
(2010) 09 MP CK 0024

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3720 of 1998

Umakant Mudgal

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Madhya Pradesh Krishi Upaj Mandi (Mandi Nidhi Lekha Tatha Rajya Vipnan Sewa Ka Gathan Ki Riti Tatha Anya Vishay) Rules, 1980 — Rule 100, 83

Citation : (2010) ILR (MP) 2552

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.—Petitioner, who at the relevant time in the year 1998 when this petition was filed was the Mandi Secretary-Grade IV and was posted in Krishi Upaj Mandi Samiti, Sihora, Jabalpur has filed this writ petition challenging the seniority list published from time to time, granting seniority to Respondents 3 to 5, over and above the Petitioner. Further challenge is also made to an order-dated 17.7.98, by which the representation of the Petitioner for correction of the Seniority List is rejected and orders-dated 19.11.1984, 14.11.1984 and 15.11.1984 - Annexures B, C and D, by which Respondents 3 to 5 are appointed as Mandi Secretary Grade IV retrospectively with effect from 10.10.1980, adversely affecting the seniority of the Petitioner.

2. Facts in brief, necessary for disposal of this writ petition, are that Petitioner was appointed as a Mandi Secretary Grade IV, vide order-dated 7.1.1982. Since then till filing of the writ petition, he was holding the said post. In the Gradation List, that was issued by Respondent No. 2, showing the position of Mandi Secretaries as on 1.10.86, when Respondents 3 to 5 were shown senior to the Petitioner and it was indicated that they were having seniority with effect from 10.10.1980, in the cadre of Mandi Secretary. Petitioner made enquiries and it was revealed that Petitioner is senior to the said Respondents and, therefore, the

Seniority List was incorrectly prepared. Petitioner, therefore, submitted representations and when nothing was done and the Seniority List was not corrected, records indicate that writ petitions were filed before this Court, being W.P. Nos. 1405/95 and 3010/95. In the said writ petitions directions were issued to Respondent No. 2 to consider the representation of all concerned and decide the same. Accordingly, records indicate that Respondent No. 2 heard all concerned, called for the records and by the impugned action having rejected the representation, Petitioner had filed this writ petition in the year 1998.

3. It is the case of the Petitioner that he was appointed as Mandi Secretary Grade IV with effect from 7.1.1982 and Respondents 3 to 5 were holding the post in the Ministerial Cadre i.e. Accountant/Clerks in various Mandis. It was only in the year 1984 that they were absorbed in the Service of the Mandi as a Secretary. It is stated that vide orders - Annexures B, C and D, Respondents 3 to 5 were absorbed as Mandi Secretaries Grade IV, by the competent authority in accordance to the provisions of Rule 83, of the M.P. Krishi Upaj Mandi (Mandi Nidhi Lekha Tatha Rajya Vipnan Sewa Ka Gathan Ki Riti Tatha Anya Vishay) Niyam, 1980 (hereinafter referred to as "Rules of 1980"). According to the Petitioner, Respondents 3 to 5 prior to their date of absorption i.e. 19.11.84, 14.11.84 and 15.11.84, were holding the substantive post of Accountant/Clerks, which is in the Ministerial Cadre and is the feeder cadre for promotion to the post of Mandi Secretary, it is stated that under Rule 83, of the Rules of 1980, absorption could only be on an equivalent post, but ignoring the same as Respondents have been absorbed retrospectively in a higher cadre post, contrary to the provisions of Rules of 1980, adversely affecting the right of the Petitioner to the seniority on the post, Petitioner has filed this writ petition. Referring to the certificates - Annexures P/15 and P/16 and the order available on record - Annexure R/4, indicating the post held by Respondents 3 to 4, in the Mandi before their absorption, Shri D.K. Dixit argued that all the three persons were working as Clerk/Accountant and they have been absorbed in a higher cadre of Secretary retrospectively, even though in the year 1980 since when they have been granted seniority, they were working in lower cadre as Accountants/Clerks.

4. Interalia contending that Respondents could be absorbed and granted seniority on the post of Mandi Secretary Grade IV only from the date Annexures B, C and D were passed and not from 10.10.80, when they were holding the lower post of Accountant/Clerk, they cannot be absorbed and granted retrospective seniority in the higher grade, which is a promotional post, Shri D.K. Dixit seeks for interference into the matter. Shri Dixit submits that the action of the Respondents results in granting retrospective seniority to Respondents 3 to 5, in the cadre of Mandi Secretary, with effect from 10.10.1980, even though between 10.10.1980 and till passing of the orders - Annexures B, C and D, in the year 1984, they were holding a post in the lower cadre of Accountant/Clerk, which is the feeder cadre for promotion to the post of Mandi Secretary. Contending that absorption could be only on an equivalent post or if entitled to, on a higher post prospectively from the date of absorption, Shri D.K. Dixit seeks

for interference into the matter.

5. As already indicated hereinabove, none has appeared for Respondents 3 to 5, but a detailed reply is filed on behalf of Respondents 1 and 2. From the reply, filed by Respondents 1 and 2, it is seen that the MP Krishi Upaj Mandi Adhiniyam, 1973 was brought into force with effect from 1.6.1973 and between 1.6.1973 and 10.10.1980, when the Rules of 1980 came into force, all the employees except Secretary were in employment of the respective Krishi Upaj Mandi Samities. Each Samiti was a separate body corporate having an independent existence under the law, but after the Rules of 1980 came into force on 10.10.1980, a separate cadre of Secretary/Assistant Secretary/Mandi Inspectors were formed and the powers for transfer of these cadre employees to various Mandis were conferred on the Director of the Mandi Board. All the Secretaries became members of the Rajya Vipnan Seva and they were entitled to hold the post of Secretary Grade I to Grade IV, in any Mandi Samiti. It is stated by the Respondents in the return that prior to coming into force of Rules of 1980, Respondents 3 to 5 and many other similarly situated employees were working in various categories as Accountants/Clerks/Head Clerks/LDC. Each Mandi Samiti had recommended for their promotion to the post of Mandi Secretary Grade IV, but as no decision was taken till the year 1984, a decision was taken in the year 1984 to constitute a Committee, for considering the cases of such employees for their absorption in the Rajya Vipnan Seva and by filing the recommendations of the said Samiti as Annexure R/3, it is the case of Respondents 1 and 2 that in accordance to the qualification of the employees, particularly Respondents 3 to 5, the Committee had recommended for their absorption in the cadre of Mandi Secretary Grade IV and the benefit of such absorption is granted to them retrospectively with effect from 10.10.1980, on which date the Rules of 1980 came into force. In this regard, the averments made by Respondents 1 and 2, in their return in paragraphs 3 and 5 may be taken note of and the relevant portions read as under:

3. All the Secretaries of any grade became a member of Rajya Vipnan Seva. There were certain persons, who although were not holding the office of Secretary (Grade I to Grade IV) in any Mandi Samiti but recommendation for their promotion to the post of Secretary. Mandi were pending. The Director, Mandi took into account the resolutions/recommendations, forwarded to it by different Mandi Samitis. and all those persons, who were found fit for promotion to the post of Secretary Grade IV were also included in Rajya Vipnan Seva. and such persons who were already in service of Mandi Samiti and promoted as Secretary-Grade IV, were also included in Rajya Vipnan Seva and seniority given to them w.e.f. 10.10.1980.The Petitioner entered into the services as Secretary - Grade IV, vide order-dated 7.1.1982 whereas the Respondents No. 3, 4 and 5, were already serving in different Mandi Samitis and the Mandi Samiti concerned, by resolution, recommended the case of Respondents No. 3, 4 and 5, for promotion to the post of Secretary Grade IV. The recommendations/resolutions were accepted by Director, Mandis and they were promoted much

before 1982, as Secretary, Grade IV and given seniority w.e.f. 10.10.1980.

(Emphasis supplied)

5. The case of Respondent Nos. 3, 4 and 5 and others were placed before the Absorption Committee, in view of Rule 83 of 1980 Rules. The absorption committee took a policy decision for absorbing such persons who were already in service of the Mandi Samitis and their names were recommended by the Mandi Samitis. Copy of the decision dated 29.8.1981 and order-dated 18.9.1981, both are being annexed with the return, marked as Annexures R/3 and R/4. For the reason that Respondents No. 3, 4 and 5 were already functioning against different posts, as disclosed in the decision dated 18.9.1981, a copy of the decision dated 13.10.1984, a copy of the decision dated 13.10.1984, is also being annexed with the return as Annexure R/5. The Petitioner cannot be treated senior to those who were already in service and functioning against the post of either Secretary/Accountant/Head Clerk or Nakedars, having requisite qualification, experience and merit.

6. Having heard learned Counsel for the Petitioner and learned Counsel for the State and on perusal of the records, it is clear that even though Respondents 3 to 5 entered the service of various Mandis much prior to appointment of the Petitioner on 7.1.1982, but on 7.1.1982 Petitioner was holding the higher cadre post of Mandi Secretary whereas Respondent Shri Ramkumar Rai was holding the post of Accountant in Krishi Upaj Mandi Samiti, Shahpura, Bhitoni. Similarly, Respondent Shri Shriniwas Sharma was holding the post of Clerk in Krishi Upaj Mandi Samiti, Kailash and Respondent Suresh Kumar Jain @ Suresh was holding the post of Clerk in Krishi Upaj Mandi Samiti, Nagda, as is evident from the document -Annexure R/4, filed by the Respondents.

7. From the pleadings of Respondents 1 and 2, it is seen that all the three Respondents and many other employees were holding the lower cadre post of Accountants/Head Clerks/LDC etc, but their respective Krishi Upaj Mandi Samitis had recommended for their promotion to the cadre of Mandi Secretary Grade IV. However, as no decision was taken till 1984, a Committee was constituted, which exercising powers under Rule 83 read with 100 of the Rules of 1980 granted them retrospective absorption with seniority on the promoted post. At this stage, it would be relevant to consider the provisions of Rule 83, of the Rules of 1980. The said Rule is reproduced hereinabove:

83. Absorption - the incumbents holding posts equivalent to the posts included in the service immediately before the commencement of these rules shall be absorbed on suitable posts on the basis of their qualifications, experience and record of service. A committee shall be constituted as follows for reviewing such cases and deciding post of absorption-

(Emphasis supplied)

From the aforesaid Rule, it is seen that on an incumbent holding post equivalent

to the post included in service (i.e. the Rajya Vipnan Seva) immediately before commencement of the Rule i.e. 10.10.1980, is entitled to be absorbed on a suitable post on the basis of their qualification.

8. This Rules clearly contemplates that based on the qualification and experience of the person, a Committee constituted under Rule 83 is entitled to recommend an incumbent holding the post equivalent to the post included in service. Admittedly, Respondents 3 to 5 were not holding any post equivalent to the post included in service i.e. the Rajya Vipnan Seva, namely Mandi Secretary, Mandi Inspector etc. They were holding lower cadre posts of Accountants and Clerks. Even if it is assumed that the Rules permit their absorption in a suitable post based on their qualification and experience, the absorption will have prospective effect and the Committee does not have any power to direct for retrospective promotion with effect from the date when the incumbent was not holding any post equivalent to the post included in service nor were they working on the post of Mandi Secretary on adhoc or officiating basis. The powers to be exercised under Rule 83 is to assess the suitability and experience of the incumbent candidate and direct for their absorption if found feasible. However, while doing so and while granting them seniority on absorption under Rule 100, the Committee should ensure that absorption and grant of seniority, if retrospectively undertaken is on a post in which the incumbent has atleast performed duties on adhoc or officiating basis and is a post equivalent to the one provided in the Rajya Vipnan Seva. It is not permissible to retrospectively absorb a person on a higher cadre and grant him seniority even though he was discharging duties in a lower cadre on the date from which he is granted seniority.

9. In the present case, if the seniority is granted to Respondents 3 to 5 with effect from 10.10.1980, it would mean that even though they were working as Accountants/Clerks between 10.10.1980 till the date of passing the orders - Annexures B, C and D, they are granted seniority in the higher cadre of Mandi Secretary Grade IV with effect from 10.10.1980 on which date they were infact working on a lower cadre post, that also a feeder post for promotion to the post of Mandi Secretary Grade IV. This is wholly impermissible and the decision of the Committee to grant them retrospective seniority on the post of Mandi Secretary Grade IV with effect from 10.10.1980, on which date they were holding a lower cadre post, is clearly impermissible. Respondents 3 to 5 can claim seniority and promotion by way of absorption to the higher post only with effect from the date they are appointed/promoted/absorbed on the higher post. If it had been a case where Respondents 3 to 5, as on 10.10.1980 and upto the dates when the orders -Annexures B, C and D were passed, were discharging the duties of Mandi Secretary on adhoc or officiating basis, the Committee could have granted them retrospective seniority, but granting them retrospective seniority on a higher promotional cadre post even when they have discharged the duties of a lower post is not permissible. In that view of the matter, Shri D.K. Dixit, learned Counsel for the Petitioner, is right in contending that the Respondents have been granted seniority retrospectively in a higher cadre, which was never held by

them and the same is impermissible. Merely because the Mandi Samiti where Respondents 3 to 5 were working, had recommended for their promotion that by itself is not a ground for granting them retrospective seniority. The benefit of seniority can be granted to Respondents 3 to 5 only from the date they are appointed to the post as per the rules.

10. This Court is of the considered view that seniority in a particular cadre has to be determined on the basis of appointment or working in that particular cadre. Normally if an employee is not appointed substantively in a particular cadre post, he is not entitled to seniority in the cadre post with effect from the date prior to his substantive appointment. However, the only exception to the Rule is that if an employee is granted adhoc appointment or officiates on a higher cadre post and such adhoc or officiation is after following the due process contemplated under law, then the adhoc or officiating service can be counted for the purpose of seniority, but while working on a lower cadre post and without even discharging the higher responsibility of a higher cadre post, the seniority on such a higher post cannot be granted, when in fact on the date when the seniority is granted, the incumbent was discharging the duties of a lower cadre post. This is the normal and settled principle of law in the matter of granting seniority. See: D.R. Yadav and Another Vs. R.K. Singh and Another,

11. When promotion is granted by way of absorption in a higher cadre post after due scrutiny of the Committee constituted under Rule 83, the decision of the Committee will only have prospective effect and the action of the Respondents in granting retrospective seniority to Respondents 3 to 5 in the cadre of Mandi Secretary Grade IV, with effect from 10.10.1980, on which date they were working in a lower cadre post of Accountants/Clerks is wholly impermissible and in that view of the matter, this petition has to be allowed.

12. Accordingly, this petition is allowed. Respondents are directed to correct the Seniority List in question and fix the seniority of the Petitioner above Respondents 3 to 5, at a suitable place and ensure that Respondents 3 to 5 are granted seniority either below the Petitioner or with effect from the date they were absorbed in the cadre of Mandi Secretary Grade IV i.e. the date on which Annexures B, C and D were issued.

13. Petition stands allowed and disposed of with the aforesaid directions. No order so as to costs.