

(2017) 04 MP CK 0042
In the Madhya Pradesh High Court
Case No : 11266 of 2007

SUDARSHAN

APPELLANT

Vs

KASHI PRASAD NAMDEO

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

Citation : (2017) 04 MP CK 0042

Hon'ble Judges : Sujoy Paul

Bench : Single Bench

Advocate : Sunil Choubey, Sonali Shrivastava

Judgement

1. This petition filed under Article 226 of the Constitution, challenges the order dated 01.07.2007 (Annexure-P/6) and 31.07.2007 (Annexure-P/7).
2. In short, the relevant facts are that the petitioner earlier filed an original application before M.P. State Administrative Tribunal, wherein he claimed relief of regular pay scale and regular status. The said case was transferred to this Court and was re-numbered as W.P. No.10090/2003. This Court on 17.11.2003 disposed of the said petition.
3. The respondents were required to examine the claim of the petitioner in the light of aforesaid finding given by this Court. Since the said order was not complied with, the petitioner filed Contempt Petition No.3592/2005. During the pendency of the said petition, impugned orders have been passed and, therefore, this petition has been filed. This Court on 31.08.2007 granted interim order against the impugned orders herein.
4. Shri Sunil Choubey, learned counsel for the petitioner criticized the impugned order by contending that the directions given by this Court in W.P. No.10090/2003 were not considered at all by the respondents. The order dated 01.07.2007 is passed by Shri A.R. Pathak, Director, State Institute of Science Education/respondent No.3. The said order is assailed by taking this Court to Annexure-R/5, the report of the Committee, it is submitted that as per this

report, the petitioner was found eligible for consideration. Shri A.R. Pathak was the Chairman of this Committee. However, a decision taken by the Committee is different than the order passed by the said authority.

5. Prayer is opposed by Mrs. Sonali Shrivastava, learned P.L. for the respondents/ State. By placing reliance on the return, she submits that a co-employee, whose case was also considered with the petitioner, namely, Shri Babbo Lal Patel filed Writ Petition No.9535/2007 before this Hon"ble Court, which was disposed of without there being any interference on the cancellation order in relation to the said employee. It is submitted that the petitioner is similarly situated. It is further pointed out that the order dated 01.07.2007 passed in the case of Shri Babbo Lal Patel was upheld and interference was only made to the extent of recovery. Hence, on the strength of this order, it is submitted that the petitioner is similarly situated and he must receive similar treatment.

6. No other point is pressed by learned counsel for the parties.

7. I have heard learned counsel for the parties at length and perused the record.

8. As per Annexure-R/5, a committee considered the claim of three persons, namely, Shri Raghvendra Singh, Shri Babboo Lal Patel, Shri Amrit Shankar Pandey (Petitioner). The committee was consisting of Shri A.R. Pathak, Director, Shri A.N. Dubey -Principal, Shri Dharendra Chaturvedi, District Education Officer, Shri Arvind Chincholikar-Assistant Director, Legal Cell and Smt. K.K. Dubey - Principal Government Education College, Jabalpur. The findings of the Committee in relation to petitioner and Shri Babbu Lal Patel is reproduced herein in juxtaposition. Findings related to Shri Babboo Lal Patel: "VERNACULAR MATTER OMITTED"

Findings related to petitioner: "VERNACULAR MATTER OMITTED"[Emphasis Supplied]

9. A comparative reading of the findings in cases of two employees will make it clear that for Shri Babboo Lal Patel, the finding of the Committee was against him and committee did not recommend his case for regularization, whereas the Committee opined in favour of the petitioner. Despite specific query from the Bench, learned P.L. for the State was unable to show as to how while passing a final order dated 01.07.2007 (AnnexureP/6), the same Director has taken a different view and decided not to regularize the petitioner and in turn, decided to inflict recovery on the petitioner. In other words, if findings of the Committee was in favour of the petitioner (wherein interestingly, the Director Shri Pathak was also Member/Chairman) on the basis of what material he has taken a different view in relation to the petitioner while passing order dated 01.07.2007 is not discernible. In all fairness, the respondents should have disclosed the basis on the strength of which order dated 01.07.2007 was passed against the petitioner. It is clear that the claim of regularization was not recommended in favour of Shri Babboo Lal Patel, whereas the recommendation was made in favour of petitioner. Thus, both the cases are not similar in nature and, therefore, petitioner's claim

cannot be be thrown to wind on the basis of the order by this Court passed in the case of Shri Babboo Lal Patel. Thus it is clear that there is no cogent basis for passing the order dated 01.07.2006 (AnnexureP/6) and the consequential order dated 31.07.2007 (Annexure-P/7).

10. Resultantly, the orders dated 01.07.2007 and 31.07.2007 are set aside. The respondents are directed to consider the case of the petitioner in the light of directions issued in W.P. No.10090/2003 and take a fresh decision in accordance with law within 60 days. It is made clear that this Court has not expressed any view on the merits of the case.

11. Petition is allowed to the extent as indicated above. No cost.