

1 Writ Petition No.6177/2009
Keshav Singh vs. The State of M.P. and others

HIGH COURT OF MADHYA PRADESH
BENCH GWALIOR

SINGLE BENCH:

HON. SHRI JUSTICE G.S. AHLUWALIA

Writ Petition No.6177/2009

.....Petitioner: Keshav Singh

Versus

.....Respondents: The State of M.P. and others

Shri MPS Raghuvanshi, Advocate for petitioner.

Shri R.K. Soni, Government Advocate for the State.

Date of hearing : 25/04/2019

Date of Order : 25/04/2019

Whether approved for reporting : Yes

Law laid down:

Significant paragraphs:

ORDER
(25/04/2019)

This petition under Article 226 of the Constitution of India has been filed against the order dated 28/10/2009 passed by the Additional Commissioner, Gwalior Division, Gwalior in Appeal No.509/2008-09, by which the appointment of the petitioner on the post of Panchayat Karmi has been set aside in the appeal filed by Up-Sarpanch.

2. The necessary facts for disposal of this petition in short are that on 27/1/2006 the Department of Panchayat & Rural Development, State of

Keshav Singh vs. The State of M.P. and others

M.P., issued a direction to all the Collectors to the effect that the Gram Panchayat must fulfill the vacant posts of Panchayat Karmi by 2/2/2006 and if the Gram Panchayat fails to fulfill the vacancy by 2/2/2006, then the Collector must take action under Section 86 of the M.P. Panchayat Raj Adhiniyam, 1993 (in short "Adhiniyam, 1993") and must issue a letter to the Sarpanch of the said Panchayat under Section 86 (1) of the Panchayat Raj Avam Gram Swaraj Adhiniyam making him to compulsorily fill up the vacant posts of Panchayat Karmi/Secretary. If any Gram Panchayat fails to comply the order issued under Section 86 (1) of the Adhiniyam, 1993, then the Chief Executive Officer of the concerning Janpad Panchayat shall be directed under Section 86 (2) of the Adhiniyam, 1993 to make appointment on the post of Panchayat Karmi after seeking approval from the Collector by exercising powers of the Sarpanch.

3. It is submitted that accordingly, a letter dated 29/3/2007 was issued by the Collector to the Chief Executive Officer, Janpad Panchayat Morar, District Gwalior to the effect that the Collector by order dated 1/8/2006 had issued a letter under Section 86 (1) of the Adhiniyam, 1993 for filling up the vacancy of Panchayat Karmi within a period of 30 days, however, the Gram Panchayat Bilheti, District Gwalior and Gram Panchayat Bastari have not complied with the order, therefore, the Chief Executive Officer was directed to make the appointment in exercise of power under Section 86 (2) of the Adhiniyam, 1993 after seeking approval from the Collector. It was also directed that

Keshav Singh vs. The State of M.P. and others

the application should be invited by affixing the notice on the public place and even a copy should be affixed on the Notice Board of the Janpad Panchayat and public announcements should be made and three days' time should be granted for making the application. After considering the application, the merit list should be prepared which should be displayed on the Notice Board of the Gram Panchayat/Janpad Panchayat and the meritorious candidate should be appointed after seeking approval from the Collector. One name should be kept in the waiting list and successful candidate should be given three days' time to submit his joining and in case if he fails to do so, then the candidate kept in the waiting list should be appointed. Accordingly, the Chief Executive Officer, Janpad Panchayat, Morar, District Gwalior issued a public notice dated 24/4/2007 inviting applications for appointment on the post of Panchayat Karmi, Gram Panchayat Bilheti and Bastari. The petitioner and three more persons applied for appointment on the post of Panchayat Karmi, Gram Panchayat Bilheti and merit list was prepared and the petitioner was placed at serial no.1, as he had received 209 marks out of 500 in High School Examination, whereas one Ajay Singh was placed at serial no.2, who had secured 203 marks out of 500 and remaining two candidates, namely, Kamlesh and Satya Narayan had secured 194/500 and 192/500 in the High School. Accordingly, after seeking approval from the Collector, the petitioner was given appointment by order dated 4/6/2007. The Collector by order dated 31/7/2007 passed an order under Section 69 (1) of the Adhiniyam, 1993 and the petitioner was notified as

Keshav Singh vs. The State of M.P. and others

Panchayat Secretary.

4. Being aggrieved by the order of appointment of the petitioner, one Keshari Singh, who was holding the post of Up-Sarpanch, Gram Panchayat Bilheti filed an application under Section 91 of the Adhiniyam, 1993 before the Additional Commissioner, Gwalior Division, Gwalior. The Additional Commissioner, Gwalior Division, Gwalior by order dated 28/10/2009 has set aside the appointment of the petitioner on the ground that at the relevant time the brother of the petitioner was holding the post of Sarpanch and in view of second proviso to Section 69 of the Adhiniyam, 1993, a person shall not hold a charge of a Secretary or Assistant Secretary of Gram Panchayat, if such a person happens to be relative of any office bearer of the concerned Gram Panchayat and as per the explanation, brother is also a relative within the meaning of second proviso.

5. Challenging the order passed by the Additional Commissioner, it is submitted by the counsel for the petitioner that since the respondent no.6 was holding the post of Up-Sarpanch, Gram Panchayat Bilheti and as the appointment was done by the Gram Panchayat, therefore, he had no authority to file an appeal against the appointment of the petitioner. The respondent no.6 was not the contesting party for his appointment to the post of Panchayat Karmi and even he was not authorized by the Gram Panchayat to file an appeal. To substantiate the submission of maintainability of appeal on the ground of *locus* of the respondent no.6 the counsel for the petitioner has relief upon the judgments passed by the

Keshav Singh vs. The State of M.P. and others

Supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others** reported in (2012) 4 SCC 407, **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and others** reported in (2013) 4 SCC 465, **R.K. Jain Vs. Union of India** reported in (1993) 4 SCC 119, **Subhash Chander Bajaj Vs. Kamal Singh Singhmar and others** reported in (2010) 15 SCC 795 and **Madan Lal v. High Court of Jammu & Kashmir & Ors.** reported in AIR 2014 SC 3434.

6. *Per contra*, it is submitted by the counsel for the State that so far as the maintainability of appeal filed by respondent no.6 is concerned, the respondent no.6 had a *locus* to file the same because the appointment was not made by the Gram Panchayat, but the appointment of the petitioner was made by the Chief Executive Officer, Janpad Panchayat after seeking approval from the Collector on the ground that the Gram Panchayat has failed to make the appointment in spite of the directions given by the Collector under Section 86 (1) of the Adhiniyam, 1993. Thus, it cannot be said that the respondent no.6 was in any manner an instrumentality to the appointment of the petitioner and, therefore, the appeal filed by respondent no.6 was maintainable as it was not contrary to the interest of the Gram Panchayat. It is further submitted that being an office bearer of the Gram Panchayat it was his duty to ensure that the funds of the Gram Panchayat are not misappropriated and the basic purpose for putting an embargo in second proviso to Section 69 of the Adhiniyam, 1993 is to avoid a situation where the two relatives by

Keshav Singh vs. The State of M.P. and others

holding the post of an office bearer as well as Secretary may misappropriate the funds of the Gram Panchayat. It is further submitted by the counsel for the petitioner that under these circumstances, the appeal so filed by respondent no.6 was maintainable and it was not necessary for him to be a candidate to recruitment to the post of Panchayat Secretary. So far as the authorization by the Gram Panchayat is concerned, the appeal was not filed by the respondent no.6 on behalf of Gram Panchayat. The appeal was filed by respondent no.6 in his personal capacity and while giving his description, he has mentioned himself to be the Up-Sarpanch, Gram Panchayat Bilheti. Since the appeal was filed in the personal capacity, therefore, no authorization from Gram Panchayat was required.

7. Heard learned counsel for the parties.

8. Section 69 (1) of the Adhiniyam, 1993 reads as under:-

“69. Appointment of Secretary and Chief Executive Officer.- (1) The State Government or the prescribed authority may appoint a Secretary and one or more Assistant Secretaries for a Gram Panchayat, who shall discharge such functions and perform such duties as may be assigned to them by the State Government or prescribed authority:

Provided that the person holding the charge of a Secretary of Gram Panchayat immediately before the commencement of this Act shall continue to function as such till a Secretary is appointed in accordance with this section.

Provided further that a person shall not hold charge of a Secretary of Gram Panchayat, if such a person happens to be relative of any office-bearer of the concerned Gram Panchayat.

Explanation.- for the purpose of this sub-section the expression "relative" shall mean father,

Keshav Singh vs. The State of M.P. and others

mother, brother, sister, husband, wife, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law.”

9. The basic purpose of second proviso to Section 69 (1) of the Adhiniyam, 1993 is to ensure that the funds of the Gram Panchayat are not misappropriated because of close relation of Panchayat Secretary and the office-bearer of the Gram Panchayat. The another reason for the second proviso to Section 69 (1) of the Adhiniyam is to give free and fair opportunity to participate in the recruitment process because otherwise, the office-bearer would try to give advantage to his relative for his appointment on the post of Panchayat Secretary. Therefore, the second proviso to Section 69 (1) of the Adhiniyam, 1993 is in consonance with Article 16 as well as 14 of the Constitution of India for giving equal opportunity to all the citizens of India in public recruitment as well as to safeguard the funds of the Gram Panchayat. Furthermore, in the present case, the Gram Panchayat had failed to make recruitment to the post of Panchayat Secretary in spite of the directions given by the Collector by order dated 1/8/2006 issued under Section 86(1) of the Adhiniyam, 1993 and, therefore, the appointment of the petitioner was made by the Chief Executive Officer Janpad Panchayat while exercising the power under Section 86 (2) of the Adhiniyam, 1993. Thus, it is clear that the appointment of the petitioner was not made by the Gram Panchayat and the respondent no.6 had never participated in the recruitment process at any stage. Under these circumstances, this Court is of the considered opinion that the respondent no.6 had *locus* to file an appeal challenging

Keshav Singh vs. The State of M.P. and others

the appointment of the petitioner to the post of Panchayat Secretary, Gram Panchayat Bilheti.

10. So far as the question of authorization by the Gram Panchayat is concerned, in the considered opinion of this Court, the authorization was required only when the appeal is filed on behalf of the Gram Panchayat. In the present case, the appeal was filed by respondent no.6 in his personal capacity and while giving his details, he has disclosed that he is the elected Up-Sarpanch of Gram Panchayat, Bilheti. Under these circumstances, this Court is of the considered opinion that for filing an appeal in an individual capacity no authorization by the concerning Gram Panchayat was required.

11. It is next contended by the counsel for the petitioner that the post of Panchayat Secretary and Panchayat Karmi are different. The appointment to the post of Panchayat Secretary is made as per the guidelines issued by the State for the said purpose, whereas the power of Panchayat Secretary are conferred on Panchayat Karmi under Section 69 (1) of the Adhiniyam, 1993. It is submitted that even if a person is de-notified under Section 69 of the Adhiniyam, 1993, but still his appointment to the post of Panchayat Karmi cannot be quashed because in the Panchayat Karmi Scheme, there is no provision that a relative of the office-bearer cannot be appointed as Panchayat Karmi.

12. Considered the submissions made by the counsel for the petitioner.

13. The appointment to the post of Panchayat Karmi is made under Section 70 read with Section 69 of the Adhiniyam, 1993, however,

Keshav Singh vs. The State of M.P. and others

Panchayat Karmi Yojna issued under Section 70 of the Adhiniyam, 1993 has not been notified in the Gazette and it is not a rule. The scheme merely makes reference to Section 70 and Section 69 of the Adhiniyam, 1993, therefore, where the scheme has been framed under Section 70 (1) read with Section 69 (1) of the Adhiniyam, 1993, then it cannot be read in isolation of the provisions of Section 69 (1) of the Adhiniyam, 1993. It is well established principle of law that an executive instruction cannot override the statutory provisions and thus, absence of a provision that the relative of the office-bearer cannot participate in the recruitment process in the Panchayat Karmi Yojna does not mean that any relative of Panchayat Karmi can apply for his appointment to the post of Panchayat Karmi. Furthermore, the powers of Panchayat Secretary are conferred under Section 69 (1) of the Adhiniyam, 1993. Thus, the appointment made under this Section has to be in consonance with the provisions of Section 69 (1) of the Adhiniyam, 1993. Therefore, the contention of the petitioner cannot be accepted that even if the petitioner was de-notified under Section 69 (1) of the Adhiniyam, 1993, still he was entitled to hold the post of Panchayat Karmi and to receive the monthly honorarium of Rs.500/-. Under these circumstances, this Court is of the considered opinion that since the petitioner was the brother of the Sarpanch of the Gram Panchayat, therefore, he was not entitled to be appointed on the post of Panchayat Karmi/Panchayat Secretary and, therefore, the notification issued by the Collector under Section 69 (1) of the Adhiniyam, 1993, thereby conferring the powers of Panchayat Secretary

Keshav Singh vs. The State of M.P. and others

on the petitioner was contrary to the mandatory provisions of second proviso to Section 69 (1) of the Adhiniyam, 1993. Under these circumstances, this Court is of the considered opinion that the Additional Commissioner, Gwalior Division, Gwalior did not commit any mistake in setting aside the order dated 31/7/2007 passed by the Collector.

14. This Court by order dated 24/12/2009 had stayed the operation of the order dated 28/10/2009 passed by the Additional Commissioner, Gwalior Division, Gwalior. It is hereby recalled. The order dated 28/10/2009 passed by the Additional Commissioner, Gwalior Division, Gwalior is hereby affirmed. The respondents are directed to immediately initiate proceedings for filling up the post of Panchayat Secretary afresh in accordance with law.

15. With aforesaid observations and directions, the petition fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

Arun*