) 3 LLJ 897 : (2008) 10 SCALE 101 : (2008) 9 SCC 31 : (2008) 2 SCC(L&S) 789 : (2009) 1 SLJ 37 and Hitendra Singh and Others Vs. Dr. P.D. Krishi Vidyapeeth by Reg. and Others, AIR 2014 SC 1635 : (2014) AIRSCW 2179 : (2014) 4 SCALE 673 : (2014) 8 SCC 369 as well as this court in the case of Munna Lal Yadav Vs. Dr. Hari Singh Gour and Another , has held that non issuance of a notice to the employee is not fatal to the order passed by the authorities when the facts involved are undisputed or in cases where the issuance of a notice would not serve any useful purpose and would be a useless formality. It is contended by the learned counsel for the petitioner that the petitioner possesses a D.Ed. Certificate and therefore, is entitled for an additional 20 marks under Rule 9 of the Rules 2001. It is stated that if the aforesaid 20 marks are awarded to the petitioner, she would even otherwise be entitled to an appointment.

12. Having heard the learned counsel for the parties, it is observed that the aforesaid benefit of marks of 20% would have had an impact on the claim of the petitioner only in case she would have obtained the minimum qualifying marks

statutorily prescribed under Rule 6 of Rules 2001 which admittedly the petitioner has not obtained and therefore, denial or award of 20 marks for possessing D.Ed certificate does not in any manner help the petitioner or affect the result of the case. The contention raised by the petitioner in this regard, is accordingly rejected.

13. The learned counsel for the petitioner states that the petitioner has been permitted to work on account of an interim order passed by this Court on 7.5.2007. It is also submitted that though the petitioner has been permitted to work, she has not been paid remuneration since August 2013 till date and therefore, respondents authorities be directed to pay the dues of the petitioner for the services she had actually rendered. The learned Government Advocate appearing for the respondent State submits that if the petitioner files the representation before the authorities, the same shall be examined and in case if it is found that the petitioner had actually worked, the remuneration shall be disbursed to her after examining the record.

14. In view of the aforesaid statement of the learned Government Advocate for the respondent/State while dismissing the petition, it is observed that the respondent authorities shall look into the representation and decide the same in case the petitioner produces a certified copy of the order passed today along-with copy of the petition within four weeks from today, the authority concerned shall thereafter, examine the record and on finding that some amount is due to be paid to the petitioner, the same shall be disbursed to the petitioner as expeditiously as possible preferably within a period of 3 months thereafter.

15. In view of the aforesaid and in view of the law laid down by the Supreme Court, I find no reason to entertain the present petitioner.

16. The petition filed by the petitioner is accordingly dismissed with the aforesaid directions.

17. C.C. as per rules.