
(1986) 01 MP CK 0012
In the Madhya Pradesh High Court
Case No : M.P. No. 400 of 1985

Satish Bhandari (Dr.)	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 06-01-1986

Acts Referred:

Constitution of India, 1950 — Article 309
Madhya Pradesh Public Service Commission (Limitation of Functions) Regulations 1957
— Regulation 5

Citation : (1986) J LJ 234

Hon'ble Judges : K.L. Shrivastava, J

Bench : Single Bench

Advocate : S.C. Bagadia, for the Appellant; S. Kulshrestha, Government Advocate for Respondent Nos. 1, 2 and Y.I. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Shrivastava, J.—By this petition, the petitioner seeks quashing of the order of ad hoc appointment of respondent No. 3, to the post of Lecturer in Pediatrics, in the Chacha Nehru Children's Hospital and Research Centre Indore (for short the Centre") and for a direction that the post be filled after open and fair advertisement.

2. It is not in dispute that the Governor of M. P. in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and all other powers enabling him in this behalf has made the M. P. (Health) Recruitment Rules 1967 (for short "the Rules") and under rule II selection for direct recruitment has to be made by the Madhya Pradesh Public Service Commission.

3. The Governor of Madhya Pradesh in exercise of powers conferred by the proviso to Clause 3 of Article 320 of the Constitution of India has also made the Madhya Pradesh Public Service Commission (Limitation of Functions) Regulations 1957 (for short "the Regulations"). Regulation No. 5 of the Regulations reads thus:-

5. (1) It shall not be necessary for the Commission to be consulted on the suitability of a person for appointment, promotion or transfer to a post, the period of which does not exceed six months. (2) In other cases where appointment, promotion or transfer to a service or post would otherwise require consultation with the Commission it shall not be necessary to consult the Commission if owing to an emergency the Commission cannot be consulted without detriment to public service: Provided that:-

(1) intimation of such appointment, promotion or transfer shall be sent to the Commission at the same time, and

(II) action to fill up the post in the normal way or to obtain the concurrence of the Commission, as the case may be shall be initiated as early as possible.

4. It was on 25-9-1984 that one Gazetted post of Lecturer in Pediatrics was created in the centre and without any advertisement for the post and without following the Rules, the respondent No. 3 was given ad hoc appointment to that post for a period of six months by an order dated 5-10-84. The petitioner is qualified for appointment to the post. Previously in December 1983 the State of Madhya Pradesh, the respondent No. 1, had advertised one post of Lecturer in Pediatrics in the Medical College Rewa but the petitioner had not applied for it.

5. The petitioner's contention is that on coming to know the creation of the post in the Centre he had applied for it to the Director of Medical-Education, the respondent No. 2, at Bhopal on 1-10-84; that the appointment of the respondent No. 3 who had not even applied for the post is not sustainable. It is contended that the Rules do not permit making of ad hoc appointments and, therefore, the appointment has to be struck down.

6. Respondent No. 1 and 2 filed a joint return. Respondent No. 3 has filed a separate return.

7. The contention of the respondents No. 1 and 2 is that in keeping with the exigencies of services and administrative convenience posts are filled in on ad hoc basis till suitable candidates can be appointed in the normal course under the Rules, after selection through Public Service Commission. Respondent No. 3 had applied for the post of Lecturer in Pediatrics at Rewa in response to the advertisement No. 4 of 1983 and had been impaneled in the selection list. The centre was scheduled to be inaugurated on the 14th November 1984 and therefore the post in Pediatrics had to be filled in at an early date. For ad hoc appointments it is not necessary for the Government to advertise the post or to make selection of the candidates. There is no bar against the Government keeping a panel though advertisement is for a single post.

8. It is contended that as ad hoc appointments are made to meet a particular contingency, the normal procedure of advertisement and selection as required under the Rules is not necessary. The post has been forwarded to the public Service Commission for recruitment in accordance with the Rules. There was no

question of considering the petitioner's application for the post.

9. The point for consideration is whether the petition deserves to be allowed.

10. Madhya Pradesh Public Service Commission has been constituted to ensure recruitment of deserving candidates to posts of responsibility. It is common knowledge that selection by the Public Service Commission is made after following the prescribed procedure and this requires sufficient time. Exigencies of public service may require immediate appointment. It is for this reason that regulation No. 5 is made. The Regulation permits appointment for a period not exceeding six months without consultation with the public Service Commission. Such an appointment for a specified period without following the procedure meant for regular appointment is termed ad hoc which means stop-gap.

11. In the instant case, the petitioner's initial appointment was only on ad hoc basis clearly necessitated by the exigencies of public service. It cannot, therefore, legitimately be subjected to any criticism more so when the respondent no 3 had qualified himself for inclusion of his name in the panel prepared earlier. As the appointment was ad hoc, there was certainly no need to advertise the post or to consider fresh applications.

12. It may, however, be observed that public is vitally interested in the efficiency and integrity of civil services and therefore rules and regulations have been made for appointments and promotions to such posts. It is of paramount importance that the rules and regulations are followed so that there is no occasion for adverse criticism and deserving candidates are available for serving the public. The power of ad hoc appointment is there to serve a definite purpose and utmost care must be taken by those in authority to ensure that it is not misused with an ulterior motive in order to achieve some ulterior purpose. Ad hoc appointment in keeping with the purpose behind the regulation must be made only with the object of covering the time gap between the requirement and the regular recruitment. There should also be a fair system in making ad hoc appointments. Such an appointment on a long term basis against regular vacancy deserves to be deprecated in no uncertain terms for such an appointment deprive the rightful persons of their claim and also tends to create vested interest for the ad hoc appointee to continue. This is apart from the charges of corruption and nepotism to which those in authority stand exposed. It is certainly in the larger interest of all concerned to ensure that the power of ad hoc appointment given to meet a contingency is not made a means for fostering favoritism. Continuation of the service beyond six months with extension for a period of six months or resorting to fictional break are just evasions of the rules and regulations which have to be followed in letter and in spirit. It is highly desirable that all cases of ad hoc appointments extending beyond the period of six months are examined and causes of delay in the way of regular appointments are rooted out.

13. Petitioners learned counsel has invited my attention to this Courts decision in

Madan Kumar Gautan's Case. (1985 JLJ 783). We also have the decision of the Supreme Court on the subject. In the decision in Rattan Lal and Others Vs. State of Haryana and Others, pointing out that the policy of "ad hocism" followed by the State Government for a long period had led to breach of Articles 14 and 16 of the Constitution of India and that such a situation could not be permitted to last any longer, the Supreme Court had issued suitable directions. Relevant portion in para 2 of the decision reads thus:-

We therefore direct the state Government to take immediate steps to fill up in accordance with the relevant rules the vacancies in which teachers appointed on an ad hoc basis are now working and to allow all those teachers who are now holding these posts on ad hoc basis to remain in those posts till the vacancies are duly filled up.

14. In the result, the petition fails and is dismissed with costs as incurred. It is hoped that the respondent No. 1 and 2 bearing in mind the observations of the Supreme Court would take steps to ensure that the post in question is filled up early by regular appointment. The amount of security costs deposited by the petitioner shall be returned to him after verification. If the Govt, has not already properly moved the P.S.C. in the matter it shall do so within a month from today.