

20/12/2016

Shri D.K. Katare, Advocate for the appellant.

Shri Praveen Newaskar Govt. Advocate for respondents no. 1 and

2.

Shri S.K. Sharma, Advocate for respondent no. 5.

1. The instant intra-court appeal assails the final order dated 10.11. 2016 passed in W.P. No. 5823/2006 whereby the petition in question assailing the order dated 3.10. 2006 passed by Commissioner Chambal Division Morena whereby Commissioner interfering in the appeal set aside the order dated 01/11/2004 passed by Collector, Bhind whereby writ appellant/respondent No. 5 herein had been appointed on the post of Panchayat Karmi in Gram Panchayat Badokheri, Lahar, District Bhind, was allowed to the extent of declaring selection process undertaken by the Gram Panchayat pursuant to advertisement dated 15.10. 2004 for appointment to the post of Panchayat Karmi to be unlawful and was setaside remanding the matter to the Collector for affording opportunity of hearing to take action afresh as per the Panchayat Karmi scheme.

2. Learned counsel for the appellant has primarily raised two contentions. The first being that subsequent selection in which the appellant herein was appointed as Panchayatkarmi was not under challenge before the writ court and therefore the quashment of subsequent selection which had culminated into appointment of the appellant herein as Panchayatkarmi was uncalled for by the writ court. The second ground raised is that the appointment of the appellant made pursuant to the selection ought not to have been disturbed after 12 years by the impugned order.

3. Learned counsel for the rival parties are heard.

4. The factual matrix in nut shell is that pursuant to the direction issued by Collector, Bhind and Janpad Panchayat, Lahar, the Sarpanch of Grampanchayat in question issued advertisement on 20.6. 2004 invited applications for filling up the singular post of Panchayatkarmi in the Grampanchayat. The petitioner/respondent no. 5 herein applied alongwith several other applications which were considered by the Grampanchayat

in its meeting held on 12.7. 2004 granting appointment in favour of the petitioner/respondent no. 5 herein resulting in petitioner/respondent no. 5 assuming charge on 14.7. 2014. During subsistence of service of the petitioner/respondent no. 5 herein complaints were received by SDO who on conduction of enquiry submit report to the Collector recommending removal of the petitioner from the post of Panchayatkarmi.

4.1. At this juncture it is pertinent to mention that assailing the enquiry and the report of SDO, W.P. No. 2828/2004 (s) was filed by the petitioner /respondent no. 5, which came to be disposed of finally by order dated 28.2. 2005 (vide P-10) declining interference on merits and relegating the petitioner to prefer an appeal before the competent authority.

4.2. Admittedly the petitioner/respondent no. 5 failed to prefer any appeal pursuant to the aforesaid order of this court passed in W.P. No. 2828/2004.

4.3. Reverting to the report made by the SDO to the Collector recommending removal from the post of Panchayatkarmi, the facts disclose that the Grampanchayat in its meeting dated 24.8. 2004 fresh proceedings for appointment of the same post of Panchayatkarmi on which the petitioner had earlier been appointed, was initiated. In this process the respondent no. 5 in W.P/appellant herein was one of the candidates in whose favour the appointment order was directed to be issued by order dated 14.10. 2004.

4.4. At this juncture the Deputy Director of Panchayats, Bhind canceled the decision of the Gram Panchayat appointing respondent no. 5 in W.P/appellant herein on the post of Panchayatkarmi which led to the Collector, Bhind directing for calling fresh applications. Accordingly, fresh advertisement was issued on 15.10. 2004 inviting application afresh which were considered alongwith earlier applications including that of the petitioner in W.P and the respondent herein. The respondent no. 5 in W.P. (appellant herein) was accordingly appointed as Panchayatkarmi which led to the petitioner/respondent no. 5 herein to directly approach the Commissioner, Revenue Division, Chambal who upheld the order of appointment of respondent no. 5 in W.P/appellant herein interalia finding

that there were complaints in regard to the resolution dated 12.7. 2004 pursuant to which the petitioner was initially appointed as Panchayatkarmi.

4.5. On the basis of the above said undisputed factual matrix attending the case the writ court found that the initial selection process culminating into appointment of petitioner as Panchayakarmi and also the subsequent process of recruitment initiated, were infested with several irregularities. It was held that the SDO, Lahar recommended termination of the petitioner's appointment whereafter fresh process for recruitment began afforded no opportunity to the petitioner while making the recommendations which were adverse to the interest of the petitioner/respondent no. 5 herein. The writ court further noticed that the then Panchayat Secretary and the Sarpanch were hand in glove to somehow ensure the execution of the resolution dated 12.7. 2004 which led to appointment of the petitioner/respondent no. 5 herein at the initial stage. The writ court adverting to the Panchayatkarmi Scheme found that opportunity of hearing contemplated therein as condition precedent for termination of service of Panchayakarmi were afforded to the petitioner\ respondent no. 5 herein. It was further found by the writ court that the procedure contemplated under the Scheme especially the one contained in para '7' therein was not followed while undertaking subsequent selection process. Lastly in regard to the subsequent selction the same was also held to be vitiated by the vice of procedural irregularities for not being in adherence to para 4.2 of the Scheme.

4.6. The writ court therefore found that not only the recruitment process which led to appointment of the petitioner/respondent no. 5 but also the subsequent process of the recruitment to be vitiated by the vice of the material irregularities and illegality. The writ court thus setaside the entire selection process and directed the Collector to commence the process of selection afresh after affording due and sufficient opportunity as contemplated by the Scheme.

5. After hearing learned counsel for the rival parties this Court is of the considered view that no illegality or impropriety or material

irregularities can be found in the findings recorded by the writ court which after rightly marshaling the factual matrix found the entire process of selection to be vitiated in law.

5.1 Merely long lapse of time since the raising of cause and deciding the lis cannot be a ground to dissuade a court of law to render justice which is otherwise due. If this ground is accepted then the result would be disastrous. Any and every lis would be scuttled by unscrupulous litigant by adopting dilatory tactics. Rule of law beckons that justice wherever due ought to be rendered with all its rigors notwithstanding the delay caused in its rendering provided the delay is not attributed to the litigant.

5.2. The other ground of the learned counsel for the appellant that subsequent selection could not have been held unlawful in the absence of any challenge thereto in the petition is further untenable.

5.3. The challenge in this petition was to the order of Commissioner Revenue Division Chambal, dated 13.10.2006 in appeal filed by the respondent No.5 herein and also to the earlier order dated 01.11.2004 of the Collector appointing the appellant herein as Panchayat Karmi. Both these orders assailed in the writ petition were directly related to the earlier and as well as the subsequent selections. More so both the two selections, the one which was made earlier in favour of the petitioner / respondent No.5 herein and the subsequent one which was made against the petitioner were so inextricably interrelated that mere lack of pleadings to assail one of them cannot invalidate the order of the writ Court.

6. Learned counsel for the appellant has not pointed out any ground to enable this court to cause any dent in the findings of the writ court impugned herein which according to the considered opinion of this court are not only in accordance with law but also arrived at by perfectly balancing the equities between the rival parties.

7. Learned counsel for the appellant has relied upon decisions in the case of **Madras Institute of Development Studies and Another v. K. Sivasubramaniyan** reported in **(2016) 1 SCC 454**, **Dhananjay Malik and Ors v. State of Uttaranchal and Ors.** reported in **(2008)**

4 SCC 171 and **State of U.P and Anr. v. Lalsa Ram** reported in **(2001) 3 SCC 389** which in the considered opinion of this court have no relevance to the issue involved herein and therefore are of no avail to the appellant.

8. Consequently present writ appeal stands dismissed without cost.

(Sheel Nagu)
JUDGE
20/12/2016

(S.K. Awasthi)
JUDGE
20/12/2016