
(2014) 09 MP CK 0126
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 700/2014

Yamuna Bai

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2014) 09 MP CK 0126

Hon'ble Judges : Rajendra Menon, J;A.K. Sharma, J

Bench : Division Bench

Advocate : Y.M. Tiwari, Learned Counsel, Advocate for the Appellant; Amit Seth, Learned G.A, Advocate for the Respondent

Judgement

1. Calling in question the tenability of order dated 17.6.2014 passed by the writ Court in W.P.No.7821/2014, this appeal has been filed under section 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005.

2. The petitioner was working as a daily wage Aaya in the Government Nehru Hospital, Burhanpur. It was her case that she was appointed in the year 1997 and her juniors have been considered and granted regularization. When she was not granted regularization she approached this Court in W.P.No.5207/2011(S) and a Bench of this Court on 29.2.2012 directed for considering her case for regularization. It seems that after considering her claim for regularization the same was rejected vide order Annexure P-7 on 21.2.2014, wherein it was indicated that in case future appointments are made petitioner shall be given preference. Being dissatisfied by this order, petitioner again approached this Court by filing writ petition bearing W.P.No.7821/2014. The same having been rejected vide order dated 17.6.2014, this appeal has been filed.

3. Having considered the arguments advanced by Shri Y.M.Tiwari, learned counsel for appellant and Shri Amit Seth, learned G.A., for respondents who

appeared on advance notice, we find that the learned Writ Court considered the grant of regularization to the petitioner and tested it in the light of principle laid down by the Constitutional Bench of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and found that the petitioner's initial engagement as daily wage employee is illegal and therefore petitioner cannot be regularized in service. Taking note of the aforesaid and subsequent law laid down by the Supreme Court in the case of Official Liquidator Vs. Dayanand and Others, the writ Court found that the benefit of regularization cannot be extended to the petitioner. Nothing is brought to our notice to show that the aforesaid direction and finding of the Writ Court is perverse or unsustainable.

4. It is well settled in law that an individual can be regularized when the appointment is irregular and not illegal and once it is found that the appointment of an individual is illegal and violative of the Article 14 of the Constitution of India, in the light of the law laid down by the Supreme Court in the case of Umadevi (supra) regularization of such a illegal appointment is impermissible. That being the legal position, we see no reason warranting our interference in the order passed by the Writ Court. The writ Court has disposed of the petition with a direction that as and when recruitment process are held as indicated in Annexure P-7 petitioner shall be given preference. This is the only benefit which can be granted to the petitioner in the given circumstances.

5. However Shri Y.M.Tiwari, learned counsel for appellant submitted that certain juniors to the petitioner have been regularized. Merely because some juniors to the petitioner have been illegally regularized, parity cannot be claimed on such a ground. If petitioner is having any grievance he shall be at liberty to call in question in accordance with law, but for granting parity on the ground that certain juniors to the petitioners have been illegally regularized, no indulgence can be made by this Court.

6. In view of aforesaid, this appeal is without any merit and is dismissed.