
(2018) 03 MP CK 0183
In the Madhya Pradesh High Court
Case No : 913 of 2016

State of Madhya Pradesh & Ors.	Vs	APPELLANT
Mangal Singh Nanda & another		RESPONDENT

Date of Decision : 05-03-2018

Acts Referred:

Citation : (2018) 03 MP CK 0183

Hon'ble Judges : Hemant Gupta, Vijay Kumar Shukla

Bench : Division Bench

Advocate : Shivendra Pandey, S.D. Mishra

Final Decision : Dismissed

Judgement

1. The instant intra-Court appeal, takes an exception to the order dated 26.08.2015 passed by learned Singe Judge, whereby the petition filed by the respondent-petitioner has been allowed and the order dated 30th August, 2014 (Annexure P-10) passed by the respondent 2 rejecting the case of the petitioner for appointment as Contract Teacher Grade-II is quashed.
2. The facts adumbrated is that the petitioner appeared in Shamvida Shala Shikshak Grade-III eligibility test and qualified the same. His documents were verified and as per the option sought from him he submitted the list attached with documents (Annexure P-5) indicating option of 176 Jabpad Panchayat. He opted for Janpad Panchayat Rampur Baghelan. On receiving the said option, provisional allotment letter for Shamvida Shala Shikshak Grade-III was issued vide Annexure P-6 allotting a local body Janpad Panchayat Rampur Baghelan in the category of OBC/X/OP at sl. no. 12. He submitting his joining before the Chief Executive Officer, Janpad Panchayat Rampur Baghelan but the allotment of institution issuing an

order of appointment was not given to him. As per correspondence Annexure P-8 it is found that the said authority requested the District

Education Officer, Satna to allot one additional post in OBC Category, otherwise issuance of order of appointment would not be possible. The

petitioner submitted a representation for appointment (Annexure P-9) on 13th August, 2014. The said representation was rejected on the ground

that the petitioner had not submitted the option of the institution within the local body till 11:55 on 29.01.2014, therefore, the allotment of the

institution could not be given. Thus, even after having selected and provisional allotment he was denied the appointment in the category as specified

by him.

3. Learned counsel for the appellant submitted that, he was denied the appointment in the OBC Category and therefore, he had no occasion to

submit the option for the institution within the said local body. By amendment he challenged the order (Annexure P-10) rejecting the representation

and submitted that because of the arbitrary, illegal action and inaction of the respondents, petitioner cannot be deprived from his right for

appointment.

4. The respondents filed the reply but it was not disputed that the petitioner was eligible for appointment to the post Contract Teacher Grade-III. It

is submitted that the petitioner had not submitting option for any institution for place of posting, therefore, the order of appointment could not be

issued to him. Learned counsel for the appellant assiduously argued that since the petitioner had not given any option for the institution and

therefore, the petitioner has rightly being denied the appointment. On 18.05.2017 time was given to produce the process of appointment including

the complete list of candidates. Again on 09.08.2017 counsel for the appellant sought time to file comprehensive affidavit giving details of the

appointment including options required to be filled up by candidates from time to time.

5. Learned Counsel for the appellant/State was directed to specify the Rule or any Provision requiring for giving an option of the institution in the

local body. On 6th September, 2017, additional submission on behalf of the appellants was filed but the same was not clarified.

6. Learned counsel for the appellant/State referred Annexure P-5 to submit that

the petitioner was issued revised provisional allotment letter for Samvida Shala Shikshak Grade-III recruitment. He was allotted local body i.e. Janpad Panchayat Rampur Baghelan, District - Satna allotted category; OBC/X/OP and serial number in allotted category is 12. He has drawn our attention to the note appended that the candidates included in the merit list has to appear before the appointing authority i.e. Chief Executive Officer, Janpad Panchayat Rampur Baghelan for compliance of the condition no. 8 & 9 as prescribed by the Government in its order dated 27th March, 2012 before issuance of the order of posting. The date shall be intimated to the candidates by way of publication on Education Portal and advertisement.

7. After having heard learned counsel for the parties, in order to appreciate the submissions it is apposite to refer certain relevant provisions of

Madhya Pradesh Panchayat Shamvida Shala Shikshak (Employment And Conditions of Contract) Rules 2005, in Rule 6 it is provided that that the

Shamvida Shala Shikshak Eligibility Examination shall be conducted by such norms as prescribed for the employment. The eligibility examination

shall be conducted by an agency prescribed by the Government. As per Sub-Rule 4 the Educational qualification for appearing in the eligibility

Examination has been specified in Schedule-II. Sub-Rule 5 prescribed for minimum percentage of marks to qualify in the each part of the question

paper of eligibility examination. The provisions of reservation have been applied to the employment of Shamvida Sfhala Shikshak. Sub-Rule 8 says

that the advertisement of the procedure of employment of Shamvida Shala Shikshak shall be specified by the executive orders of the State

Government. The relevant part of Sub-Rule 8 & 9 of Rule 6 is reproduced as under :

6 Selection and Method of Employment. - (1) The employment of Samvida Shala Shikshak after commencement of these rules shall be done in

accordance with the provisions of these Rules.

(2)

.....

(8) The advertisement and the procedure of employment of Samvida Shala Shikshak shall be specified by the executive orders of the State

Government.

(9) Criterion of Selection.- The procedure of employment of Samvida Shala Shikshak and preparation of merit list of the candidates belonging to

all categories, may be specified by executive order of the State Government.

8. The appellant has not produced the copy of the circular dated 27.03.2012 and also could not bring to our notice any provision requiring

submission of option after having been allotted a local body. After the provisional allotment letter dated 25.01.2014 (Annexure P-6) issued in his

favour allotting the local body, Janpad Panchayat Rampur Baghelan in the category of OBC, the petitioner had submit his joining before the Chief

Executive Officer, of the said local body but the Chief Executive Officer had requested the District Education Officer to create one additional post

in the OBC Category. No appointment order was issued to the petitioner, therefore, there was no occasion to the petitioner to submit his option of

the institution when the Head of the Local Body had asked for allotment of additional post. The respondents have also not filed any documents

indicating the fact that in absence of having the post in the local body the candidate was required to submit the option of the institution where he

wanted to seek appointment.

9. Thus, there is ambiguity in the stand taken by the appellant/State in the present matter. Despite sufficient opportunity granted to them the said

position was not clarified even at appellate stage. In absence of any material brought before this Court, the reasons ascribed by the Director Public

Instruction refusing the appointment merely for not submitting the option of the institution by him can not be accepted especially when the petitioner

was declared qualified and he had given his option of the local bodies and he was allotted Janpad Panchayat Rampur Baghelan. The procedure for

employment has to be prescribed by the Circulars as per Sub-Rule 8 of Rule 6 of Rules 2005 but no circular has been produced for such

requirements of option for institution after having been allotted local body after the option.

10. In the conspectus of above facts and circumstances of the present case and ambiguity in the stand of the appellant/State, we affirm the order

passed by the learned Single Judge as no illegality and infirmity has been found. The present intra-Court appeal does not warrant any interference.

The appeal is dismissed. No order as to costs.