
(2015) 09 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13761 of 2013

Shivam Upadhyay

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 16(2), 41

Citation : (2015) 09 MP CK 0031

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : K.K. Pandey, Learned Counsel, for the Appellant; Deepak Awasthy, Learned Govt. Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Yadav, J—The matter though is posted for consideration of I.A. No. 9185/2015 and I.A. No. 9377/2015; however, with consent of learned counsel for the parties, the matter is finally heard.

2. Petition is directed against the order dated 11.7.2013 passed by Additional Commissioner, Jabalpur Division, Jabalpur; whereby, while setting aside order dated 6.2.2013 passed by Collector, Jabalpur directing for appointment of petitioner on the post of Gram Rogjar Sahayak, Gram Panchayat Padwar, Janpad Panchayat Jabalpur Distt. Jabalpur, the Appellate Authority directed for appointment of respondent No. 3 on the post of Gram Rogjar Sahayak.

3. Applications were invited for appointment to the post of Gram Rogjar Sahayak between 18.6.2012 to 4.7.2012. The eligibility criteria stipulated therein was: -

4. That ten applications were received; whereon, merit list was prepared; respondent No. 3 was at serial No. 1 with 112.22 marks. The petitioner was not found eligible because of non-production of voter identity card in proof of residence, though the petitioner had 120.66 marks. The petitioner raised objection before the Committee. The Committee turned down the objection

whereon the petitioner preferred an appeal before Collector, Jabalpur. Objection was raised by the petitioner on the basis of voter identity card issued to him on 17.7.2012. Taking into consideration the same, the petitioner was appointed as Gram Rogjar Sahayak, Gram Panchayat Padwar, Janpad Panchayat Jabalpur, District Jabalpur on 22.8.2012 whereagainst respondent No. 3, who was at serial No. 1 in the merit list, challenged the same before Collector, Jabalpur on the ground that on the last date of receiving of application form, petitioner was not possessing voter identity card and therefore, was not eligible for appointment to the post of Gram Rogjar Sahayak. The appeal preferred by respondent No. 3 was dismissed on 6.2.2013; whereagainst respondent No. 3 preferred a revision petition before Additional Commissioner, Jabalpur Division, Jabalpur who, by order dated 11.7.2013, allowed the revision and while setting aside the appointment of the petitioner as Gram Rogjar Sahayak, directed for appointment of respondent No. 3, who was at serial No. 1 in the merit list, on a finding that the petitioner was not having requisite qualification i.e. voter identity card as on 4.7.2012, the last date for applying for appointment to the post of Gram Rogjar Sahayak.

5. It is contended on behalf of the petitioner that the Appellate Authority erred in deciding the appeal ex parte and that there being no bar for taking into consideration other credential such as bona fide resident certificate to establish the factum of being bona fide resident, the insistence for having a name in voter list of respective Gram Panchayat besides being erroneous, is also contrary to the law down in Kailash Chand Sharma Vs. State of Rajasthan and Others, AIR 2002 SC 2877 : (2002) 95 FLR 689 : (2002) 5 JT 591 : (2002) LabIC 2943 : (2002) 5 SCALE 512 : (2002) 6 SCC 562 : (2002) 1 SCR 317 Supp : (2003) 1 SLJ 121 : (2002) AIRSCW 3276 : (2002) 5 Supreme 425 , Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, AIR 2004 SC 361 : (2003) 4 CTC 477 : (2003) 8 JT 296 : (2004) 4 SCALE 70 : (2003) 11 SCC 146 : (2003) 5 SCR 152 Supp and Nihal Himthani v. State of Uttarakhand 2013 AIR SCW 5368. On the anvil of these submissions, petitioner seeks quashment of the impugned order.

6. Responding to the relief claimed by the petitioner, at the outset, it is urged that the petitioner having not questioned the validity of clause 23 of the Policy providing for appointment of Gram Rogjar Sahayak at any stage and having participated in the selection, is barred from questioning its validity at the stage of writ petition for the first time.

7. As to merits of the matter, the contention on behalf of respondent No. 3 is that except voter identity card or the name in the electoral roll, no other document in proof of residence is acceptable under the scheme for appointment to the post of Gram Rogjar Sahayak. It is further contended that the last date for accepting the application form was 4.7.2012 and the petitioner on the said date was not having voter identity card in his favour nor his name was entered into electoral roll of village Padwar. It is urged that the voter identity card was issued to the petitioner on 17.7.2012 that is much after the cut-off date which was 4.7.2012.

It is urged that since the petitioner was not having the eligibility criteria, he was wrongly directed to be appointed to the post of Gram Rogjar Sahayak.

8. Learned counsel for the petitioner defended that order, however, he fails to establish that other than voter identity card or name in the electoral roll, any other document could have been relied upon for proof of residence.

9. Considered the rival submissions.

10. At the outset, it needs a mention that the proposition of law laid down in Dr. Jagadish Saran and Others Vs. Union of India (UOI), AIR 1980 SC 820 : (1980) 2 SCC 768 : (1980) 2 SCR 831 ; whereby, the Apex Court while discarding the institution-wise reservation holding that the same is constitutionally circumscribed and may become ultra vires if recklessly resorted to, held that reservation must be administered in moderation, if it is to be constitutional. It has been observed -

"49. We recognise that institution-wise reservation is constitutionally circumscribed and may become ultra vires if recklessly resorted to. But even such rules until revised by competent authority or struck down judicially, will rule the roost. That is why we have to concede that until the signpost of "no admission for outsiders" is removed from other universities and some fair percentage of seats in other universities is left for open competition the Delhi students cannot be made martyrs of the Constitution.

50. Even so, "reservation" must be administered in moderation, if it is to be constitutional. Some central technical institutions like the All India Institute of Medical Sciences, Delhi and Chandigarh and the Pondicherry Medical College have a much smaller fraction. Their circumstances may be different and we do not have the full facts, neither side having furnished more than fragments. Judicial surmise is too weak to be of decisional certainty. For reasons we have assigned 70% plus is too high at the post-graduate level in the half-proved circumstances. But we stop short of invalidating the rule because the facts are imperfect, the course has already started and the court must act only on sure ground, especially when matters of policy, socio-educational investigation and expert evaluation of variables are involved. Judges should not rush in where specialists fear to tread. We spare the impugned regulation even though we are, prima facie, sceptical about the vires thereof. To doubt is not enough to demolish. When fuller facts are placed, the court will go into this question more confidently."

11. In Kailash Chand Sharma (supra), it has been held -

"14. Article 16 which under clause (1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State reinforces that guarantee by prohibiting under clause (2) discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. Be it noted that in the allied article - Article 15 - the

word "residence" is omitted from the opening clause prohibiting discrimination on specified grounds. Clauses (3) and (4) of Article 16 dilutes the rigour of clause (2) by (i) conferring an enabling power on the Parliament to make a law prescribing the residential requirement within the State in regard to a class or classes of employment or appointment to an office under the State, and (ii) by enabling the State to make a provision for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the State. The newly introduced clauses (4-A) and (4-B), apart from clause (5) of Article 16 are the other provisions by which the embargo laid down in Article 16(2) in somewhat absolute terms is lifted to meet certain specific situations with a view to promote the overall objective underlying the Article. Here, we should make note of two things : firstly, discrimination only on the ground of residence (or place of birth) in so far as public employment is concerned is prohibited; secondly, Parliament is empowered to make the law prescribing residential requirement within a State or Union Territory, as the case may be, in relation to a class or classes of employment. That means, in the absence of parliamentary law, even the prescription of requirement as to residence within the State is a taboo. Coming to the first aspect, it must be noticed that the prohibitory mandate under Article 16(2) is not attracted if the alleged discrimination is on grounds not merely related to residence, but the factum of residence is only taken into account in addition to other relevant factors. This, in effect, is the import of the expression "only".

12. In Saurabh Chaudri (supra), it is observed by their Lordships -

"39. Ideal situation, although it might have been to see that only meritorious students irrespective of caste, creed, sex, place of birth, domicile/residence are treated equally but history is replete with situations to show that India is not ready therefore. Sociological condition prevailing in India compelled the makers of the Constitution to bring in Articles 15 and 16 in the Constitution. The said Articles for all intent and purport are species of Article 14 which is the genies in a sense that they provide for exception to the equality clause also. Preference to a class of persons whether based on caste, creed, religion, place of birth, domicile or residence is embedded in- cur constitutional scheme. Whereas larger interest of the country must be perceived, the law makers cannot shut their eyes to the local needs also. Such local needs must receive due consideration keeping in view the duties of the State contained in Articles 41 and 47 of the Constitution of India.

...

88. The validity of institutional reservation must be judged on the touchstone of equality clause."

13. While the proposition of law in these cases cannot be disputed; however, there is no foundation laid by the petitioner challenging the vires of clause 23.

When called upon to establish as to whether at any stage of the proceedings right from the stage of first appeal, revision and present petition as to whether the petitioner had questioned the validity of the rules in question, learned counsel for the petitioner fails to establish the same. In absence whereof, the contentions that selection of petitioner on the basis of Gram Rogjar Sahayak is de hors Article 14 and 16 of the Constitution of India cannot be gone into in the factual aspect of the present petition.

14. The petitioner having participated in the selection and having been selected, but later on found to be ineligible on the basis of the fact that the subsequently got his name entered in the electoral roll of the said Gran Panchayat, held ineligible and having not questioned the very clause on the basis whereof he got the appointment cannot for the first time be permitted to raise the issue in a writ petition. Thus, the petitioner does not draw any benefit from the decisions in Kailash Chandra Sharma, Saurabh Chaudri and Nihal Himthani (supra).

15. Furthermore, as is apparent from the rule quoted above, it was an essential requirement that one must be possessing voter identity card or name in the electoral roll while applying to the post of Gram Rogjar Sahayak. It is also not in dispute that the application forms were to be filled in between 18.06.2012 and 04.07.2012. Thus 04.07.2012 was the cut-off date for considering the eligibility requirement.

16. In State of Haryana and Others Vs. Anurag Srivastava and Another, (1998) 9 JT 190 : (1998) 8 SCC 399 : (1998) SCC(L&S) 1600 , it has been observed :

"4. Learned counsel for the 2nd respondent has relied upon two decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar and Rekha Chaturvedi v. University of Rajasthan. Both these judgments hold that the qualifications which have to be considered are those possessed as on the last date of filing applications. The High Court has, therefore, rightly held that the 2nd respondent did not possess the requisite qualifications at the material time and was not entitled to be selected under the advertisement of 7-12-1980. The appeal is, therefore, dismissed. There will be no order as to costs."

17. In U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, (1994) 68 FLR 750 : (1994) 1 JT 94 : (1994) 1 SCALE 98 : (1994) 2 SCC 723 : (1994) 1 SCR 131 : (1995) 1 SLJ 183 : (1994) 1 UJ 330 , wherein it has been observed :

"6. In the facts of the present case we fail to appreciate how the ratio of the said decision of this Court can be attracted. The facts of this case reveal that the respondent was not qualified to apply since the last date fixed for receipt of applications was August 20, 1988. No rule or practice is shown to have existed which permitted entertainment of her application. The Public Service Commission was, therefore, right in refusing to call her for interview. The High Court in Writ Petition No. 1898 of 1991 mandated the Public Service Commission to interview her but directed to withhold the result until further orders. In obedience to the

directive of the High Court the Public Service Commission interviewed her but her result was kept in abeyance. Thereafter, the High Court while disposing of the matter finally directed the Public Service Commission to declare her result and, if successful, to forward her name for appointment. The High Court even went to the length of ordering the creation of a supernumerary post to accommodate her. This approach of the High Court cannot be supported on any rule or prevalent practice nor can it be supported on equitable considerations. In fact there was no occasion for the High Court to interfere with the refusal of the Public Service Commission to interview her in the absence of any specific rule in that behalf. We find it difficult to give recognition to such an approach of the High Court as that would open up a flood of litigation. Many candidates superior to the respondent in merit may not have applied as the result of the examination was not declared before the last date for receipt of applications. If once such an approach is recognised there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities but would also increase the pressure on such authorities to withhold interviews till the results are declared, thereby causing avoidable administrative difficulties. This would also leave vacancies unfilled for long spells of time. We, therefore, find it difficult to uphold the view of the High Court impugned in this appeal."

18. In the case at hand, admittedly, on 4.7.2012, the petitioner was not having essential qualification i.e. he was not having the voter identity card nor his name was registered in the electoral roll.

19. In view whereof, the revisional authority was justified in holding the petitioner was not having requisite qualification and directed the appointment of respondent No. 3 to the post of Gram Rogjar Sahayak.

20. Consequently, petition fails and is dismissed. There shall be no costs.