
(2008) 05 MP CK 0050
In the Madhya Pradesh High Court
Case No : Writ Petition No. 15218 of 2007

Vishnu Dev Pandey

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 09-05-2008

Acts Referred:

Madhya Pradesh Panchayat (Appeal and Revision) Rules, 1995 — Rule 3

Citation : (2008) 4 MPLJ 232

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : A.G. Dhande, with Arpan Shrivastava, for the Appellant; P.N. Dubey, Dy. A.G. for Respondent Nos. 1 and 2 and Amit Singh for Respondent Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

Short facts relevant for the purpose of present writ petition are that Gram Panchayat, Shivpur issued an advertisement dated 10-8-2007 (Annexure P/2) inviting thereby applications for the post of Panchayat Karmi (Secretary). Relevant minimum qualifications were as follows :

- (i) The applicant must have passed under 10+2 system. High School, Higher Secondary Examination.
- (ii) In addition to the qualification described in the advertisement, the Gram Panchayat may add other suitable qualifications by passing resolution.
- (iii) There must be a constructed latrine in the residential premises of the applicant which must be in use. Certificate of Sarpanch/ Secretary will have to be attached to the application.

Applications were invited during the period from 10-8-2007 to 20-8-2007. Various candidates including the petitioner as well as respondent No. 5 made

applications pursuant to the said advertisement. Applicants including Kamlapati Pandey and Shripati Pandey, both sons of Shri Thakur Prasad Pandey were considered in the meeting of Gram Panchayat held on 16-9-2007. Name of the petitioner was rejected on the ground that there was no constructed latrine in his residential premises and no such certificate was enclosed with the application. The Gram Panchayat passed the resolution appointing thereby the respondent No. 5 on the post of Panchayat Karmi vide Annexure P/3 dated 16-9-2007. Pursuant thereto the appointment order was issued on 17-9-2007 in favour of respondent No. 5 vide Annexure P/1.

Aggrieved by it, the present petition has been preferred for quashment of order Annexure P/1 and to command the respondents to appoint the petitioner on the post of Panchayat Karmi (Secretary) of Gram Panchayat Shivpur, District Rewa mainly with the allegation that the petitioner was having 77% marks in High School Examination and there was a latrine already constructed since the year 1990 in the house of petitioner as revealed in certificate Annexure P/4.

Respondent No. 5 submitted the return and opposed the writ petition on various grounds including maintainability. He stated that the petitioner was not qualified because there was no latrine in his house as revealed in Annexure R/2.

Countering it, the petitioner submitted rejoinder stating therein that he is living jointly with his uncle in a house having latrine. Certificates with respect to the constructed latrine, issued by various Sarpanch, Up-Sarpanch and other local residents are annexed to the rejoinder which has been in use since 1990.

Shri A.G. Dhande, learned senior advocate with Shri Arpan Shrivastava, Shri G.P. Singh, learned Government advocate and Shri Amit Singh made their respective submissions.

Shri Amit Singh, learned counsel contended that the order for appointment marked as Annexure P/1 is an appealable order under Rule 3 of M.P. Panchayat (Appeal and Revision) Rules, 1995 and writ petition directly before this Court without availing the alternative remedy is not maintainable.

Obviously, there is an alternative remedy of appeal under Rule 3 as contended by Shri Amit Singh, learned counsel for respondents No. 4 and 5. However, in view of the decision of the Apex Court rendered in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , a writ petition may be directly entertained if any of the fundamental rights is infringed. It is to be examined in the present case that whether there is a violation of Articles 14 and 16 of the Constitution of India. Since it involves various other documents, it would be considered at the later stage of the judgment.

Shri Dhande, learned senior counsel contended that neither under the Panchayat Karmi Yojna nor under circular of the State Government dated 13th of August, 2007 (Annexure P/5) it was made qualification that the applicant must have latrine in his house. This being so, the petitioner could not have been excluded

from consideration on the ground of absence of latrine in his house. Case of the petitioner as averred in the writ petition with rejoinder is that he is living jointly with his uncle and his sons namely Thakur Prasad Pandey, Kamlapati Pandey and Shripati Pandey. There is a latrine already constructed since 1990 in their house. The fact of joint living and existence of constructed latrine in their house has not been refuted by the respondents. On the contrary, it is clearly mentioned in the proceedings book at page 19 (Annexure P/3-A) that three applications were received from the house of the petitioner wherein only one latrine is constructed, since the application of Kamlapati Pandey was received first, the constructed latrine was considered against his application. It is further mentioned that since there is no second latrine for petitioner, his application was rejected. This clearly goes to show that joint residence of petitioner and Kamlapati Pandey and Shripati Pandey was not disputed by Gram Panchayat and there has been a latrine in the petitioner's house since 1990, as revealed in Annexure P/4 and other certificates annexed to the writ petition. The Gram Panchayat has not dared to oppose in writing by submitting return that there was no joint living of petitioner and his cousins and that there was no latrine in the house occupied by them as common residence. This being so, the application of the petitioner could not have been excluded from consideration on the ground of alleged absence of separate latrine.

Apart from the aforesaid, it may be seen that in Panchayat Karmi Yojna, there is no condition that a candidate must have latrine in order to qualify himself for being appointed on the post of Panchayat Karmi. Such condition does not exist in any of the circulars or orders issued by the State Government. It is true that other proper and desirable conditions could be added by Gram Panchayat as mentioned in the advertisement Annexure P/2 itself but this could have been done by Gram Panchayat by passing a resolution. Learned counsel Shri Amit Singh also appearing on behalf of Gram Panchayat, Shivpur fairly admitted before this Court that no resolution was passed by Gram Panchayat for adding the condition that the applicant must have a constructed latrine in his house. In view of the matter, the condition about constructed latrine could not have been added as a mandatory qualification for the candidate seeking appointment on the post of Panchayat Karmi. This apart, it may be seen that this Court has also found on the basis of documents on record that the petitioner with his uncle and his sons was living jointly in a house which was having a constructed latrine since 1990. Shri Amit Singh, learned counsel submitted that necessary certificate about existence of latrine was not enclosed with the application by the petitioner, therefore, his application was rightly rejected.

Question before this Court would be whether enclosure of certificate about the latrine was made mandatory by advertisement and its non-compliance would be so fatal so as to exclude the petitioner from consideration in the matter of appointment on the post of Panchayat Karmi. From the advertisement Annexures P/1 and P/2 it may be seen that the applications were invited within the period from 10-8-2007 to 20-8-2007. It has been clearly and specifically mentioned in

Annexure P/2 that the applications submitted after prescribed date will not be taken into consideration. Although it has been mentioned in the requisite qualification No. 7 that the candidate shall have to enclose the certificate about the latrine and its use, it has nowhere been mentioned that absence of certificate would make the application liable to be rejected. Latrine cannot be constructed in an antedated manner. If, it is in existence and certificate is not filed or is defectively filed, the candidate may very well be asked to make up the deficiency by submitting the proper certificate. Thus, it may be said that condition about enclosing the certificate with the application was not mandatory and the application of the petitioner could not have been rejected for want of certificate. This being so, exclusion of the petitioner from consideration on the basis of absence of certificate is also found to be illegal and arbitrary.

Under the Panchayat Karmi Yojna, a candidate for the post of Panchayat Karmi is to be appointed on the basis of merits of High School examination. The petitioner has secured 77% marks whereas respondent No. 5 has secured 59.2 marks. Obviously, the petitioner is more meritorious and his candidature could not have been rejected in the impugned manner. Since the petitioner was fully qualified, respondent No. 5 could not have been appointed on the post of Panchayat Karmi ignoring the claim of the petitioner by way of rejecting his application on untenable ground. Exclusion from consideration of a qualified candidate amounts to violation of Articles 14 and 16 of the Constitution of India. Accordingly, the writ petition preferred before this Court without availing the remedy of appeal is well maintainable.

In the result, Annexure P/1 dated 17-9-2007 is not sustainable in law and the same is hereby quashed and simultaneously resolution dated 16-9-2007 vide Annexure P/3 is also found to be unsustainable in law being contrary to the criteria of appointment prescribed under the Panchayat Karmi Yojna, and is also hereby quashed. Respondent No. 4 is hereby directed to consider the application of the petitioner for appointment on the post of Panchayat Karmi in accordance with Panchayat Karmi Yojna and other orders/circulars of the State Government in relation to the matter of appointment. Respondents No. 1 to 3 are directed to ensure that the appointment on the post of Panchayat Karmi in Gram Panchayat Shivpur may be made in accordance with law after considering all the eligible and qualified candidates including the petitioner.

No order as to costs.