

(2015) 09 MP CK 0060
In the Madhya Pradesh High Court
Case No : WP-18023-2014

Suryakant Upadhyay

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9, 141

Citation : (2015) 09 MP CK 0060

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : Siddharth Singh, Learned Counsel, for the Appellant; Lalit Joglekar, Learned Panel Lawyer, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gangele, J—Heard.

2. Petitioner has filed this petition against the non-appointment of the petitioner on the post of Gram Rojgar Sahayak. Petitioner has challenged order dated 17.06.2014 (Annexure P/8).

3. The Janpad Panchayat, Rewa initiated process of selection for appointments to the post of Gram Rojgar Sahayak at different panchayats including Jawa Panchayat. The petitioner participated in the selection process and he was placed at Sr. No. 4 in the select list. The petitioner was sent for training from 23.06.2011 to 13.07.2011, however, the petitioner was not appointed on the post of Gram Rojgar Sahayak. Subsequently, the respondents initiated another process of selection to the post of Gram Rojgar Sahayak and persons were selected in pursuance to the second advertisement.

4. Learned counsel for the petitioner has contended that non-appointment of the petitioner as Gram Rojgar Sahayak is arbitrary and illegal. In support of his contentions, learned counsel relied on the judgments of the Supreme Court in the matter of A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another, AIR 2000

SC 205 : (1999) 9 JT 125 : (1999) 7 SCALE 136 : (2000) 1 SCC 600 : (2000) SCC(L&S) 206 : (1999) 4 SCR 443 Supp : (2000) 2 SLJ 123 : (1999) AIRSCW 4300 : (1999) 9 Supreme 251 and in the matter of Dr. Atul Bhardwaj Vs. Government of NCT of Delhi and Others .

5. The respondents in the return pleaded that the process of appointment to the post of Gram Rojgar Sahayak was initiated in the year of 2011 for different panchayats. The petitioner was selected in the aforesaid process. However, no appointment order was issued in favour of the petitioner. The Commissioner, MPRGC, Bhopal directed the Collector and Chief Executive Officer to take appropriate steps for initiating fresh selection process in accordance with new guidelines for selection to the post of Gram Rojgar Sahayak which were vacant. Thereafter, the advertisement was issued calling applications for appointment on the post of Gram Rojgar Sahayak at Village Panchayat Bareti Khurd. The petitioner did not participate in the aforesaid selection process and one person Mr. Krishnananda Upadhyay was selected for appointment as Gram Rojgar Sahayak in Village Panchayat Bareti Khurd.

6. Mr. Krishnananda Upadhyay is necessary party, because the petitioner claimed appointment as Gram Rojgar Sahayak in Bareti Khurd. The petitioner has not pleaded in the petition that validity of the selection list is still valid by which the petitioner was selected. Apart from this, Mr. Krishnananda Upadhyay who was appointed as Gram Rojgar Sahayak for Village Panchayat Bareti Khurd, has not been added as a party in this petition.

7. The Supreme Court in the matter of State of Rajasthan Vs. Uchhab Lal Chhanwal, (2013) 11 AD 253 : (2013) 14 JT 255 : (2013) 5 LLN 1 : (2013) 13 SCALE 272 : (2014) 1 SCC 144 : (2014) 1 SCC(L&S) 34 : (2014) 1 SCT 342 : (2014) 1 SLJ 232 has held as under in regard to non-joinder of necessary party:

"10. Though some argument was canvassed with regard to the relevance of the punishment of censure, yet the said aspect need not be adverted to. On a perusal of the writ petition, the order of the writ court and that of the Division Bench we notice that there were specific averments that juniors placed at serial numbers 9, 10 and 11 in gradation list had been promoted vide order dated 20.8.1997. They have not been arrayed as parties. Needless to emphasize, in the event the order passed by the High Court is affirmed, the persons who are seniors to the respondents in the promotional cadre are bound to become junior regard being had to their seniority position in the feeder cadre. It is well settled in law that no order can be passed behind the back of the person that shall adversely affect him.

11. In this context, we may refer with profit to the decision in Vijay Kumar Kaul v. Union of India wherein it has been held thus:

"36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have

been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant."

12. After so stating this Court referred to the decision in *Indu Shekhar Singh v. State of U.P.* wherein it has been held thus: (*Vijay Kumar Kaul* SCC p 620 paras 37-38)

"37. ...56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority (*Indu Shekhar Singh* case, SCC p 151, para 56)."

38. In *Public Service Commission v. Mamta Bisht* this Court while dealing with the concept of necessary parties and the effect of non- impleadment of such a party in the matter when the selection process is assailed observed thus:

9. "In *Udit Narain Singh Malpaharia v. Board of Revenue*, wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called "CPC") provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (*Babubhai Muljibhai Patel v. Nandlal Khodidas Barot*, and *Sarguja Transport Service v. STAT*.)

10. In *Prabodh Verma v. State of U.P.* and *Tridip Kumar Dingal v. State of W.B.*, it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

13. In *J.S. Yadav v. State of Uttar Pradesh* and another it has been as follows:

"31. No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice."

8. In the present case another person has been appointed on the post of Gram Rojgar Sahayak for which the petitioner is claiming appointment. He has not been joined as a party. Apart from this, there is no pleading in the petition that the validity of the list is still in existence in which the petitioner was selected. In such circumstances, in my opinion, no relief can be granted in favour of the petitioner. I do not find any merit in this petition. It is hereby dismissed.

9. No order as to costs.

10. C.C. as per rules.