

(2018) 02 MP CK 0162
In the Madhya Pradesh High Court
Case No : 261 of 2017

State of Madhya Pradesh

APPELLANT

Vs

Hanuman Prasad Verma & others

RESPONDENT

Date of Decision : 12-02-2018

Acts Referred:

Citation : (2018) 02 MP CK 0162

Hon'ble Judges : Hemant Gupta, H.P. Singh

Bench : Division Bench

Advocate : Amit Seth, Praveen Dubey

Final Decision : Allowed

Judgement

1. The challenge in the present appeal is to an order dated 24.02.2016, passed in W.P. No.11434/2015 (Hanuman Prasad Verma vs. State of M.P. and others) by learned Single Bench, whereby the writ petition filed by the petitioner/respondent No.1 was allowed and the decision of the State Government dated 16.6.2015, rejecting the resolution passed by Mayor-in-Council to promote the writ-petitioner to the post of Superintending Engineer, was set aside.

2. The writ-petitioner was promoted to the post of Executive Engineer vide order dated 22.10.1999. The petitioner was given additional charge of the post of Superintending Engineer on 27.2.2015. In the meeting of Departmental Promotion Committee held on 23.1.2015, the writpetitioner was recommended for promotion to the post of Superintending Engineer, which recommendation of the Departmental Promotion Committee was approved by the Mayor-in-Council on 2.2.2015. But the State Government on 16.6.2015, rejected the resolution inter alia for the reason that the writ-petitioner does not possess the educational qualification prescribed for promotion to the post of Superintending Engineer. The educational qualification of the writ-petitioner is said to be Diploma.

3. The service condition of the petitioner is governed by Madhya Pradesh Municipal Corporations (Appointment and Conditions of Service of Officers and

Servants) Rules, 2000 (hereinafter referred to as "the Rules"). Rule 10 of the Rules, is the rule for promotion, which prescribes that the Committee shall consider the case of all persons, who on the 1st January of that year has completed such number of years of service (whether officiating or substantive) as specified in column (4) of Schedule III, specified in column (3) of Schedule III. It is not disputed that the writpetitioner has the specified number of years, specified for consideration of promotion. The relevant clause of the Rules read as under :- "10. Promotion. -

(1) *** *** ***

(2) *** *** ***

(3) Subject to the provisions of sub-rule (4), the Committee shall consider the cases of all persons, who on the 1st January of that year has completed such number of years of service (whether officiating or substantive) as specified in column (4) of Schedule III on the posts specified in column (3) of Schedule III from which promotion is to be made and are within the zone of consideration in accordance with the provisions of sub-rule (4):"

4. However, the recommendation of promotion was rejected by the State for the reason that the appellant is not a Degree-Holder relying upon Rule 13 of the Rules, which contemplates that if no specific rule has been provided in respect of other conditions of service in the Rules, or any other Rules made under the Act, then the Rules as applicable to the Government servants on the same post from time to time, shall be applicable. The relevant clause read as under :- "13. Other conditions of Service.- (1) The Corporation shall be competent to prescribe the method/procedure under which decision is to be taken in respect of medical treatment, General Provident Fund and Pension. The other conditions of service which have not been provided in these rules or any other rules made under the Act shall be deemed to be the same which are applicable to Government servants on the same post from time to time.

(2) Notwithstanding anything contained in sub-rule (1), the following rules as amended from time to time applicable to the Government servants shall be applicable to the employees of the Corporation, namely:-

(a) Madhya Pradesh Fundamental Rules Volumes I and II.

(b) Madhya Pradesh Travelling Allowance Rules.

(c) Madhya Pradesh Civil Services (Leave) Rules, 1977.

(d) Madhya Pradesh Civil Service (Conduct) Rules, 1965.

(e) Madhya Pradesh Civil Services (Classification, Control & Appeal) Rules, 1966."

5. The arguments of learned Government Advocate for the appellant- State is that in terms of Rule 13 of the Rules, the Madhya Pradesh Public Works Engineering (Gazetted) Service Recruitment Rules, 1969 (for short "the Rules of

1969") would be applicable and as per such Rules, a Superintending Engineer must possess educational qualification of Degree of Graduation in Engineering. It is also pointed out that Rule 10 of the Rules has been amended vide Notification dated 15.7.2015, whereby the educational qualification for the post of Superintending Engineer has been prescribed as "Degree-Holder". It is, thus, contended that the decision of the State Government not to accept the recommendation of the Mayor-in- Council is legal and in accordance with Rules of 1969 or in any case supported by the amendment carried out on 15.7.2015.

6. On the other hand, learned counsel for the respondent contended that on the day, the State Government rejected the recommendation, the amendment in the Rules was not in force. Therefore, in view of Rule 10(3) of the Rules, it cannot be said that the writ-petitioner was not possessing the necessary educational qualification for promotion.

7. We have heard learned counsel for the parties and find that the order passed by learned Single Bench cannot be sustained in law.

8. Promotion is not a right. A candidate has a right of consideration on the basis of Rules, which may be applicable to the service. On the date of consideration on 23.1.2015, Sub-rule (3) of Rule 10 of the Rules contemplated that the Committee shall consider the cases of all persons who have completed requisite number of years i.e. 5 years (whether on officiating or substantive) post and who are within the zone of consideration. Schedule-III appended to the Rules does not specify the educational qualification required for promotion. But, soon after the recommendation was rejected by the State Government on 16.6.2015, the statutory Rules have been amended so as to incorporate that only "Degree-Holder" can be promoted to the post of Superintending Engineer.

9. Admittedly, none of juniors has been promoted to the post of Superintending Engineer. Since promotion is not a right, therefore, mere recommendation by the Departmental Promotion Committee will not confer any right in favour of the petitioner to seek promotion to the post of Superintending Engineer on the basis of his educational qualification which is Diploma. No doubt, on 16.6.2015, when the State Government rejected the recommendation of Mayor-in-Council, the Rules were not amended but that rejection will not be illegal only for the reason that the statutory Rules were amended on 15.7.2015. The post of Superintending Engineer is the post of higher responsibility and duties. Promotion to such post from amongst the Diploma-Holders is not likely to facilitate the nature of the duties to be discharged by a Superintending Engineer. We find that though the Rule was amended subsequent to the rejection of the candidature of writ-petitioner but the rejection of the candidature will not confer any cause to the writ petitioner as neither the promotion is a right nor any junior has been promoted.

10. Consequently, we find that the order of the learned Single Bench holding that the amendment in the Rules will not be applicable in the case, does not hold

good. Therefore, the order passed by learned Single Bench is set aside. The appeal is allowed and the writ petition stands dismissed.