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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 15th OF APRIL, 2024

WRIT PETITION No. 8902 of 2013

BETWEEN:-

**KALIKA PRASAD S/O SHRI AGNU PRASAD PATEL, AGED
ABOUT 47 YEARS, VILL. PADKHURI
VIJAYRAGHAVGARH, DISTT. KATNI (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI PRADEEP KUMAR SHARMA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH TH:PRINCIPAL
SECRETARY, PANCHAYAT AND VILL.
DEPARTMENT VALLABH BHAWAN,BHOPAL
(MADHYA PRADESH)**
- 2. ADDL. COMMISSIONER (MADHYA PRADESH)**
- 3. SARPANCH GRAM PANCHAYT PADKHURI BLCOK
AND TAH.VIJAYRAGHAVGARH (MADHYA
PRADESH)**
- 4. SECRETARY GRAM PANCHYAT PADKHURI
BLCOK AND TAH.VIJAYRAGHAVGARH (MADHYA
PRADESH)**
- 5. AMOD KUMAR PATEL S/O HARCHHAT GRAM
PANCHAYAT PADHKHURI (MADHYA PRADESH)**
- 6. SANJAY KUMAR S/O RAGHUNATH PRASAD GRAM
PADKHURI VIJAYRAGHAVGARH (MADHYA
PRADESH)**

.....RESPONDENTS

***(STATE BY SHRI ANKIT AGRAWAL - GOVERNMENT ADVOCATE;
RESPONDENT NO.3 BY SHRI UTTAM MAHESHWARI; RESPONDENT NO.5
BY SHRI SANJAY K. AGRAWAL - ADVOCATE)***

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This petition coming on for admission this day, the court passed the following:

ORDER

This petition is filed being aggrieved of the order dated 11.03.2013 passed by the Additional Commissioner, Jabalpur Division, Jabalpur in Revision Case No.169/A-89/09-10 so also the order passed by the Sub Divisional Officer, Vijayraghavgarh/Barhi, district - Katni in Revenue Case No.6-A - 89 - A -15- 2006-07 dated 30.04.2008, Annexure P-2 and the order passed by the Additional Collector, Katni on 11.01.2010.

Brief facts, leading to the present case, are that an advertisement was issued by the Secretary of Gram Panchayat, Padkhuri on 06.08.2007 signed on 07.08.2007 inviting applications for appointment on the posts of Panchayat Karmi. Petitioner's contention is that selections were to be made on the basis of the merit and not on the basis of a majority resolution in terms of the circular dated 13.08.2007 (Annexure P-4) and, therefore, the appointment of private respondent No.5 on the basis of a majority resolution, as is available in the original record which was initially undated and later on a date is put as 27.08.2007, will not supersede circular dated 13.08.2007.

It is submitted that stipulations contained in the circular issued by the State Government of Madhya Pradesh, Panchayat and Rural Development Department, Mantralaya Bhopal vide No/P.C./Panch - 4/2582 dated 13.08.2007 addressed to all Collectors in regard to filling the posts of Panchayat Karmi, clearly provides that appointments are to be made in accordance with the merit and it is further provided that appointments which were already made, will not be affected by the said circular. Thus, it is submitted that appointment of private respondent No.5 as Panchayat Karmi is illegal and arbitrary.

Shri Sanjay K. Agrawal, learned counsel appearing for the respondent No.5 submits that firstly the petitioner has not challenged the appointment of the respondent No.5. It is settled law, as is held by Division Bench of this High Court in *Sagar Machhua Sahakari Samiti, Seoni v. Chief Executive Officer, Janpad Panchayat, Seoni and another*, 2008 (2) MPLJ 194, that resolution of Gram Panchayat can be challenged in an appeal or revision as per substantive provision of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. It is submitted that since appointment of the respondent No.5 was not challenged before the competent authority, the present petitioner who had intervened before the Sub-Division Officer where the case was filed at the instance of the respondent No.6, having failed to independently challenge the order of appointment of the respondent No.5 or the resolution passed by the Gram Panchayat in favour of the respondent No.5, has no locus to file this petition. Shri Agrawal further submits that Annexure P-4 will not have any retrospective application. It is pointed out that it is not applicable to those appointments which were already made and therefore, process having been started on 06.08.2007, subsequent circular dated 13.08.2007 will not have application to the facts and circumstances of the case.

Shri Ankit Agrawal, learned Government Advocate supports the impugned orders.

Shri Uttam Maheshwari, learned counsel appearing for the respondent No.3 also supports the impugned orders.

After hearing learned counsel for the parties and going through the record, it reveals that the order, Annexure P-2 makes an interesting reading. The first paragraph of Annexure P-2 dated 30.04.2008 passed by concerned Sub-Divisional Officer, Vijayraghavgarh/Barhi makes a clear mention of the fact that

order dated 13.08.2007 was endorsed by the Chief Executive Officer, Janpad Panchayat, Vijayraghavgarh vide letter No.1653/Panchayat/07 dated 20.08.2007 to the Gram Panchayat, Padkhuri. This endorsement is available and is evident from Annexure P-4. Once an endorsement was made to the concerned Gram Panchayat, then the issue will emerge that whether a circular/office memorandum dated 13.08.2007 being clarificatory in nature, will have application to the pending proceedings or as submitted by Shri Sanjay K. Agrawal, it will amount to change of rules of game, after the game is begun.

It is evident that conditions of appointment as are mentioned in Annexure P-4 dated 13.08.2007 are produced in verbatim in the advertisement dated 06.08.2007. This office memorandum dated 13.08.2007 makes a mention of letters written by some Collectors in regard to appointment of Panchayat Karmi (Secretary) giving reference to communication No. 1737/22/Panchayat - 0/P.A/D.C/06 Bhopal dated 27.06.2006. It is mentioned in the opening line of office memorandum dated 13.08.2007 that in some districts, clarification is sought in relation to the words 'Prathmikta' (Preference) and 'Vareeyata' (Seniority). That position is clarified by the State Government in the following terms:

"उक्त संबंध में स्पष्ट किया जाता है, कि जिन ग्राम पंचायतों में अभी भी पंचायतकर्मी के पद रिक्त है उनमें पंचायतकर्मी की नियुक्ति प्राप्त आवेदन पत्रों में से निर्धारित न्यूनतम अर्हताधारी अभ्यर्थी को मेरिट के आधार पर चयन कर नियुक्ति की जावेगी। यह नियुक्ति चाहे ग्राम पंचायत द्वारा की जावे अथवा कलेक्टर द्वारा की जावे, मेरिट का पालन हर स्तर पर किया जावेगा। यह भी स्पष्ट किया जाता है कि जिन ग्राम पंचायतों में पंचायतकर्मी की नियुक्ति हो चुकी है उन प्रकरणों में यह शर्त लागू नहीं होगी। पुनः यह भी स्पष्ट किया जाता है कि भविष्य में होने वाली रिक्तियों की पूर्ति में मेरिट के आधार पर होगी।"

Thus, the clarification reveals that the appointments were to be made in terms of the merit and not in terms of any majority resolution of the Gram Panchayat. It is also mentioned in the concluding paragraph, quoted above, that this clarificatory circular will not be applicable to the cases where appointments were already made. Admittedly, when this circular was issued on 13.08.2007, the appointments in Gram Panchayat, Padkhuri were not made.

Even when the aforesaid circular was endorsed to Gram Panchayat till then on 20.08.2007 the appointments were not made. The appointments were made by passing a resolution on 27.08.2007. Thus, this clarificatory circular was binding on the Gram Panchayat and it could not have acted otherwise. Thus, it cannot be said that the rules of the game have been amended after the game had begun. Rules were clarified in reference to the earlier circular and that clarification was since available to the Gram Panchayat before it passed the resolution, it was obligatory on the part of the Gram Panchayat to have taken into consideration the clarification given by the State Government and, therefore, act of the Gram Panchayat, Padkhuri in passing the resolution and consequent order of appointment are de hors the clarification dated 13.08.2007 which was available to it as is discussed and mentioned by the concerned Sub - Divisional Officer but for some strange reasons, has not been considered in depth on its own merits by the SDO, the Collector and the Additional Commissioner. Therefore, the impugned resolution or the order of appointment of the private respondent No.5, cannot be sustained in the eyes of law having been passed without considering the relative merits. Therefore, the said resolution and impugned orders (Annexures P-1, P-2 and P-3) are hereby quashed because illegality cannot be allowed to be perpetuated only in the name of the technicalities. Concerned Gram Panchayat will prepare a merit list and on

the basis of that merit list, will issue appointment orders in favour of the meritorious candidates.

Accordingly, the petition is allowed and disposed of. Record is given back to the Government Advocate.

(VIVEK AGARWAL)
JUDGE

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