
(2015) 07 MP CK 0014

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 4638/2014 and 2107 of 2015

Sandeep Sharma and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Citation : (2015) 07 MP CK 0014

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : D.K. Katare, for the Appellant; Praveen Newaskar, Govt. Advocate, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sujoy Paul, J.—In view of commonality of facts and issues, on the joint request, matters were analogously heard and decided by this common order.

WP. 4638/2014

2. In this case petitioners have challenged the notice dated 14.07.2014 (Annexure P/1) whereby the petitioners were directed to produce the original certificates relating to their eligibility. In this petition, this court by order dated 01.10.2014 directed the parties to maintain status quo as regards petitioners' employment. The stand of the petitioners in this case is that they were duly selected by recruiting agency. They possess requisite qualification. Earlier petitioners filed WP No. 1727/11 and WP. 1321/2011. This Court decided the said matters and opined that University of Technology and Science Raipur (CG) and the certificates obtained from said university must be treated at par with other petitioners in the said case. It is contended that for that reason, the competence of said university to issue diploma certificate cannot be doubted. However, Shri D.K. Katare fairly admitted that genuineness/authenticity of certificates could have been examined. Shri Katare submits that respondents examined the genuineness of the document and by Annexure P/3 dated 17th September 2012

found that the diploma certificate issued by UTS University is valid.

3. Shri Katare further submits that a plain reading of Annexure P/3 makes it clear that petitioners' certificate of diploma issued by said university was minutely examined by respondents and after verification from UTS University, it was found to be correct. It is contended that again verification was made by Commissioner, land record (Annexure P/13). Reliance is placed on Annexure P/15 dated 5th April, 2015. It is contended that the verification in relation to petitioners' DCA certificate was made on more than one occasion. Genuineness of certificate were approved at the level of Commissioner and State Govt. Thereafter, it was not open to the respondent to subject the petitioners for another verification.

WP. 2107/2015

4. In this case petitioners have challenged the order dated 30.03.2015 whereby the Collector Morena opined that computer diploma certificate of petitioner is an invalid and forged document. Hence, petitioners were held to be ineligible for consideration. Accordingly, the selection and appointment of petitioners are cancelled. Assailing this order, Shri Katare advanced same contention. He submits that DCA certificate issued by University of Technology and Science Raipur was minutely examined by the respondents. There is no justification in again verifying the same and taking a different decision. On merits, it is contended that since there was a interim order prevailing in WP No. 4638/2014, it was not proper on the part of respondent to pass the order Annexure P/1. It is submitted that para 2 of the impugned order which shows that the said university was not recognized is not justifiable because this point stood concluded in the earlier round of the litigation. It was not open for the respondents to reverify the document after earlier round of verification and raise doubt over the competence of said university.

5. Shri Katare heavily relied on Rule 29 of MPCS (CCA) Rules, 1966. To elaborate, he submits that the order Annexure P/3 dated 17 September, 2012 (in WP No. 4638/2014) has attained finality. Thereafter it was not open for the respondent to review or recall its order. Moreso when six months time has already elapsed. In support of his submission he relied certain judgments.

6. Per Contra, Shri Praveen Newaskar, G.A for respondents/State, relied on the averments of the return filed. He submits that if there is a genuine doubt in the mind of employer, it can reverify the document. He further submits that interim order passed in 4638/2014 was never communicated by petitioner to the Collector. Hence, the Collector has not committed any legal error in passing the order which is under challenge in WP. 2107/2015. He further submits that order of Collector is clear which shows that DCA certificate was verified by the University but said verification document does not contain the name of the Officer and his seal. Verification certificate is issued after closure of UTS University. After closure of said university, certification of DCA certificate could

have been done by Pandit Ravi Shankar Shukla Vishwavidhayala, Raipur. This was not done. Hence, no error can be found in the order of Collector. He heavily relied on the judgment passed by this Court in WP No. 4897/2012 (Pradeep Singh Gurjar and Ors. v. State of M.P. and Ors.).

7. Lastly, he submits that the document filed with the rejoinder do not indicate that petitioners documents were reverified at the level of Commissioner and State Government. In rejoinder Shri Katare submits that petitioners' services could have been terminated only after holding departmental enquiry as per CCA Rules. In absence thereof, impugned order is liable to be interfered with.

8. No other point is pressed by the learned counsel for the parties.

9. I have heard learned counsel for parties and perused the record.

10. Shri Katare has taken pains to submit that petitioners' certificates cannot be put to verification repeatedly. In the opinion of this Court, as a thumb rule it cannot be said that after one verification, employer has no right for any further verification of the same document. There may be cases where first verification is improper, incorrect or an outcome of manipulation. Thus, I am unable to hold that after one verification, the employer is estopped or debarred from making any further verification of the document. Unless such further verification is tainted with malafide or actuated with oblique motive, no interference is warranted. In cases where it can be established that reverification is done in order to harass the employee, interference can be made. In the present case, those elements are not available. Hence, action of reverification cannot be said to be impermissible.

11. The bone of contention of Shri Katare is that petitioner is a State Government employee. Impugned orders are punitive in nature and entails civil consequences. This can be done only after following "due process". I find substance in this contention. The Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 are statutory in nature. The rule 3 reads as under:--

"3. Application--(1) These rules shall apply to every Government servant but shall not apply to--

(a) any member of the All India Services.

(b) any person in casual employment.

(c) any person subject to discharge from service on less than one month's notice.

(d) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the Governor before or after the commencement of these rules, in regard to matters covered by such special provision:

(2) Notwithstanding anything contained in sub-rule (1) the Governor may by order exclude any class of Government servants from the operation of all or any of these rules.

(3) Notwithstanding anything contained in sub-rule (1), these rules shall apply to every Government servant temporarily transferred to a service or post coming within exception (d) in sub-rule (1), to whom, but for such transfer, these rules would apply.

(4) If any doubt arises-

(a) whether these rules or any of them apply to any person, or

(b) whether any person to whom these rules apply belongs to a particular service;

the matter shall be referred to the Governor who shall decide the same."

12. The petitioners were subjected to selection by recruiting agency. They were sent on training and thereafter they were appointed. Status of the petitioners, as shown in the appointment order, makes it clear that CCA Rules are applicable on them. The impugned order shows that allegations against the petitioners is that DCA certificate submitted by them is fabricated/forged. In my view, this amounts to casting a stigma on the petitioner. The order is thus punitive in nature.

13. The Apex Court in Punjab State Electricity Board and Others Vs. Leela Singh, (2007) 113 FLR 221 : (2007) 2 LLJ 215 : (2007) 3 SCALE 22 : (2007) 12 SCC 146 : (2007) 1 SCR 1139 opined that employee has committed fraud in obtaining appointment by production of forged experience certificate needs to be proved in a duly constituted departmental proceeding. The Apex Court opined as under:--

"5. The Charge against the respondent is that he has committed fraud in obtaining the appointment by production of a forged experience certificate. The said charge, in our considered opinion, was required to be proved in a duly constituted departmental proceeding. The services of the appellant could not have been directed to be terminated relying on and/or on the basis of the decision of the Board in the case of another employee"

6. We, therefore, are of the opinion that interest of justice will be subserved if the appellant Board is directed to initiate a departmental proceeding against the respondent herein."

(Emphasis Supplied)

14. In the light of aforesaid analysis and judgment, in my view, the impugned order could not have been passed without affording opportunity to the petitioners as per CCA Rules. So far contention of Shri Katare about review of Annexure P/3 dated 17th September, 2012 is concerned, I do not see any merit in this contention. The order dated 17th September, 2012 is not passed under the CCA Rules. Hence, question of applying limitation for review prescribed under the CCA

rules does not arise. I am also unable to hold that petitioners certificates were approved by the Collector and State Government. The said contention is devoid of merits. Documents relied on for this purpose do not support the case of the petitioners in this regard. Apart from this, when an interim order was prevailing in WP.4638/2014, the petitioners services could not have been terminated. For this reason also, impugned orders are bad in law.

15. In view of foregoing analysis, the impugned orders dated 30.03.2015 whereby petitioners candidature is cancelled is set aside. The petitioners be reinstated in services. The liberty is reserved to the respondent to proceed against the petitioners in accordance with law.

16. Petition is disposed of. It is made clear that this Court has not expressed any view on the merits of the case. No costs.