
(2004) 08 MP CK 0020
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3560 of 2003

Saroj Saxena

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2004) 2 MPJR 401 : (2004) 4 MPLJ 492

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : S.R. Muley, for the Appellant; Ami Prabal, Government Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.

Petitioner who is working as a Tracer in the Office of Commissioner, Chambal Division, Gwalior feels aggrieved by the action of the respondents in not granting her seniority with effect from the date of her initial appointment i.e. 30-6-1983, instead granting it with effect from 5-5-1992 on the ground that she is regularised in service from the said date.

Petitioner joined services in the Office of Commissioner, Chambal Division, Gwalior on 30-6-1983. It is her case that she had continued in service with utmost sincerity and devotion. On 24-6-1986 she had proceeded on maternity leave when she was terminated from service without giving her any opportunity of hearing and without following the principles of natural justice. Feeling aggrieved thereof, petitioner challenged the termination by filing an application u/s 19 of the Administrative Tribunal Act before the State Administrative Tribunal, Madhya Pradesh, Gwalior and the Tribunal by its order dated 30-4-1992 Annexure A-I directed for reinstatement of the petitioner and payment of salary with arrears of backwages. Accordingly, in compliance thereof it is stated by the

petitioner that Respondent No. 2 passed the order of reinstatement so also granted backwages vide Annexure A-2 dated 21-10-1992. It is the case of the petitioner that contrary to the directives issued by the Tribunal without following the mandate of the Tribunal, Respondent No. 2 passed an order on 6-11-1993 vide Annexure A-4 regularising reappointing the petitioner with effect from 5-5-1992. It is the case of the petitioner that this order passed by the Respondent No. 2 is clearly illegal. Petitioner having been reinstated in service in accordance with the directives of the Tribunal, the question of granting her appointment with effect from 5-5-1992 it is stated deserves to be quashed. Petitioner, therefore, submits a representation vide Annexure A-5 on 26-11-1993 and the said representation cum appeal has been ultimately rejected by the respondents on 19-3-1996.

Shri S.R. Muley, learned counsel appearing for the petitioner argued that when the petitioner was appointed on 30-6-1983, her services were subsequently terminated illegally and when the Tribunal had passed the order Annexure A-1 directing for her reinstatement with full backwages and consequential benefit, respondents were duty bound to grant the benefit of continuation in service so also seniority to the petitioner with effect from the initial date of appointment i.e. 30-6-1983. The main ground of challenge in this petition is that grant of seniority to the petitioner with effect from 5-5-1992 is not proper. Placing reliance on the following judgments, Rajbir Singh and others Vs. Union of India and others, , Delhi Water Supply and Sewage Disposal Committee and Others Vs. R.K. Kashyap and Others, , Jagdish Lal and others Vs. State of Haryana and others, and S.K. Saha vs. Prem Prakash Agarwal and others, 1994 J.L.J. 1, Shri S.R. Muley during the course of hearing submitted that as the petitioner has been in continuous service without any interruption since 30-6-1983, she is entitled to count seniority in the service with effect from her initial date of appointment.

Refuting the aforesaid, Smt. Ami Prabal, learned counsel appearing for the State argued that petitioner was granted appointment vide Annexure R-I on 29th of June, 1983 in pursuance to which she joined services on 30th of June, 1983. The said appointment was a temporary appointment for a period of one year. It was specifically stated that the petitioner's appointment to the post was without following the procedure contemplated under the Recruitment Rules and it was an ad hoc appointment. Respondents admit that services of the petitioner were terminated but after the order passed by the Tribunal vide Annexure A-I on 30-4-1992 she was reinstated in service on ad hoc basis with a further stipulation that her case shall be considered for regularisation as per rules. It is the case of the respondents that the Tribunal had only interfered with the termination of services of the petitioner and the Tribunal had not granted any relief of regular appointment. Reinstatement and consequential benefit by the Tribunal was on the same terms and conditions that were existing prior to her termination in the year 1986. However, in view of a circular dated 9-1-1990 issued by the State Government wherein it was decided to refer the cases of all such employees who are appointed prior to 31-12-1988 for regularisation to a

Screening Committee. It is stated by the respondents that on the basis of recommendations by the Screening Committee, petitioner was regularised with effect from 5-5-1992. It is, therefore, the case of the respondents that as the petitioner's initial appointment was not in accordance with rules and as she had been regularised on the basis of a circular issued by the State Govt., she is entitled to seniority in the cadre only from 5-5-1992. Smt. Ami Prabal, learned counsel for the State argued that the initial appointment of the petitioner being contrary to the rules of recruitment, petitioner cannot get any benefit of the said appointment nor can her seniority be counted from the said date. Accordingly, it is stated that no relief can be granted to the petitioner in the present petition.

I have heard learned counsel for the parties and perused the records.

Initial appointment of the petitioner on 29th of June, 1983 as contained in Annexure R-1 indicates that petitioner was appointed as an ad hoc employee for a period of one year and she joined in the said post on 30th of June, 1983. From the records it is seen that petitioner was treated as a temporary employee and on the ground that she is not entitled to the Madhya Pradesh Civil Services (Leave Rules) 1997, her services were dispensed with on 24-6-1986 vide Annexure R-2 on the ground that her services are no more required. When the petitioner challenged this order of termination, it was the case of the respondents that petitioner being a temporary employee is not entitled to the maternity leave benefit and, therefore, her services were terminated. However, holding the termination to be stigmatic, learned Tribunal by its order dated 30-4-1992 Annexure A-1 had directed the petitioner to be reinstated with consequential benefit. In pursuance thereof, petitioner had been reinstated in service and the backwages have also been paid to her. On such reinstatement, petitioner continued to hold the status of an ad-hoc employee which was the status held by her prior to her termination in the year 1986. Thereafter, it is seen that in the year 1993, case of the petitioner was again considered according to a policy decision taken by the State Govt. in its circular dated 9-1-1990 to regularise the services of all such daily wages employees who have appointed prior to 31-12-1988. The case of the petitioner was referred to a Screening Committee in accordance with this policy and thereafter, on the basis of the recommendations of the Committee, petitioner has been regularised in service on 5-5-1992. This fact is apparent from the order dated 6-11-1993 filed by the petitioner.

It is, therefore, clear that the initial appointment of the petitioner was on ad hoc basis and she was regularised in service in pursuance to a policy decision taken by the State Govt. to regularise the services of all such employees who are working as daily wages employees or ad hoc employees prior to 31-12-1988. Respondents have categorically stated that the initial appointment of the petitioner was made on ad hoc basis without following the recruitment rules, without conducting any selection. It was only in view of the circular dated 9-1-1990 that she has been regularised in the post of Tracer. In the petition also,

it is not the case of the petitioner that her initial appointment is after following any procedure for appointment of an employee in accordance with the recruitment rules or by following a procedure known to law for the purpose of appointment to a post under the Government, petitioner only contends that she was appointed on 29-6-1983 and joined services on 30-6-1983. The question, therefore, which requires consideration in the present case is as to whether petitioner is entitled to count seniority with effect from her initial date of appointment i.e. 29-6-1983/30-6-1983 or from the date of regularisation i.e. 5-5-1992.

Shri S.R. Muley, learned counsel appearing for the petitioner had placed reliance on a judgment rendered by the Supreme Court in the case of Delhi Water Supply and Sewage Disposal Committee and others (supra) to argue that when the ad hoc appointment is followed by regularisation in service, person should get the benefit of seniority from the date of initial appointment. However, it is seen that in the aforesaid case itself in para 26, it has been held by the Supreme Court that if the ad hoc appointment is made considering the claim of other eligible persons, then the benefit of seniority can be granted but if all other eligible candidates are not considered, the said benefit cannot be granted. The said judgment is clearly distinguishable and will not apply in the facts and circumstances of the present case in view of the subsequent judgment of the Supreme Court and in particular the law laid down by the Supreme Court in the case of The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, . Shri Muley had also relied upon the judgment in the case of Rajbir Singh (supra) which is also distinguishable and will not apply in the facts and circumstances of the case in view of the law laid down in the case of Direct Recruit Class II Engineering Officers' Association and others (supra). Similarly, the case of Jagdish Lal (supra) will not apply in the present case as it is a case where the dispute was with regard to fixing of inter se seniority of direct recruit general candidates and SC/ST candidates. The judgment of the Supreme Court in the case of S. K. Saha (supra) relied upon the learned counsel does not help the petitioner as it is clearly laid down in the aforesaid judgment that seniority cannot be counted from the date of ad hoc appointment in case the appointment is not made according to the rules. In the case of the Direct Recruit Class II Engineering Officers' Association and others (supra), Supreme Court after considering the various judgments on the point has laid down the law in para 44 of the aforesaid judgment and 44(A) and (B) reads as under:-

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

It is, therefore, clear from the aforesaid judgment that if the initial appointment is only on ad hoc basis and not in accordance with the rules, the said period cannot be taken into count for considering the seniority. In the present case, there is nothing on record to indicate that the initial appointment of the petitioner is after following the procedure contemplated in the recruitment rules. On the contrary, it is seen that even while regularising the services of the petitioner, the benefit of a policy decision of the State Govt. was extended to her and she was regularised in service keeping in view the said policy decision as contained in the circular dated 9-1-1990. It is, therefore, the case where appointment of the petitioner has been made without following the principles of recruitment rules but the ad hoc appointment was regularised on the basis of the circular issued by the State Govt. for regularising services of daily wages and ad hoc employees. Petitioner has not made out any case on the basis of which it can be construed that her initial appointment was after following the procedure as provided in the rules of recruitment, on the contrary, it is the case of the respondents that the petitioner's appointment is not in accordance with the rules of the recruitment but considering the policy decision taken by the State Govt. and keeping in view the conditions stipulated in the circular dated 9-1-1990, she has been regularised on the basis of recommendations of the Departmental Screening Committee. In that view of the matter, the contention of learned counsel that petitioner is entitled to be regularised with effect from the initial date of appointment is clearly unsustainable. Supreme Court in the case of Masood Akhtar Khan and Others Vs. State of Madhya Pradesh and Others, after considering the judgment in the case of the Direct Recruit Class II Engineering Officers' Association and others (supra) has laid down that if initial appointment is not made according to the rules, subsequent regularisation of service of an employee disentitles him to benefit of intervening service for the purpose of seniority. Similarly, in the case of Excise Commissioner, Karnataka and another Vs. V. Sreekanta, after considering the judgment of the Constitution Bench in the case of the Direct Recruit Class II Engineering Officers' Association and others (supra), it has been held that seniority of a ad hoc employee has to be counted from the date of regularisation and not from the date of ad hoc appointment. The aforesaid view is further affirmed by the Supreme Court in the case of Y.H. Pawar Vs. State of Karnataka and another, .

Considering the facts and circumstances of the present case in the backdrop of the settled legal principle as enunciated hereinabove and keeping in view the fact that petitioner has not come out with a case that her initial appointment is after following the due process of law or after following such procedure as is contemplated for appointment to the post of Tracer so also considering the fact that the respondents have categorically asserted in their return and additional

return that the initial appointment of the petitioner was not made in accordance with the rules, I find no ground to grant relief claimed by the petitioner. Respondents have correctly granted seniority to the petitioner with effect from 5-5-1992 on the basis of the recommendations made by the Screening Committee. In that view of the matter, there being no merit in the contents raised by learned counsel for the petitioner.

Petition stands dismissed without any order as to costs.