
(2011) 09 MP CK 0014
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 497 of 2011

Suresh

APPELLANT

Vs

Chief Executive Officer, Zila Panchayat, Barwani

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2012) ILR (MP) 698 : (2012) 1 MPHT 74

Hon'ble Judges : S.S. Kemkar, J;Prakash Shrivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—Heard on the question of admission.

2. This intra Court appeal u/s 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 has been directed against the order dated 10-8-2011 passed by Single Bench of this Court in W.P. No. 10387 of 2010 (S).

3. Briefly stated, the 3rd respondent - Gram Panchayat, Barwani invited applications for filling the post of Panchayat Karmi. The appellant and the 4th respondent (writ petitioner) submitted their applications amongst other candidates for the said post. After receipt of the applications a resolution was passed by the Gram Panchayat on 8-8-2007, resolving to appoint the appellant herein, as a Panchayat Karmi on the basis of majority of votes. Pursuant to the said resolution and order of appointment was issued by the Gram Panchayat on 9-8-2007 appointing the appellant as Panchayat Karmi.

4. The 4th respondent challenged the appointment of the appellant by filing an appeal before the Sub Divisional Officer (for short, the SDO) Barwani. The SDO Barwani, vide order dated 3-7-2008, dismissed the appeal of the 4th respondent

and maintained the order of the Gram Panchayat by which the appellant was appointed as a Panchayat Karmi on the basis of majority of votes. The revision filed by the 4th respondent against the order of the SDO also suffered dismissal vide order dated 14-6-2010, passed by the Additional Commissioner in Revision No. 285/2007-08.

5. Feeling aggrieved by the dismissal of the appeal by the SDO and Revision by the Additional Commissioner, the 4th respondent filed the aforesaid Writ Petition No. 10387/2010 (S). The said writ petition has been allowed by the learned Single Judge vide impugned order dated 10-8-2011, placing reliance on the order passed in the case of Prajapal Singh Vs. State of M.P. and Others, and also on the order dated 14-10-2010 passed in the case of Yatindra Gupta Vs. State of M.P. and others, in W.P. No. 12498 of 2010 (S). The learned Single Judge set aside the resolution, the order of appointment of the appellant, the order of the SDO and the Additional Commissioner and remanded the matter back to the Gram Panchayat to pass a fresh resolution on the basis of merit. Aggrieved, the appellant has filed this intra Court appeal.

6. Shri A.S. Garg, learned Senior Counsel for the appellant argued that the appellant was duly appointed by the Gram Panchayat on the basis of the majority of votes being casted in favour of the appellant. The said appointment was in accordance with the existing provision and circular and there was no illegality in it. He pointed out that the circular dated 27-1-2006 was in force when the appellant was appointed, thereafter, the State Government issued another circular on 13-8-2007 in which, for the first time, it was made mandatory for the Gram Panchayat or to the Collector as the case may be to ensure compliance of merit in making appointment to the post of Panchayat Karmi. He argued that in the said circular dated 13-8-2007, it was made clear that the observance of merit for making appointment was not necessary in the Gram Panchayat in which appointments were already made as per circular dated 27-1-2006. Thus, according to him, the appointment of the appellant on the post of Panchayat Karmi on the basis of majority of votes could not have been set aside by the learned Single Judge by applying the circular which came into force w.e.f. 13-8-2007, i.e., after the issuance of the appellant's appointment order. He further argued that the Writ Court has failed to consider that the 4th respondent's appeal before the SDO was barred by limitation and therefore, was liable to be dismissed on that ground alone.

7. Shri Pankaj Soni, learned Counsel appearing for the 4th respondent on the other hand supported the order passed by the learned Single Judge. He contended that in view of the law laid down by this Court in the case of Prajapal Singh Vs. State of M.P. and others (supra) and also in the case of Mahesh Vs. State of M.P. and Others, , in which it has been held that even as per the circular dated 27-1-2006 the appointments, cannot be made by ignoring the merits, the learned Single Judge has rightly remanded the matter to the Gram Panchayat for making the appointment by observing merit. He also argued that at this stage

when the objection of Limitation was not raised before the authorities below and when the matter has been decided on merits, it would be wholly unjustified to direct the SDO to decide the question as to whether the appeal of the 4th respondent was within limitation or not. He further argued that undisputedly the appointment of the appellant was made on the basis of majority of votes ignoring the merit, the objection of Limitation which was not raised before the authorities cannot now be allowed to be raised. In support of his contentions, he has drawn our attention to Paragraph 8 of the order passed by this Court in the case of Mahesh son of Mohan Jadhav Vs. State of M.P. and others (supra), which reads as under :--

8. In the circumstances at this point of time having fought the matter before various Forums and having regard to the fact that the matter stood decided on merits also, the second respondent cannot be directed to go before the Sub Divisional Officer for litigating the issue once again afresh. This is more so as even on merits, undisputedly the 2nd respondent secured more marks than the petitioner in the 10th standard examination of the system of 10 + 2 and as such was entitled to get appointment, in view of the law laid down by a Division Bench of this Court, Bench at Indore in the case of Devilal son of Bherulal Patidar Vs. State of M.P. and others, vide order dated 20-3-2009 passed in Writ Petition No. 5579 of 2008 (S).

8. Having considered the submissions made by the learned Counsel for the parties and having gone through the impugned orders, we find that the 4th respondent, in Paragraph No. 9 of his memo of appeal filed before the SDO had very specifically stated the reasons for belated filing of the appeal and had very categorically prayed for condonation of the same. In the circumstances, if the appeal of the 4th respondent has been decided on merits by the SDO, it would be assumed that the delay has been condoned. In the circumstances, when the present appellant failed to raise this objection before the SDO and also before the Additional Commissioner, in our considered opinion, the learned Single Judge has rightly declined to accept the said plea of limitation while exercising jurisdiction under Article 226 of the Constitution of India.

9. So far as the appellant's contention that he could have been appointed as Panchayat Karmi on the basis of the majority of votes in view of the circular dated 27-1-2006 which was prevailing at the time of making of his appointment is concerned, we find no merit in this submission. In the circular dated 27-1-2006 it was provided that the list of all the applications received by the Gram Panchayat for the said post was to be prepared by the Gram Panchayat on the basis of seniority and merit. It further provided that after preparation of such list, the eligible candidate, as per seniority of such list, was to be appointed. Therefore, in our considered view as per the Scheme of appointment of Panchayat Karmi the merit was required to have been observed even as per the Circular dated 27-1-2006, which was in vogue when the appellant was appointed. The contention of the learned Senior Counsel for the appellant that in

making the appointments prior to the Circular dated 13-8-2007 there was no necessity of observing of merit is, therefore, wholly misconceived. We find that in the present case ignoring the merit the appointment has made by the Gram Panchayat only on the basis of majority of votes. In such circumstances the appellant's appointment which was made giving complete go bye to the merit could not have been sustained and the same has rightly been set aside by the learned Single Judge and the matter has rightly been remanded to the Gram Panchayat for passing fresh resolution on the basis of merit.

10. As a result, no case is made out to interfere in the order passed by the learned Single Judge. Accordingly, the writ appeal deserves to be and is hereby dismissed.