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WP-27645-2018

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 25th OF MARCH, 2025WRIT PETITION No. 27645 of 2018*KISHAWAR SINGH**Versus**LAW AND LEGISLATIVE AFFAIRS DEPARTMENT AND OTHERS*

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Appearance:

Shri Kailash Chandra Yadav - Advocate for the petitioner.

Shri Kushagra Jain - Dy. G.A. for respondent/State.

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ORDER

The petitioner has filed this present petition under Article 226 of the Constitution of India challenging the order dated 20.06.2016 whereby his representation has been rejected by the Collector, Dhar.

FACTS OF THE CASE IN SHORT ARE AS UNDER:-

2. Vide order dated 13.06.2003, the petitioner was appointed against the temporary post of Assistant Grade-3 in District Election Office Dhar by the Collector. The appointment was purely on contractual basis was up to 30.06.2003. Thereafter, the petitioner was appointed vide order dated 04.08.2003 on same terms and conditions from 01.07.2003 to 31.12.2003 by Deputy District Election Officer, Dhar. The petitioner has also filed the copy of order dated 23.04.2014 whereby he was again appointed against the temporary post of Assistant Grade-3 on contractual basis up to 31.10.2014. The petitioner has not filed any document to show that between 31.12.2003



to 23.04.2014 he was appointed to do the election work as Assistant Grade-3 on contract basis.

3. The petitioner approached this Court by way of W.P. No.1382/2015 for claiming regular appointment. Vide order dated 17.06.2015, the writ petition was disposed of by directing respondents to examine the claim of the petitioner in comparison to the claim of other employees who were regularized and other orders and take action for consideration of the claim of the petitioner also. It was also observed that in case petitioner is also identically situated, grant relief to the petitioner or else record reasons for non-grant of benefits. In compliance of the aforesaid order, the Collector Dhar considered the claim of the petitioner and rejected vide impugned order dated 20.06.2016 on the ground that vide circular dated 29.07.1994 only the preference is liable to be given to the surplus employees kept in "B-1" category and there is no such exemption from participating in selection process. Hence this petition before this Court.

4. Learned counsel for the petitioner submits that the similarly placed employees who worked alongwith the petitioner in the election duties have been appointed by the respondents, therefore, the claim of the petitioner has wrongly been rejected by the respondents.

5. Learned Dy. G.A. appearing for respondent/State submits that the respondents have rightly considered the circulars dated 29.11.1973, 10.09.1991, 10.12.1993 and 29.07.1994 which clearly reveals that there is no direction for giving appointment to these type of employees without undergoing any selection process. The State Government has only granted



them a preference in case they participate in the regular selection process.

I have heard learned counsel for the parties and perused the record.

6. In this present case, the petitioner worked in the year 2003 and thereafter in the year 2004 for limited period in election duties as Assistant Grade-3 in the office of District Election Officer. The petitioner claimed the regular appointment by virtue of circular dated 29.11.1973. The circular dated 29.11.1973 provides that the person who are engaged in the election work are to be treated as surplus and they are to be placed in "B" category. Thereafter, another circular dated 10.09.1991 was issued which says that the person engaged in the election work on temporary basis are to be removed on completion of the work and they are to be considered for appointment in "B" category. Thereafter, another circular was issued dated 10.12.1993 provides that the persons who have been given "B-1" category will have to participate in the selection process like any other candidates and they would be given a preference in the matter of appointment. This fact has further been clarified vide circular dated 29.07.1994 that the candidate falling in "B-1" category will have to follow the process of selection.

7. By taking similar view, this Court has dismissed the W.P. No.11135/2022 vide order dated 08.02.2024. Para 6 of the aforesaid order is reproduced below:-

"6.The Collector issued letter dated 07.02.2008 to the petitioner calling upon to submit all necessary documents for appointment to the post of Assistant on contract basis. After due verification of documents, vide order dated 04.04.2008, this petitioner was appointed upto fixed time i.e. 31.05.2008, thereafter his services were terminated after 31.05.2008. The aforesaid appointment was made in compliance of circular dated 23.11.2007 which is filed as Annexure R/1. According to which, sanction has been granted by



Law Department to Chief Election Officer, Madhya Pradesh to appoint various employees on contract basis after due approval from Finance Department for creation of temporary post. The petitioner was appointed only for limited period upto 31.05.2008 and thereafter it was extended vide order dated 08.08.2008 upto 31.11.2008, therefore, he hardly worked only three months and he is claiming regularization without undergoing selection process. Till date no order has been passed by this Court on merit directing respondents to appoint him directly to the post of Assistant Grade-III. Every time order has been passed directing the respondents to decide the representation of the petitioner in accordance with law. The petitioner claiming parity with other employees who have been regularized but they continued for considerable period i.e. from the year 2009 to 2014 but this petitioner had hardly work for three months only that to on contract basis, hence cannot claim parity with the others. The circular dated 14.04.1972 and circular dated 19.09.1991 only recommends for appointment in government service in 'B' Category on preferential basis. Both the circulars nowhere says that employee be appointed directly without undergoing any selection process as per rules. Under circular dated 14.04.1972 surplus employees were kept under 'B' Category & those who worked during Election on temporary basis were classified surplus in 'B' Category by circular dated 19.09.1999".

8. The aforesaid order was challenged by the writ petitioner by way of W.A. No.568/2024 *inter alia* on the ground of parity with similarly placed employees who have been given the appointment. Vide order dated 13.03.2024 the writ appeal has been dismissed on the ground that the petitioner cannot claim negative parity. The Writ Court also placed reliance on the judgment passed by the Apex Court in the case of *Secretary, State of Karnataka and others Vs. Uma Devi and others* reported in (2006) 4 SCC 1.

Paras 15 and 16 are reproduced below:-

"15. In the present case, the appellant is claiming negative equality. It is not to be forgotten that if it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment or claim appointment directly without undergoing any selection process.



16. In Uma Devi (Supra) the Supreme Court has held that the High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the Court, which we have described as "litigious employment" in the earlier part of the judgment, the employee would not be entitled to any right to be absorbed or made permanent in the service".

9. Thereafter, the petitioner- Vaibhav Singh approached the Apex Court by way of an SLP (civil) Diary No.38712/2024. Vide order dated 20.09.2024, the SLP has also been dismissed, therefore, this issue has attained finality. In light of these four circulars i.e. 29.11.1973, 10.09.1991, 10.12.1993 and 29.07.1994, the direct appointment cannot be claimed without undergoing a regular selection process by the persons who worked during the election period in the Office of District Election Officer, they are only entitled for preference in surplus category in case of regular selection process, therefore, the Collector Dhar has not committed any error of law as well as on fact while dismissing the claim of the petitioner.

10. At this stage, no interference is liable to be called for. Accordingly, the Writ Petition stands **dismissed**.

(VIVEK RUSIA)
JUDGE