THE HIGH COURT OF MADHYA PRADESH
W.P. No. 15111 /2020
Mahesh Prasad Dixit vs. State of MP

Gwalior, Dated :09/10/2020

Shri Vivek Jain, Counsel for the Petitioner

Shri Abhishek Mishra, Panel Lawyer for the State

Heard through Video Conferencing

This petition under Article 226 of the Constitution of India has been filed seeking the following relief (s) :

> A. To quash the impugned order dated 23-9-2020(P/1) and impugned order dated 23-9-2020 (P/2) issued by the respondent no.2 in relation with the petitioner and respondent no. 5.
> B. To allow the petitioner work as a Incharge Chief Municipal Officer at Aantari (Gwalior)
> C. To direct the respndent to treat the petitioner within the ambit of feeder cadre for promotion on the post of CMO as per rule 5 sub rule (1) clause (c) Second Schedule.
> D. To pass any other appropriate order as may be deemed fit, just & expedient in the interest of justice.
> E. To award the cost of the petition.

It is the case of the petitioner, that he was initially appointed as LDC on 18-6-1987 and then promoted to the post of Head Clerk cum Accountant in the Municipal Council and thereafter in the year 2001, he was appointed/posted as Incharge Chief Municipal Officer, and since, then, he is discharging the duties as Incharge C.M.O. However, it is fairly claimed by the petitioner that his substantive post is Head Clerk cum Accountant.

It is the case of the petitioner that by impugned order dated 23-7-2020 (Annexure P/1) he has been directed to work on his

substantive post, and by order dated 23-9-2020 (Annexure P/2), the respondent no. 5 has been posted as Chief Municipal Officer.

It is submitted that in fact the petitioner is in the feeder cadre for promotion to the post of CMO, Class C Municipality and therefore, he has been wrongly directed to work on his substantive post, thus, the impugned order dated 23-9-2020 (Annexure P/1) amounts to his demotion. It is also submitted by the Counsel for the petitioner that the co-ordinate in the case of **Vijay Kumar Sharma Vs. State of M.P. and others** by order dated **30-9-2020** passed in **W.P. No. 14632/2020 (Indore Bench), Order dated 1-10-2020** in **W.P. No. 14689/2020 (Indore Bench), Prabhu Ram Patidar VS. Urban Administration and Development Department and others** by **order dated 1-10-2020** passed in **W.P. No. 14654 of 2020** have granted interim protection. However during the course of arguments, the Counsel for the petitioner, fairly conceded that this Court has already dismissed the identical petitions and he is in possession of the said orders. However, submitted that he would try to satisfy the Court, that the petitioner is in feeder cadre for promotion to the post of CMO, Class C Municipality.

Accordingly, the Counsel for the petitioner was directed to read out the order passed by this Court in the identical petition and to point out as to how the said order is incorrect, so that if required, it

can be referred to larger bench, but Shri Vivek Jain, continuously submitted that since, interim protection has been granted in some of the petitions, therefore, he should also be granted the same protection.

Under these circumstances, this Court is left with no other option, but to consider the case of the petitioner, in the light of the pleadings.

This Court by order dated **1-10-2020** passed in the case of **Sayed Rehan Ali Zaidi Vs. State of M.P.** in **W.P. No. 14624 of 2020** has dismissed the petition.

It is the case of the petitioner, that his substantive post is Head Clerk cum Accountant.

The State has framed **M.P. Municipal Service (Executive) Rules, 1973** (In short Rules, 1973) which were amended in the year 2015. As per Schedule 2 of Rules, 1973 (As amended in the year 2015) the qualification for promotion to the post of CMO, Municipal Council Class C is as under :

> By promotion of Superintendent of Class A Municipal Council, Revenue Inspector and Revenue Sub Insepctor of Class C Municipal Council and employee of the Municipal Council having at least 5 years experience of the respective post.

The Hindi Version of the relevant entry of Schedule 2 of Rules, 1973 reads as under :

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 15111 /2020
Mahesh Prasad Dixit vs. State of MP

> क श्रेणी की नगर पालिका परिषद् के अधीक्षक, ग श्रेणी की नगर पालिका परिषद् के राजस्व निरीक्षकों तथा राजस्व उप निरीक्षकों तथा संबंधित पद का कम से कम 5 वर्ष का अनुभव रखने वाले नगर पालिका परिषद् के कर्मचारियों की पदोन्नती द्वारा

As per Madhya Pradesh Official Language Act, 1957, the official language of State of Madhya Pradesh is Hindi. However, as per Article 348 of Constitution of India, the English Translation published under the authority of the Governor, shall be deemed to be the authoritative text. However, in order to find out the intention of the Legislature, the Hindi and English Version can be looked into. The Division Bench of Uttarakhand High Court in the case of **Shahjahan Baigam Vs. District Magistrate Udham Nagar and others** reported in **AIR 2017 Uttarakhand 200** has held as under :

> **21**. Having thus referred to the various provisions of law, we must consider the effect of any ambiguity, which may exist between the two versions, namely, (i) English language and (ii) any other language, which may be the official language of the State concerned. There can be broadly two situations to our mind. As in the case of Nityanand Sharma (AIR 1996 SC 2306) (supra) and Prabhat Kumar Sharma (2006 AIR SCW 5379) (supra), the original version of a law may be published in the English language. It may be followed by the Hindi version of the same. The second possibility is where the law may be made in the official language of the State concerned, as in the case of State of Uttar Pradesh where Hindi is the official language. A law may be made in Hindi language; it must be followed by an English translation within the meaning of Article 348(3), which is to be treated as authoritative text under Article 348(1). In a case where a law is made in English language and a confusion

> arises on account of the translation found in the Hindi version, quite clearly, dominance would be accorded to the English version. When a law is made, however, in the official language, other than English language as say the Hindi language as in the facts of this case and a discrepancy occurs when the translation takes place, it can give rise to two broad situations again. The first situation would be on account of the inadequacy or ineptitude of the translator, a doubt or ambiguity may be created by virtue of the translation made under Article 348(3) of the Constitution. While, it is true that Article 348(1) declares that the translation published under Article 348(3) will be the authoritative text within the meaning of Article 348(1), as the duty of the Court is to give effect to the intention of the Legislature, every effort must be made to reconcile the differences. An attempt must be made to find out the intention of the law-giver. Both the Hindi version and the English version can be looked into and the Court would be acting within its powers in adopting the version, which best accords with the intention of the Legislature, applying various Rules of interpretation and in particular, the purpose Rule.

Admittedly, neither the petitioner is the Superintendent of Class A Municipal Council, nor Revenue Inspector or Revenue Sub Inspector of Class C Municipal Council, however, the petitioner claims that since, he is an employee of Municipal Council having at least 5 years experience, therefore, he is in feeder cadre for promotion to the post of C.M.O., Class C Municipal Council.

It is well established principle of law that purposeful meaning has to be given to each and every word used in the statute and the Court must adopt the principle of harmonious construction. The Supreme Court in the case of **Union of India v. Alok Kumar,**

reported in **(2010) 5 SCC 349** has held as under :

> **61.** It will be useful to apply the rule of contextual interpretation to the provisions of Rule 9. It would not be permissible to import any meaning or make additions to the plain and simple language of Rule 9(2) in relation to "other authority." The rule of contextual interpretation requires that the court should examine every word of the statute in its context, while keeping in mind the Preamble of the statute, other provisions thereof, pari materia statutes, if any, and the mischief intended to be remedied. Context often provides a key to the meaning of the word and the sense it carries.
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> **62.** It is also a well established and cardinal principle of construction that when the rules and regulations have been framed dealing with different aspects of the service of the employees, the courts would attempt to make a harmonious construction and try to save the provision, not strike it down rendering the provision ineffective. The court would normally adopt an interpretation which is in line with the purpose of such regulations. The rule of contextual interpretation can be purposefully applied to the language of Rule 9(2), particularly to examine the merit in the contentions raised by the respondent before us. The legislative background and the object of both the Rules and the Act is not indicative of any implied bar in appointment of former employees as enquiry officers. These principles are well established and have been reiterated with approval by the courts, reference can usefully be made to the judgments of this Court in *Gudur Kishan Rao* v. *Sutirtha Bhattachaarya*, *Nirmal Chandra Bhattacharjee* v. *Union of India*, *Central Bank of India* v. *State of Kerala*, *Housing Board of Haryana* v. *Employees' Union*.

Further, any interpretation which leads to absurdity should be avoided. A statute must be construed to make it effective and workable.

THE HIGH COURT OF MADHYA PRADESH
W.P. No. 15111 /2020
Mahesh Prasad Dixit vs. State of MP

The Supreme Court in the case of **Oswal Agro Mills Ltd. v. CCE,** reported in **1993 Supp (3) SCC 716** has held as under :

> 5.....The task of interpretation of the statute is not a mechanical one. It is more than mere reading of mathematical formula. It is an attempt to discover the intention of the legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts. It is also idle to expect that the draftsman drafted it with divine prescience and perfect and unequivocal clarity. Therefore, court would endeavour to eschew literal construction if it produces manifest absurdity or unjust result.....

Further, it has to be presumed that each and every word has been inserted by the Legislature with some purpose. The Supreme Court in the case of **Mithilesh Singh Vs. Union of India** reported in **(2003) 3 SCC 309** has held as under :

> 8.....In the interpretation of statutes the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain. The authorities were, therefore, justified in holding that he was guilty of the offence of absence from duty without proper intimation.

In Schedule 2 of Rules, 1973, it has been provided that "**and** employee of the Municipal Council having at least 5 years experience of the **respective post**."

Here the word "and" has been used and not "or". Word "and" is

conjunctive whereas word "or" is disjunctive. According to Lord Halsbury, reading of "or" as "and" is not to be resorted to unless some other part of the same statute or clear intention of it requires that to be done. However, if the literal reading leads to absurde result, only then "and" can be read as "or".

If the qualifications laid down for promotion to the post of CMO, Class C Municipality are considered, then, it is clear that following posts are in the fedeer cadre :

1. Superintendent Class A Municipal Council
2. Revenue Inspector of Class C Municipal Council ; and
3. Revenue Sub-Inspector of Class C Municipal Council ;

   and employee of Municipal Council having atleast 5 years experience of the **respective post.**

Thus, it is clear that Superintendent, Class A Municipal Council, Revenue Inspector and Revenue Sub-Insepctor of Class C Municipal Council having 5 years experience are elgible for promotion to the post of C.M.O. Class C Municipal Council. Further, the use of word "respective", clarifies the intention of the Legislature. The dictionary meaning of word "respective" is "separately or individually and in the order already mentioned". If "and" is read as "or" then it would mean that any employee including a class IV employee of Municipal Council, who has 5 years experience would

become eligible for promotion to the post of CMO, Class C Municipal Council. Thus, the interpretation as suggested by the Petitioner cannot be accepted, because it would not only lead to absurdity but would create difference in Hindi and English version of Schedule 2 of Rules, 1973.

Thus, it is held that only Superintendent, Class A Municipal Council, Revenue Inspector and Revenue Sub-Insepctor of Class C Municipal Council having 5 years experience are eligible for promotion to the post of CMO, Class C Municipal Council and since, the petitioner is not holding any of the above mentioned post, therefore, he is not eligible for promotion to the post of CMO, Class C Municipal Council.

So far as the contention of the petitioner that earlier some Accountants were promoted to the post of CMO is concerned, it is suffice to mention here that the principle of Negative Equality cannot be applied. The Supreme Court in the case of **Union of India v. International Trading Co.,** reported in **(2003) 5 SCC 437** has held as under :

> **13.** What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. It is not necessary to deal with that aspect

> because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality.

Further, the impugned order dated 23-9-2020 has been passed in the light of the directions given by this Court in the case of **Sanjay Soni and others Vs. State of M.P.** reported in **2014 (21) MPLJ 419** which reads as under :

> "11. Now the only question is whether the petitioners could be permitted any longer to continue on the post of Chief Municipal Officer in incharge capacity ? In accordance to the service laws and the well recognized principles, it is clear that an employee is entitled to hold his substantive post on which he is appointed in accordance to the Rules. No employee can claim a posting on a different post dehors the Rules. Even if such an improper order was earlier issued, the said order will not constitute a right in favour of such an employee to claim his posting in such capacity. Such directions cannot be issued as no right to the petitioners is available in such circumstances even in exercise of powers under Article 226 of the Constitution of India by this Court. However, the grievance of the petitioners is also to be noted that

> such an order is issued only in respect of petitioners and in respect of few persons only whereas in the entire State large number of persons are working as Incharge Chief Municipal Officers, though they are not substantively holding the feeder post for their promotion on regular basis as Chief Municipal Officers.
> 12. Keeping in view these submissions and in view of the discussions made herein above, while dismissing the writ petition and vacating the interim stay, it is directed that the State Government will ensure that in all such places where the Chief Municipal Officers are posted in the Municipal Councils and Nagar Panchayats in Incharge capacity, only those would be allowed to continue on the post who are holding substantive posts, which are in feeder cadre for regular promotion on the post of Chief Municipal Officer. All others, who are not substantively holding the feeder post for promotion on the post of Chief Municipal Officer would be sent back to work on their substantive post forthwith."

It is true, that the State Govt, took 7 long years to implement the above mentioned order, but the impugned order dated 29-3-2020 cannot be quashed only on this ground, specifically when no substantive right of any person, who was holding the current charge of the post of CMO but was not in feeder cadre, is violated. The Supreme Court in the case of **State of Haryana Vs. S.M. Sharma,** reported in **AIR 1993 SC 2237** has held as under :

> **"9.** It is only a posting order in respect of two officers. With the posting of Ram Niwas as Executive Engineer Sharma was automatically relieved of the current duty charge (if the post of Executive Engineer. Sharma was neither appointed/promoted/posted as Executive Engineer nor was he ever reverted from the said post. He was only holding current duty charge of

the post of Executive Engineer. The Chief Administrator never promoted Sharma to the post of Executive Engineer and as such the question of his reversion from the said post did not arise. Under the circumstances the controversy whether the powers of the Board to appoint/promote a person to the post of an Executive Engineer were delegated to the chairman or to the chief Administrator. is wholly irrelevant.

10. Sharma was given the current duty charge of the post of Executive Engineer under the orders of the Chief Administrator and the said charge was also withdrawn by the same authority. We have already reproduced above Rule 4(2) of the General Rules and Rule 13 of the Service Rules. We are of the view that the Chief Administrator, in the facts and circumstances of this case. was within his powers to issue the two orders dated June 13. 1991 and January 6, 1992.

11. We are constrained to say that the High Court extended its extraordinary jurisdiction under Article 226 of the Constitution of India to a frivolity. No one has a right to ask for or stick to a current duty charge. The impugned order did not cause any financial loss or prejudice of any kind to Sharma. He had no cause of action whatsoever to invoke the writ jurisdiction of the High Court. It was a patient misuse of the process of the Court "

Since, the substantive rights of the petitioner have not been violated and the petitioner has no right to continue to hold the current charge of the post of CMO, Class C Municipal Council, no infirmity could be found in the impugned order dated 23-9-2020 (Annexure P/1 and P/2).

Accordingly, the petition fails and is hereby **Dismissed.**

G.S. Ahluwalia
Judge