

HIGH COURT OF MADHYA PRADESH,
PRINCIPAL SEAT AT JABALPUR

Case No.	W.P. No.5268/2017
Parties name	Deepak Kalosia and another Vs. State of Madhya Pradesh and others
Date of Order	28/01/2022
Bench Constituted	Single Bench : Justice S.A.Dharmadhikari
Judgment/Order delivered by	Justice S.A.Dharmadhikari
Whether approved for reporting	Yes.
Name of counsels for parties	Shri Atul Nema, Advocate for the petitioners. Shri H.S.Hora, Panel Lawyer for the respondents No.1 to 3/State. Shri Shoeb Hasan Khan, Advocate for the respondent no.4.
Law laid down	The power of regularization vests with the Municipal Council in respect of Class III & class IV employees as per section 94(4) of the Act of 1961, therefore, prior approval is not necessary in respect of class III and IV employees. As such petitioner is entitled for regularization/regular pay-scale.
Significant paragraph numbers	11 and 12.

ORDER
(28.01.2022)

By invoking extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, the petitioners have not assailed any specific order; but, seek a direction to the respondents to regularise/grant regular pay-scale on the post of “Safai Karmchari”.

2. At the outset learned counsel for the petitioners submitted that services of the petitioner no.2 Ashok Verma, who is working on the post of “Tax Moharrir”, has been terminated recently and, therefore, he prayed for withdrawal of the writ petition so far as it relates to the petitioner no.2. Accordingly, the petition stands **dismissed** as withdrawn so far as it relates to the petitioner no.2.

3. Brief facts leading to filing of this case are that the petitioner no.1 was appointed on the post of “Safai Karmchari” after following the due procedure. The respondent no.4 had issued an advertisement dated 25.11.2002 inviting applications for the post of Peon, Tax Moharrir, Pump Operator, Choukidar, “Safai Karmchari” etc. Earlier, the respondent no.4 had passed a resolution in its meeting dated 16.7.2002 and according to the resolution the advertisement was to be issued after due permission from the State Govt. As per the sanction letter issued by the State Govt. dated 20.2.2001 there were four clear vacant posts of “Safai Karmchari”. The petitioner no.1 applied against the clear vacant post and in pursuance to the advertisement dated 25.11.2002 the petitioner was appointed as “Safai Karmchari” on contractual basis vide order dated 25.1.2003 and since then he is continuing to work as “Safai Karmchari” till date. Thereafter, the appointment of the petitioner was extended from time to time with prior approval of the President-in-Council. Looking to the fact that the petitioner has already put in about 18 years of service as “Safai Karmchari”, he made a representation to the competent authority claiming the regularisation as well as regular pay-scale. Vide resolution dated 22.2.2013, annexure P/14, the President-in-council unanimously decided to grant regular pay-scale /regularisation to those employees who were appointed in accordance with the advertisement dated 25.11.2002 against the sanctioned and vacant post. Thereafter, the resolution dated 22.2.2013 for grant of regular pay-scale/regularisation was turned

down by the State Govt. vide letter dated 12.2.2019 on the ground that only those employees are eligible for regularisation who were in service on 10.4.2006 and have completed 10 years of regular service.

4. Learned counsel for the petitioner contended that the petitioner no.1 was appointed purely against the vacant post as indicated in the advertisement dated 25.11.2002 for which a duly constituted select committee was formed. The petitioner was directed to appear before the District Selection Committee and on the decision of the Committee, the petitioner no.1 was appointed on the post of "Safai Karmchari". The petitioner has completed more than 18 years of regular service without there being any break. As such he is entitled for regularisation. Learned counsel for the petitioner further contended that the State Govt. could not have cancelled the resolution passed by the President-in-council inasmuch as there is no need for sanction by the State Govt. for regularisation of class III and class IV employees. He further submitted that the petitioner does not fall within the purview of section 94(5) of the M.P. Municipalities Act, 1961, (hereinafter referred to as 'the 1961 Act'). For the purpose of convenience, section 94 of the Act is reproduced hereinbelow :-

94. Appointment of staff.-(1) Every Council having an annual income of five lacs of rupees or more shall subject to rules framed under Section 95, appoint a Revenue Officer and an Accounts Officer and may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties.

(2) Every Council not falling under sub-section (1) shall, subject to rules framed under section 95, appoints a Sanitary Inspector, a Sub-Engineer, a Revenue Inspector and an Accountant and may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties:

Provided that such Council may appoint a part time Health Officer or an Engineer on such terms and conditions as the State Government may approve in this behalf.

(3) The State Government may-

(i) in case of any Council, relax the provisions of such-section (1) or sub-section (2), as the case may be, subject to such conditions as it may think fit to impose; or

(ii) grant permission to any Council to appoint whether temporarily or otherwise one person to discharge the duties of any two or all such officers.

(4) The appointment of Revenue Officer, Accounts Officer, Sanitary Inspector, Sub-Engineer, Revenue Inspector and Accountant shall be subject to confirmation by the State Government and no such post or the post of any other officer or servant as may be specified by the State Government in this behalf shall be created or abolished and no alteration in the emoluments thereof shall be made without the previous approval of the State Government, and every appointment to, and dismissal from, such post, shall be subject to a like approval.

(5) No order of suspension for a period exceeding one month shall be passed against any officer mentioned in or specified under sub-section (1) and no resignation tendered by any such officer shall be accepted without previous approval of the State Government.

(6) Unless the State Government otherwise directs the power of appointing Municipal officers and servants other than those mentioned in or specified under sub –section (4) shall vest in the President-in-Council.

(7) The State Government may transfer any officer or servant of a Council mentioned in subsections (1) and (2) and in receipt of total emoluments exceeding one hundred rupees to any other Council.

(8) The State Government may prescribe the classes or grades of officers and servants who shall have the right to appeal from any decision of the Chief Municipal Officer the President-in-Council, the prescribed authority or any other authority empowered in this behalf, inflicting any departmental punishment other than censure.

(9) The authority hearing an appeal made under sub-section (8) shall have power to set aside or reduce the punishment against which the appeal is preferred”.

5. The next contention of learned counsel for the petitioner is that as per section 50 of the 1961 Act, the municipal Govt. vests in the counsel, therefore, the decision taken by the President-in-council is final and there is no need to take any approval from the State Govt. to grant regular pay-scale/regularisation. For the purpose of convenience, sections 50 and 81 of the Act are reproduced hereinbelow :-

*“50. **Municipal Government vests in Council.**- (1) Subject to the provisions of this Act and the rules and bye-laws made thereunder, the Municipal Government of a Municipality shall vest in the Council.*

(2) Subject to the restrictions, limitations and conditions imposed by this Act and the rules made there under the executive powers for the purpose of carrying out the provisions of this Act shall vest in the Chief Municipal Officer”.

*“81. **Proceedings of meeting to be deemed to be good and valid.**- Until the contrary is proved-*

(i) every meeting of the Council or any of its Committees shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified, when the minutes of the meeting have been signed in accordance with the provisions of this Act; and

(ii) where the meeting is a meeting of the President-in-Council such Committee shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

6. The third contention is that as per the M.P. Nagar Palika Karmchari Recruitment and Condition of Service Rules, 1968, (hereinafter referred to as ‘the 1968 Rules’), there is no provision

of contractual appointment. Despite that the advertisement was issued, applications were invited, procedure followed and the petitioner was appointed as “Safai Karmchari”. He has already put in 18 years of regular service; but, in spite of resolution passed by the President-in-Council, the claim of the petitioner is not being considered for regularisation. He further contended that the respondent no.4 from time to time had taken a decision to enhance the emoluments of the petitioner. In the appointment order dated 25.1.2003 as well, it is clear that the order has been issued with the approval of the President-in-Council dated 22.1.2003. In view of the aforesaid it cannot be said that the petitioner was appointed through backdoor entry or his appointment was illegal or irregular. Even in the case of **Secretary, State of Karnataka Vs. Uma Devi and others, (2006)4 SCC 1**, it is held that persons who have been appointed on regular basis after following the due procedure and having rendered more than 10 years of regular service are entitled for regularisation.

7. Even as per the sanction of the State Govt., the expenditure bill of the Municipal Council, respondent no.4 is below 65%, therefore, if service of the petitioner is regularised then no financial burden would be caused to the respondent no.4. In identical situation, one Shankar Battu Barkade has been granted regularisation who was appointed on the same date, i.e. 25.1.2003 on the post of “Safai Karmchari”, therefore, the respondents cannot discriminate in the matter of regularisation. Moreover, second resolution was passed by the President-in-council on 7.6.2018 to grant the benefit of regular pay-scale /regularisation to those who have been appointed against clear vacancies and the selection was made through the District Selection Committee, thereafter, approved by the President-in-council. In view of the

aforesaid grounds, the petitioner no.1 seeks regularisation / regular pay-scale on the post of “Safai Karmchari”.

8. Per contra, learned counsel for respondents no.1 to 4 opposed the prayer and submitted that there is no illegality or infirmity committed by the respondents in not regularising the service of the petitioner. The petitioner is not entitled to claim regularisation in the light of provisions contained in section 50 of the Act as well as having not completed 10 years of service as on 10.4.2006, the cutoff date prescribed in the case of Uma Devi (supra). Learned counsel for the State further submitted that according to section 323 of the 1961 Act, the power vests with the State Govt. to suspend execution of order etc. of the President-in-Council. Section 323 is reproduced below :-

323. Power to suspend execution of orders, etc., of Council-

(1) If in the opinion of the Divisional Commissioner, the Collector, or any other officer authorized by the State Government in this behalf, the execution of any order or resolution of a Council, or of any of its Committee or any other authority or officer subordinate thereto, or the doing of any act which is about to be done or is being done by or on behalf of the Council, is not in conformity with law or with the rules or bye-laws made there under and is detrimental to the interests of the Council or the public or is causing or is likely to cause injury or annoyance to public or any class or body of persons or is likely to lead to a breach of the peace, he may, by order or prohibit the doing of any such act.

(2) When any order under sub-section (1) is passed the authority making the order, shall forthwith forward to the State Government and to the Council affected thereby a copy of the order with a statement of reasons for making it; and it shall be in the discretion of the State Government to rescind the order, or to direct that it shall continue in force with or without modification, permanently or for such period as it thinks fit:

Provided that the order shall not be revised, modified or confirmed by the State Government without giving the Council reasonable opportunity of showing cause against the order.

9. In view of the aforesaid, the respondents passed an order dated 12.2.2019 (Annexure R/5) rejecting the resolution of the President-in-Council and the claim of the petitioner. No case is made out warranting interference by this court in exercise of extraordinary jurisdiction. The instant petition being devoid of merit and substance deserves to be dismissed.

10. Heard learned counsel for the parties and perused the record.

11. On perusal of section 94(5) of the Act of 1961, admittedly the power of appointing Municipal Officers, Revenue Inspector, Office Superintendent and Accountant shall be subject to confirmation by the State Govt. meaning thereby no sanction for appointment on the post of class III and class IV employees is necessary. Admittedly, the petitioner is a class IV employee. Therefore, the President-in-Council is vested with the power of appointment, etc. of class IV employee. The case of the petitioner does not come within the purview of section 94(5), but fall under section under section 94(4) of the Act of 1961. Further, as per section 50 of the Act, the Municipal Govt. vests in the Council, therefore, the decision taken by the President-in-council is final and there is no need to take any approval from the State Govt. As such the President-in-Council is the authority to take a decision to grant regular pay-scale/regularisation to the petitioner. As per the 1968 Rules, there is no provision for contractual appointment. Admittedly, the petitioner no.1 was appointed after following the due procedure. He has already put in 18 years of regular service without any break and still continuing as "Safai Karmchari".

12. In view of the foregoing discussion, it is clear that the State Govt. has no power to cancel the resolution dated 22.3.2013 of the President-in-Council vide order dated 12.2.2019 (annexure R/5). Accordingly, the order dated 12.2.2019 is hereby set aside. The respondent no.4 is directed to regularise/grant regular pay-scale to the petitioner in accordance with the resolution passed by the President-in-council dated 22.2.2013, annexure P/14, as well as resolution dated 7.6.2018 with effect from 22.2.2013, and grant all consequential benefits flowing out of regularisation as expeditiously as possible preferably within a period of three months from the date of receipt of certified copy of the order.

13. Petition stands **allowed** to the extent indicated hereinabove. No order as to cost.

14. It is made clear that this order shall be applicable in respect of petitioner no.1 Shri Deepak Kalosia only.

(S.A.DHARMADHIKARI)
JUDGE

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