
(2008) 01 MP CK 0094
In the Madhya Pradesh High Court

State of M.P. and Others

APPELLANT

Vs

Shiv Narayan Saxena and Others

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(i)

Citation : (2008) 117 FLR 1011 : (2008) ILR (MP) 1356 : (2008) 3 MPHT 387 : (2008) 3 MPJR 91 : (2008) 2 MPJR 91 : (2008) 3 MPLJ 306

Hon'ble Judges : Sanjay Yadav, J; A.K. Gohil, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Gohil, J.

State has filed this appeal u/s 2(i) of M.P. Uchcha Nyalaya (Khand Peeth Ko Appeal) Adhiniyam, 2005 against the order dated 8-2-2007 passed by the learned Single Judge in W.P. No. 4967/05 (S) : [2007(2) M.P.H.T. 104].

Brief facts of the case are that on 10-9-1988 advertisement was issued in daily news paper for appointment on the post of Shiksha Karmi Grade 1, 2 and 3 in the schools falling within the jurisdiction of Municipal Council Ganjbasoda. Selection Committee was constituted and committee conducted the interview on 8th and 9th April 1999 and submitted the list for approval to the Dy. Director of Education Vidisha and Block Education Officer, Vidisha on 24-9-1999 and the list was approved by them. The list was also approved by the Municipal Council through its resolution dated 21-10-1999 and the matter was referred to P.I.C. for approval. Because of the election of the Municipal Council and due to the enforcement of code of election conduct, the approval of PIC could not be given. After the election against the list was placed before the PIC on 16-4-2007 and it was approved. Thereafter vide letter dated 23-4-2001 appointment orders were issued by the Chief Municipal Officer, Ganjbasoda. In the appointment order, it was specifically mentioned that these appointments are subject to confirmation

by the State Government. It was brought to our notice that subsequently by order dated 2-11-2002 (Annexure P-6), the Collector referred the matter to Principal Secretary, Department of Urban Administration and Development and by letter dated 3-9-2003 (Annexure P-7) Government examined the matter and found that under the rules approval from the Government before appointment is not necessary and it was directed that the payment of the salary to the employees be also made. Thereafter various letters were exchanged between the District Education Officer and the Chief Municipal Officer Municipal Council Ganjbasoda and the Collector regarding the payment of salary to the appointed Shiksha Karmi. Directions were given but on 6-11-2005 all the petitioners employees filed W.P. No. 4967/05 (S) seeking directions to the respondent employer about the payment of salary to the petitioners.

Writ petition was contested and the stand of the Government was that the Government is not responsible for making the payment of salary to the respondents/employees as their appointment is not valid. Under the prevalent rules namely M.P. Municipality Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1998 (hereinafter shall be referred as "Rules of 1988"). As per Rule 5(9)(e)(ii), the select list of each category shall only be valid for a period of nine months. Therefore, the objection of the Government was that the appointments were made contrary to the aforesaid provisions as the period had expired and list had lapsed. It was further objected that as per resolution dated 16-4-2001 the Government never approved the list and not affirmed the appointment made by the Council.

After considering various rival contentions of the learned Counsel for the parties, learned Single Judge was of the view that the appointments were made by the Council in accordance with Rules of 1998 on the recommendations of a duly constituted committee in accordance with the aforesaid rules and any right cannot be taken away by subsequent change in Rules w.e.f. 12th March, 2001 under new Rules of 2000 and directed that the salary be paid and Municipal Council be reimbursed and allowed the petition with cost of Rs. 10,000/-. Payable by the respondents Nos. 1 and 2. Against the aforesaid order and directions, the State has preferred this appeal.

Shri Brijesh Sharma, learned Govt. Advocate vehemently submitted that the appointments made by the respondent Council are contrary to law, they have not followed the rules. The list was lapsed after expiry of the period of nine months and the appointments were never approved by the Government, therefore the Government is not responsible for payment of salary and the order passed by the learned Single Judge is also contrary to law. Learned Single Judge has not considered the background in which the appointments were made and has overlooked this provision that unless this appointment is approved, no direction can be given to the State to make the payment of the salary and submitted that the order be set aside.

In reply learned Counsel for the respondent supported the order and prayed for

dismissal of the Writ Appeal.

Having heard the rival contentions of the learned Counsel for the parties, we have perused the record, documents as well as finding recorded by the learned Single Judge. There is no dispute that in the year 1998, when the advertisement was issued regarding the selection and appointment of Shiksha Karmi Grade 1, 2 and 3, the Rules of 1998 were in force. The Selection Committee was constituted as per the Rules and the method of selection and recruitment as laid down was followed and thereafter the appointment were made. So far as the dispute about the validity of the select list and the waiting list for a period of 9 months as laid down in Rule 5(9)(e)(ii) of the Rules of 1998 is concerned, it is clear that the appointments could not be made because of the declaration of the election of the Municipal Council itself. There is also no dispute that these Rules of 1998 have been framed by exercising power u/s 433 read with Section 58 of the M.P. Municipal Corporation Act, 1956 and Section 355 read with Section 95 of the M.P. Municipalities Act, 1961 and as per these rules, the Municipal Council is the Appointing Authority of the Shiksha Karmi. There is no dispute between the parties about the constitution of the Selection Committee or the selection of the employees on the basis of their merit. State has only challenged the validity of the list on the ground of period of 9 months. Rule 5(9)(ii) of Rules of 1998 says that select list of each category shall be prepared on the basis of the above assessment in order of merit and shall include 5 names of 20% names whichever is more in the waiting list which shall be valid for nine months. As per the language of this rule, it is clear that the period of validity of 9 months is for the waiting list and not for the select list. This rule also speak about the integrated selection list for appointment equal to the total number of vacancies. Learned Single Judge has held that the list of petitioners, which means the select list and can not be said to be the waiting list. It was also held that select list was approved by the PIC on 16-4-2001. Therefore, the learned Single Judge was of the view that the period of 9 months shall start from 16-4-2001, when the resolution shall be passed by the PIC and not from its earlier date. It was further pointed out that the delay in approval of the list by PIC was because of the election of the Council itself. Therefore, even if it is held that the provision of validity of select list was for 9 months, which has to be reckoned from the date of 6-4-2001 when the list was approved and not prior to it, as the integrated selection list for appointment equal to the appointment number of vacancies was required to be prepared in such a manner as laid down under the rules. If the learned Single Judge has considered the aforesaid eventuality under which the list could not be approved by the PIC and the appointment orders were issued on 23-4-2001, in our considered opinion, the learned Single Judge has not committed any illegality. There is also no dispute that any appointment has been made out of the waiting list and the question of approval by Government, when the matter was referred by the Collector for approval. Government was of the view that under Rules there is no necessity to take any permission or approval from the Government and vide letter dated 3-9-2003 (Annexure P-7)

Government also directed the Council to make payment of salary to the appointed Shiksha Karmi. Therefore, in such circumstances after considering the provisions of the rules as well as the eventuality of election of the Council itself, if the appointments are made and approval was taken on 16-4-2001. it cannot be held that the appointments were not made legally or the list had lapsed or the appointments are invalid. The only ground raised by the Government about the invalidity of the appointment was about the approval of the Government as well as the delay on account of approval of list by PIC on account of election. There is no dispute about the qualification of the candidates or that the procedure for appointment was not validly or duly followed. The learned Single Judge has also placed reliance on a decision in the case of Secretary, A.P. Public Service Commission Vs. B. Swapna and Others, and also in the case of Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu, .

In fact after the selection of the candidates and till the resolution dated 16-10-2001, Government never raised any objection regarding appointment, even when the matter was referred by the Collector to the Government for permission, the Government did not raise any objection and Government was of the view that no permission was necessary. Therefore, under these circumstances it cannot be held that Government had any objection on these appointments or ever examined the cases about their selection, it is needless to aid that Writ Petition was filed by the employees for a direction to the Government for payment of their salary. Learned Counsel for the respondents submitted that the respondents/employees are working from 2001 and they are rendering services in various school run by the Council, but they are not being paid regular salary and only payment was made upto July, 2003 and after July, 2003 no payment towards their salary have been made to them.

Therefore, we are of the view that the rule does not say that the appointments should be approved by the Government and when the appointments are made as per the rules, then certainly the Government is liable to pay the salary or to reimburse the amount to the Municipal Council.

Thus, considering the totality of the facts and circumstances of the case, no case is made out by the Government that the Government is not liable to pay the salary to the respondents/employees.

Consequently, this appeal being devoid of merit and substance is hereby dismissed. Arrears of salary be paid to the respondents positively within two months and regular salary be paid monthly. So far as the cost imposed by the learned Single Judge on the Government is concerned, under the facts and circumstances of the case we consider that the learned Single Judge has wrongly imposed the cost of Rs. 10,000/- on the Government. Order passed about the payment of costs is hereby set aside.