

**HIGH COURT OF MADHYA PRADESH AT JABALPUR****WA No. 828/2012****Narendra Kumar**

Vs.

**State of Madhya Pradesh****Present : Hon'ble Shri Justice Rajendra Menon, Acting Chief Justice  
Hon'ble Smt. Justice Anjali Palo, Judge**

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Shri R.K.Samaiya, learned counsel for the appellant.

Shri Nitin Karan, learned counsel for respondent no. 4.

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**JUDGEMENT**  
**(05/12/2016)****Per : Smt. Anjali Palo, J :-**

1. This appeal has been filed under Section 2(1) of Madhya Pradesh Uchch Nyayalay (Khandnyaypeeth ko Appeal) Adhiniyam, 2005 arising out of the judgement and order passed in WP No. 15595/2007 dated 27.06.2012, by which the learned writ Court remanded the matter back to Gram Panchayat with a specific direction to re-screen the applications submitted by the candidates pursuant to the selection procedure initiated for appointment on the post of "Panchayat Karmi" and prepare a merit list strictly in order of the merit on the basis of marks obtained in the qualifying examination and to convene a meeting for selection of Panchayat Karmi.

2. It is also directed by the learned Writ Court that the case of appellant and respondent no. 4 both be considered in the said meeting, proper selection of Panchayat Karmi be done and a resolution be passed in this respect and the order of appointment be issued in respect of the selected candidate within a period of six weeks from the date of receipt of certified copy of the order. The Sub-Divisional Officer, Kundam and CEO, Janpad Panchayat concerned were to supervise the selection and appointment of Panchayat Karmi to Gram Panchayat Padhariya Tehsil Kundam, District Jabalpur.

3. Contention of the appellant is that certain applications were invited for appointment of Panchayat Karmi by the Gram Panchayat Padhariya along with requisite documents and experience certificate. The Gram Panchayat passed resolution and decided to grant appointment to the appellant on the post of Panchayat Karmi. In compliance of the said resolution, appointment order was issued in favour of the appellant on 31.08.2007. Respondent 4 made complaint before the SDO against the said resolution. The SDO instead of granting an opportunity of hearing, passed the impugned order and directed that the resolution passed by the Gram Panchayat be suspended and also directed the Sarpanch of the Gram Panchayat to issue an order of appointment in respect of respondent no. 4. The

matter was not referred to the Collector, Jabalpur for approval of the order of suspension as provided under Section 85(2) of the Act.

4. Hence, the appellant filed the appeal on the ground that the SDO can only exercise power under Section 85(1) of the Act subject to rider fixed by Section 85(2) and he has to forward the resolution to the State Government within 10 days which otherwise loses its efficiency but in the present case, the order was not forwarded or referred to the State Government. In view of the law laid down in the case of **Basant Kumar Verma Vs. State of MP [ILR 2009 MP 16]**, it is argued that against the resolution the appeal or revision was not maintainable before the SDO.

5. It is also contended that, uncle of respondent no. 4 was the sitting member of the panchayat, hence respondent no. 4 could not have been selected in the light of prohibition contained in the scheme for appointment. Nobody shall be judge of his own case. For this, reliance has been placed on **Poonamchand Vs. Murti Madanmohanji [2007 (3) MPHT 25]**. Therefore, the appellant has prayed to set aside the impugned order passed by the writ court in WP No. 15592/2007 and has also prayed that appropriate relief be awarded in favour of the appellant.

6. Under Section 69 of MP Panchayat Raj Gram Swaraj Adhiniyam 1993, “uncle” does not come under the definition of relative. Section 69 defines relative to mean a father-mother, brother-sister, husband-wife, son-daughter, father in law – mother in law.

7. That apart there is no prohibition in the rules or the scheme for appointment to show that the candidature of any candidate can be rejected if his close relative uncle was an officer of Gram Panchayat.

8. As per record of the Gram Panchayat for the selection in question, there were six candidates who submitted their applications and marks of respondent no. 4 was higher than the appellant, hence he was appointed and it was for this reason that the SDO directed the Gram Panchayat to issue appointment letter in favour of the respondent no.4.

9. Under Section 85 (1) of the Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993, SDO can suspend the resolution of Gram Panchayat and thereafter refer it to the Collector for approval of the order of suspension as provided under Section 85(2) of the Act. The Collector is required to hear all concerned and then either confirm the order of suspension of the resolution, to revoke or modify the order of suspension of the resolution. Such a reference is required to be

made within a period of 10 days from passing of the order of suspension of the resolution. The SDO had suspended the resolution dated 27.07.2007 as well as appointment of appellant on the post of Panchayat Karmi and same was to be forwarded to the officer nominated by the State Government for this purpose and this exercise was to be done within 10 days.

10. It is stated by learned counsel for the appellant that the resolution passed in his favour cannot be suspended by SDO, remedy available to respondent no. 4 was to challenge the order of appointment of the appellant in appropriate manner before the SDO by filing an appeal under Rule 3 of the appeal rules within the stipulated period. No such appeal was preferred by the respondent no. 4. In this context reliance has been placed on the judgement of **Devidayak Raikwar Vs. State of MP & Ors. [2008 (4) MPLJ 647]** wherein it has been held that the order of appointment of Panchayat Karmi issued by the Sarpanch pursuant to the resolution of the General Body of Gram Panchayat is not appealable. However, the question of appeal under Section 91 of Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhinyam, 1993 is not involved in the present case as the SDO exercised *suo-moto* power under Section 85(1) of the Adhinyam to suspend the resolution.

11. Learned counsel for respondent no. 4 stated that the order passed under Section 85(2) of the MP Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 was confirmed by the Collector, but this order is not produced by the respondents.

12. In view thereof, since the appointment was not on merit but by majority ignoring the merit of others, the learned Writ Court was right in remanding the matter for fresh consideration.

13. The Hon'ble Supreme Court in the case of **Roshan Deen Vs. Preeti Lal [AIR 2002 SC 33]** has observed that the power conferred on the High Court under Articles 226 and 227 of the Constitution of India, is to advance justice and not to thwart it. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

14. The learned writ Court was right in holding that proper selection of Panchayat Karmi be undertaken, cases of appellant

and respondent no. 4 be considered in the meeting and to prepare a merit list strictly in order of merit and then issue the order of appointment in respect of the selected candidates after passing the resolution.

15. Having regard to the aforesaid position of law, in our considered view, no fault can be found in the order of the learned Writ Court, as it has led to setting aside of an unjust appointment, which was made ignoring the merits of the more meritorious candidates.

16. Thus, no case for interference in the order passed by the learned Writ Court is made out. The appeal is therefore dismissed.

**(RAJENDRA MENON)**  
**ACTING CHIEF JUSTICE**

**(SMT. ANJULI PALO)**  
**JUDGE**