
(2018) 07 MP CK 0178
In the Madhya Pradesh High Court
Case No : Writ Appeal No.281 OF 2016

Vandana Gupta

APPELLANT

Vs

Additional Commissioner Gwalior Division Gwalior & Ors

RESPONDENT

Date of Decision : 20-07-2018

Acts Referred:

Panchayat (Method of Service of Notice & Document) Rules, 1995 — Rule 3
Madhya Pradesh Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Rules 2005 — Rule 6(9)(d)

Citation : (2018) 07 MP CK 0178

Hon'ble Judges : Sanjay Yadav. J;S.K. Awasthi, J

Bench : Division Bench

Advocate : M.P.S. Raghuvarshi, Harish Dixit, Pawan Dwivedi, Shyam Sharma

Final Decision : Disposed Off

Judgement

With the consent of learned counsel for the parties, the matter is finally heard.

2. This Appeal under Section 2 (1) of Madhya Pradesh Uchcha Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005, is directed against the order dated 16/07/2016 passed in Writ Petition No.746/2014(S).

3. The controversy relates to the appointment on the post of Samvida Shala Shikshak Grade-III undertaken by Janpad Panchayat Pichhore, District

Shivpuri; in the year 2008 in furtherance to the stipulations contained in Madhya Pradesh Panchayat Samvida Shala Shikshak (Employment

andConditions of Contract) Rules 2005. That in the select list of Samvida Shala Shikshak Grade-III unreserved (woman) incumbents from Serial

No.69 to 86 secured equal marks i.e.27.04; their names were accordingly arrayed as per Rule 6(9) (d) of 2005 Rules which stipulates that â??(d) In

case of equal marks in the categorywise merit list, preference shall be given in

final selection to the candidate having obtained higher marks in the eligibility examination and even after that if the situation of equality of marks arises, then the preference shall be given to the candidate who is older in age.â?? Accordingly, the Appellant was placed at Serial No.75 and respondent No.4.

4. Since the candidate at Serial No.86 was given the appointment by order dated 05/03/2008, present Appellant on 08/02/2011 raise the grievance

before Collector Shivpuri in Jan Sunwai. Thereafter, she filed Writ Petition No.4048/2011(S) against the order dated 05/03/2008. The petition was

disposed of on 06/02/2012 with the direction â??that the petitioner shall submit an appeal against the order annexure P/1 before the competent

authority along with the application for condonation of delay. If such application along with the application for condonation of delay is submitted,

competent authority after giving opportunity of hearing to respondent no.4 shall decide the same on merits within a period of eight weeks from the date

of filing of appeal and shall not dismissed the appeal on the ground of delay.â??

5. An appeal preferred by present Appellant was allowed on 08/01/2013; whereby, Collector, Shivpuri on the findings that there is no material on

record that on respondent No.4 not appearing for counseling in response to communication dated 21/01/2008, other candidates from Serial No.76 to 85

were given the opportunity; accordingly, faulted with the appointment of respondent No.4 who was at Serial No.86.

The Appellate Authority observed:

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ls Li""V ugha gSa lkFk gh Ã?ekad 86 ij vafdr jsLiksa- Ã?aekad & 02 jks'kuh tSu dks fu;qfDr mDr vHk;fFkZ;ksa ds gksrs gq;s dSls nh xbZ ;g Hkh

vfHkys[k ls izekf.kr ugha gSaA Li""V gSa] fd mDr lHkh vH;fFkZ;ksa ds 27-04 leku vad gksrs gq;s Hkh vihyk.V tks Ã?ekad 75 ij vafdr gSa&mlds

vkxs ds 76 yxk;r 85 vH;fFkZ;ksa dks NksM+dj Ã?ekad 86 ij vafdr jsLiksaÃ?ekad&02 jks'kuh tSu dks fu;qfDr nh xbZ gSa] ftlds laca/k esa eq[;

dk;Zikyu vf/kdkjh tuin iapk;r fiNksj }kjk dksbZ Li""V mYYks[k ugha fd;k x;k gSa vr% mijksDr ds izdk'k esa jsLiksa Ã?ekad&02 dqjks'kuh tSu dks

lafonk 'kkyk f'k{k d oxZ&3 ij dh dbZ fu;qfDr vekU; dh tkrh gSaA vkns'k dh izfr eq[; dk;Zikyu vf/kdkjh ftyk iapk;r f'koijh dh vksj Hkstdj funsZf'kr fd;k

tkrk gS fd os fu;qfDr ls lacaf/kr leLr vfHkys[k cqyk dj ik= mEehnokj dk p;u fnukad
30-03-2013 ¼vf/kdre le;&lhek½ rd djsaA eq[; dk;Zikyu

vf/kdkjh ftyk iapk;r f'koijh }kjk fy;s tkus okys vafre fu.kZ; rd jsLiksMsaV Å?
ekad&02 dq- jks'kuh tSu vius in ij vf/kdre vof/k 30-03-2013 rd dk;Z dj

ldrh gSa ftlls ikB'kkyk esa cPpksa dks fn;s tkus okyh f'k{kk esa fdLh izdkj dk
vojks/k mRiUu u gksA lacaf/kr lwfpr gksaA izdj.k lekIr gksdj nkf[ky

fjdkMZ gksA**

6. The Appellate order was subjected to revision before the Additional Commissioner, Gwalior Division Gwalior, who affirmed the Appellate order.

7. These orders were subjected to challenge vide Writ Petition No.746/2014(S), wherein, these orders were reversed. Learned Single Judge observed:

â??..... It is also true that publication of final selection list does not cast a responsibility on the selected candidates to join and stake claim on the post

merely because they have been selected. Thus, selection gives an opportunity to approach, participate in the counselling and stake their claims in terms

of the provisions contained in the Rules of 2005. If the persons whose names appear from serial No.76 to 85 did not stake their claim and did not

appear before the Court of the Collector and the Additional Commissioner, then no fault could have been attributed to the candidature of the present

petitioner. It was not the case of respondent No.4 that these persons were deliberately kept away from the selection at the behest of present

petitioner.â??

8. Learned Single Judge also found that during the period from 20/12/2007 to 08/04/2008, the appellant went missing and a missing person report was

lodged by her husband. In that context, it is observed:

â??7. In absence of any such allegation and rebuttal about the facts pleaded in the return of respondent No.3 that an FIR was lodged by husband of

respondent No.4 in regard to her missing and also the fact that respondent No.4 never approached the concerned authority within the validity of final

selection list i.e. within one year from the date of its publication and also in the light of the fact that respondent No.4 has not disclosed unambiguously

that what prompted her to approach this Court in the year 2011, therefore, merely saying that when she gathered information about selection of the

present petitioner, who secured equal marks and is younger in age, she approached the authorities, is not sufficient to prove her bonafides.â??

9. The order is being challenged vide this appeal on the ground that learned Single Judge having glossed over the fact that respondent No.4 being

below in the select list had no right of appointment prior to those placed above her, including the Appellant. It is also contended that learned Single

Judge has misconstrued the entire facts which though bordered on the aspect of entitlement of a junior in the rank list vis-a-vis the candidate placed

higher in rank, but was treated to be one of inter se dispute. It is urged that the Appellant had no grievance against the final list. The grievance was

that, the incumbent lower in the rank was picked and was given the appointment abrogating the right of the appellant. On these submissions, the

Appellant seeks quashment of the order in Writ Petition No.746/2012(S).

10. Respondents on their turn have supported the order passed in W.P. No.746/2012(S).

11. Considered the rival submissions.

12. Trite it is that placement in select list does not create any right of appointment in the incumbent. More so, when 17 candidates get similar marks, as

in the case at hand, none of them had any right accrued in them for appointment. The only right which arose was the right of consideration. In that

event it may incumbent upon the employer to invite the candidate in seriatim offering them the appointment. And if refused, to proceed further.

13. In the case at hand evident it is from the return filed by respondent No.3- Janpad Panchayat, wherein in paragraph 2 it is stated:

â??2. That, after the preparation of the merit list letters were sent to all the candidates for their appointment and when candidates from merit list

remained absent letters were sent to wait listed candidates for the post of Samvida Shala Shikshak Grade-III in various schools under the auspices of

respondent No.3 Panchayat. Letters for counseling at SI.No.75 to 86 on 21.1.2008. Copy of the letters are enclosed hereto collectively and marked as

Annexure R/3-2 and the acknowledgment from the Post Office is enclosed hereto and marked as Annexure R/3-3.â??

14. Respective communication dated 21/01/2008 which is brought on record is in the following terms:

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Ã?a-@la-'kk-f'k-@fu;kstu@2007@321 fiNksj] fnukad&21 Jan 2008izfr]

Jhefr oanuk xqIrk@

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,rn! }kjk vkidks lwfpr fd;k tkrk gS] fd e;/izns'k iapk;r

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Js.kh&rhu gsrq vkids vkosnu ds vk/kkj ij vafre p;u lwph esa] vH;fFkZ;ksa ds vuqifLFkr jgus ds dkj.k izfr{kk lwph ls vkids vkosnu rFkk ofj""Brk ds

vk/kkj ij izfr{kk lwph ls vki fu;kstu gsrq vgZ ik;s x;s gSaA vr% vki fu;kstu ,oa lafonk ds fy;s vk;ksftr dkmalfyax fnukad 31 JAN 2008 esa vko';d leLr

ewy vfHkys[kksa ds lkFk vfuok;Z :i ls bl dk;kZy; esa dk;kZy;hu le; esa mifLFkr gksa] rkfd fu;kstu ds fy;s lafonk dh dk;Zokgh laikfnr dj;h tk ldsA ;fn

vki fu/kkZfjr le;kof/k rd mifLFkr ugh gksrs gSa] rks ;g ekuk tkdj dh vki fu;kstu gsrq bPNqd ugha gS] izrh{kk lwph ls vU; vH;FkhZ dks ofj""Brk ds Ã?e

vk/kkj ij fu;kstu gsrq vkeaf=r fd;k tk ldsxA

;g lwpuk&i= fu;kstu vkns'k ugha gSA

eq[; dk;kZikyu vf/kdkjh

tuin iapk;r fiNksj Â¼07496&245304Â½

i`""Bk- Ã?a-@la-'kk-f'k-@fu;kstu@2007 fiNksj] fnukad&21 Jan 2008 izfrfyfi%&

1&dysDVj egksn;] ftyk&f'koiqjh dh vksj lwpukFkZ

2&eq[; dk;Zikyu vf/kdkjh] ftyk iapk;r&f'koiqjh dh vksj lwpukFkZA

3&f'k{kk vf/kdkjh] ftyk&f'koiqjh dh vksj lwpukFkZA 4&fodkl [k.M f'k{kk vf/kdkjh] fiNksj dh vksj lwpukFkZA

eq[; dk;Zikyu vf/kdkjh Â tuin iapk;r fiNksj**

15. It is a matter of record that the notices sent to the candidate appearing at Serial No.69 to 86 was in accordance with the Rule 3 of Panchayat

(Method of Service of Notice & Document) Rules, 1995 which stipulates:

â??3. Save as otherwise provided in the Act the service of any notice or other document under the Act or under nay rule, bye-law or order made

thereunder on any person to whom it is by name address shall be effected-

(a) by giving or tendering the said notice or document to such person; or

(b) if such person is not found, by giving or tendering the same to some adult member or servant of his family; or

(c) by sending the same by post under certificate of posting; or

(d) if such person does not reside in the jurisdiction of Panchayat and his address elsewhere is known to the officer directing the issue of such notice

or document by sending the same to him by registered post of acknowledgment. Provided that if officer directing the issue of such notice or document

is satisfied that the addressee is evading the notice or document and the notice or document cannot be served by the methods mentioned as above, the

said officer shall cause such notice or document to be served by affixing a copy thereof upon some conspicuous part of the last known place of

residence or business of the person concerned and service shall be as effectual as if it had been made on the addressee personally.â??

(Emphasis supplied)

16. Thus even if the appellant was not to be non-suited on the ground of delay, her claim for appointment was rightly negated because despite the

offer given to her vide notice dated 21/01/2008, she did not accept the same. And if respondent No.4 did not avail the opportunity, in absence of any

cogent material to contrary, no motive can be attributed. Thus learned Single Judge was well within his jurisdiction in setting aside the orders dated

08.01.2013 and 15.01.2014 passed by Collector, Shivpuri and Additional Commissioner, Gwalior Division, Gwalior respectively, as would warrant any

interference.

17. Before parting, it is observed that learned Single Judge while dwelling on the order dated 06/02/2012 passed in Writ Petition No.4048/2011, has

observed:

â??.....In fact, it is apparent from the order Annexure P/5 passed in W.P.No.4048/2011 on 6.2.2012 that this Court had categorically disposed of the

writ petition with a short direction that petitioner shall submit an appeal against the order Annexure P/1 before the competent authority alongwith the

application for condonation of delay. Once a direction was given to file an appeal alongwith the application for condonation of delay, the authority of

Collector was required to deal with the application for condonation of delay on its own merits and the observation in the order that competent authority

shall decide the same on merits within a period of eight weeks from the date of filing of the appeal and shall not dismiss the appeal on the ground of

delay could not have been construed to mean that delay was condoned by this Court. If delay would have been condoned by this Court, then this Court would not have directed for submission of an application for condonation of delay and deciding the same after giving opportunity of hearing to respondent No.4 i.e. the present petitioner. Thus, there is an inherent contradiction in the order dated 6.2.2012 which was either required to be clarified by the Collector or was required to be understood by the Collector in correct legal perspective inasmuch as on the one hand this Court directed respondent No.4 to the present petition to file an application for condonation of delay and on the other, observed that appeal shall not be dismissed on the ground of delay.â??

18. Admittedly, the order 06/02/2012 passed in W.P.4048/2011 had attained finality, and the Writ Court was not in seisin with a review. It is held in

Sant Lal Gupta and Others vs. Modern Cooperative Group Housing Society Limited and Others: [(2010) 13 SCC 336]

â??16. Be that as it may, the High Court has referred to its Division Bench judgment in B.B. Chibber v. Anand Lok Co-operative Group Housing

Society Ltd. &Ors., (2001) 90 DLT 652, wherein the same provision has been considered and it had categorically been held that deeming approval

was not legally permissible. In view of the above, it was neither desirable nor permissible by the coordinate Bench to disapprove the earlier judgment

and taken view contrary to it. More so, extension of the period from 6 months to 1 year amounts to legislation.

18. In Rajasthan Public Service Commission v. Harish Kumar Purohit, (2003) 5 SCC 480, this Court held that a Bench must follow the decision of a

coordinate Bench and take the same view as has been taken earlier. The earlier decision of the coordinate Bench is binding upon any latter coordinate

Bench deciding the same or similar issues. If the latter Bench wants to take a different view than that taken by the earlier Bench, the proper course is

for it to refer the matter to a larger Bench.â??

19. In view whereof, the observation adverted to in Sant Lal Gupta (supra) will not be treated to be precedent.

20. In the result, the Appeal is disposed of finally in above terms.

21. No costs.