

(2002) 01 MP CK 0081
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1413 of 1999

Shivshakti Vyas

APPELLANT

Vs

Somat Singh and Others

RESPONDENT

Date of Decision : 03-01-2002

Acts Referred:

Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 91
Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995 — Rule 3

Citation : (2002) 1 MPJR 286 : (2002) 2 MPLJ 231

Hon'ble Judges : Shravan Shanker Jha, J

Bench : Single Bench

Advocate : M.M. Kaushik, for the Appellant; K.S. Tomar for respondent No. 1
K.N. Gupta, Government Advocate for respondent No. 2-State and Praveen
Newaskar, for the Respondent

Final Decision : Allowed

Judgement

S.S. Jha, J.

Petitioner by Shri M. M. Kaushik, Advocate.

Respondent No. 1 by Shri K. S. Tomar, Advocate.

Respondent No. 2-State by Shri K. N. Gupta, Govt. Adv.

Respondent No. 3 by Shri Praveen Newaskar, Advocate.

With the consent of the parties, this petition is disposed of finally.

This petition is filed against the order dated 11-8-1999 passed by the Chief Executive Officer, Zila Panchayat, Vidisha, whereby appointment of the petitioner has been quashed.

A school was started under the Education Guarantee Scheme in Village Karai, Gram Panchayat Gurariya. Petitioner was appointed as Guruji on fixed pay of Rs. 500/- per month vide order dated 26-2-1997. Petitioner joined services as Guruji

on 1-3-1997. Petitioner continued teaching in the school. While the petitioner was teaching in the school, some appeal was preferred before the Chief Executive Officer, Zila Panchayat, Vidisha challenging the appointment of the petitioner. Though the petitioner was arrayed as respondent in the appeal, but it is contended by the petitioner that no notice was sent to him. Petitioner further submitted that the Chief Executive Officer, Zila Panchayat, Vidisha had no jurisdiction to entertain the appeal after lapse of two years. Even otherwise, he is not an appellate authority u/s 91 of the M. P. Panchayat Raj Adhiniyam.

Chief Executive Officer, Zila Panchayat vide order Annexure P/1 dated 11-8-1999 has allowed the appeal and set aside the appointment of the petitioner and further directed that meeting of the community be convened and fresh appointment be made. The order is challenged as without jurisdiction.

Counsel for the respondent No. 1 submits that the Chief Executive Officer has jurisdiction to decide the appeal. He invited attention to the document Annexure R/1 which is Education Guarantee Scheme. Para 7 of the Scheme relates to appeal and representation. It is provided that if the community is not satisfied with the decision of the Gram Panchayat, it shall prefer an appeal against the decision of the Gram Panchayat before Chief Executive Officer, Janpad Panchayat, which shall be decided within a period of seven days. If the Gram Panchayat, is not satisfied with the decision of the Chief Executive Officer, Janpad Panchayat, then the order can be challenged before Chief Executive Officer of District Panchayat and the appeal shall be heard by the Education Guarantee Scheme Committee which shall take final decision. Counsel for respondent No. 1 therefore submits that the appeal was maintainable before the Chief Executive Officer. He submits that considering the facts of the case and the reasons assigned, the petition be dismissed.

The fact remains that the petitioner was appointed vide order dated 28-2- 1997 Annexure P/2 and the order is passed on 11-8-1999. Appeal was preferred in the year 1998-1999 by respondent No. 1 in the office of Chief Executive Officer, District Panchayat Vidisha. On bare perusal of the Education Guarantee Scheme, no appeal lies at the instance of an individual to the Chief Executive Officer, Zila Panchayat. Chief Executive Officer, Zilla Panchayat can entertain appeal filed by the Gram Panchayat, if it is not satisfied with the decision of the Chief Executive Officer, Janpad Panchayat. But the Chief Executive Officer, Zila Panchayat is not competent to decide the appeal. The appeal shall be heard by the District Education Guarantee Scheme Committee. Therefore, the order passed by the Chief Executive Officer, Zila Panchayat is without jurisdiction. Even otherwise, appeal could not be entertained after period of two years. It is not the case where community being aggrieved by the decision of the Gram Panchayat has filed appeal before the Chief Executive Officer, Janpad Panchayat and after decision of the Chief Executive Officer, Janpad Panchayat, appeal is preferred by the Gram Panchayat before the Chief Executive Officer, Zila Panchayat.

In the facts of the case, and considering the scope of para 7 of the Education

Guarantee Scheme, the order Annexure P/1 passed by the Chief Executive Officer, Zila Panchayat is without jurisdiction and is quashed.

It may be made clear that in the absence of any provision for challenging the appointments in the Education Guarantee Scheme, the order passed by the Gram Panchayat shall be governed by Madhya Pradesh Panchayat Raj Adhiniyam. Section 91 of the aforesaid Adhiniyam provides for appeal and revision. Appellate authorities have been specified in the rules known as M. P. Panchayats (Appeal and Revision) Rules, 1995. Rule 3 of the aforesaid Rules, specifies appellate authorities, period of limitation is also provided for filing appeal. It is apparent that no appeal was filed within the period of limitation and the appeal is entertained in the year 1999 by the authority.

In the facts and circumstances of the case, the order Annexure P/1 passed by the Chief Executive Officer, Zila Panchayat, Vidisha dated 11-8-1999 is quashed being without jurisdiction as power to hear appeal is not vested with the Chief Executive Officer, Zila Panchayat.

In the result, petition succeeds and is allowed without any order as to costs.