
(2016) 03 MP CK 0072
In the Madhya Pradesh High Court
Case No : W. P. No. 20813 of 2015.

Smt. Chhaya Kaul

APPELLANT

Vs

Board of Secondary Education

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 — Section 17(3)

Citation : (2016) 2 MPLJ 393

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sujoy Paul, J. - In this petition filed under Article 226 of the Constitution, the petitioner, a Legal Adviser (on contract basis), has challenged the order dated 07-11-2015 (Annexure P/6) whereby her service has been terminated.

2. Draped in brevity, the relevant facts are that pursuant to advertisements dated 08-04-2015 and 17-04-2015, the petitioner submitted her candidature for the post of Legal Adviser. By communication dated 19-05-2015, she was informed that she has been selected on the basis of "Lottery" for the said post. On 21-05-2015 (Annexure P/4) she was appointed on contract basis for one year.

3. Shri Mishra, learned counsel for the petitioner submits that in obedience of said order, the petitioner submitted her joining. It is urged that the impugned order came as a bolt from blue to her whereby her service has been terminated on the sole ground that she was appointed on the basis of "Lottery" which is not justifiable.

4. Shri Mishra advanced two fold contentions. Firstly, it is urged that the appointment of the petitioner is in consonance with the service conditions mentioned in Clause 2 (Page 13). In the method of selection itself, it was shown that the persons will be selected on the basis of Lottery. Secondly, it is urged that

before passing the impugned order, no opportunity of hearing was given to her.

5. Shri Kaurav, learned Deputy Advocate General supported the impugned order. By taking this Court to Section 17 and 19 of the M.P. Madhyamik Shiksha Adhiniyam, 1965 (hereinafter referred to as the Adhiniyam), it is urged that the appointment can be made only in consonance with the said provisions. In the present case, the appointment was made contrary to said provisions. A public employment cannot be made by way of "Lottery". The petitioner has not signed any agreement which was condition precedent as per order dated 21-05-2015 (Annexure P/4). Lastly, it is urged that the petitioner being a contractual employee cannot invoke jurisdiction of this Court. No other point is pressed by the parties.

6. No doubt in the present case, as per the instructions (Page 13), the method of selection was "Lottery" based. However, it is seen that as per Section 17 (3) of the Adhiniyam, the Board is empowered to appoint Officers, Secretaries and Servants. The stand of Shri Kaurav was that Board has not taken any decision in the present case to appoint the Legal Advisers. The service conditions were also not framed by the Board. Similarly, power of Secretary of the Board is confined to the extent laid down in the regulations. Thus, it is clear that it is only the Board which can appoint a servant. In the present case, no appointment order is issued by the Board.

7. Apart from this, another question is about enforcement of a contract of service. This point is no more res integra. The Apex Court in 2008 (8) SCC 92 (State Bank of India and others v. S.N. Goyal) has held that the relationship of Master and Servant is purely contractual. If termination of contract of employment is found to be illegal or in breach of contract, the remedy of employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. Three well recognised exceptions to this rule are: (i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309); (ii) where a workman having the protection of the Industrial Disputes Act, 1947 is wrongly terminated from service; and (iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

8. The Apex Court further held that to decide the nature of relief to be given, it is necessary to examine whether the employment is governed by contract or by a statute or statutory rules. Even where employer is statutory body, where the relationship is purely governed by contract with no element of statutory governance, contract of personal service will not be specifically enforceable.

9. In the present case, admittedly the appointment was not made pursuant to any statutory recruitment rules. Hence, the petitioner cannot seek reinstatement

or a writ of mandamus from this Court. At best, she can claim damages from the Civil Court. Apart from this, the respondents by passing the impugned order have ensured that the petitioner will get the remuneration till she had performed her duties.

10. The second contention of Shri Mishra was relating to violation of principles of natural justice. Krishna Iyer, J. in *The Chairman Board of Mining Examination and Chief Inspector of Mines and another v. Ramjee* 1977 (2) SCC 256 has held that natural justice is no unruly horse, no lurking land mine. It is held that its unnatural expansion without reference to the realities can be exasperating.

11. As per the Adhiniyam, the power to appoint an employee/servant is vested with the Board. The petitioner is unable to show that recruitment process was started with the concurrence of Board and appointment order was issued by the Board. In this view of the matter, even if opportunity would have been granted to the petitioner, she would not have been in a position to establish that the appointment is made by following the rules and by the order of Competent Authority/Board. Thus, in the peculiar facts and circumstances of this case, principles of natural justice cannot be mechanically applied. Apart from this, in public employment, the recruitment cannot be made by way of "Lottery". It should be made as per rules and on the basis of merits, experience etc.

12. As analyzed above, I find no reason to interfere in discretionary jurisdiction of this Court under Article 226 of the Constitution. Resultantly, the petition fails and is hereby dismissed. No cost.