



IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,  
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 15<sup>th</sup> OF APRIL, 2025

WRIT APPEAL No. 2459 of 2024

*MUNICIPAL COUNCIL NEPANAGAR*

*Versus*

*VIJAY SINGH AND OTHERS*

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Appearance:

Shri Kamlesh Mandloi, Advocate appears through VC with Shri Naval Kumar Gupta, Advocate for appellant.

Shri Anshuman Singh, Advocate for respondent No.1.

Shri Anubhav Jain, Government Advocate for State.  
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ORDER

*Per. Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice*

Aggrieved by order dated 16.05.2025<sup>4</sup> passed by learned Single Judge in W.P. No. 1184 of 2009 whereby the writ petition filed by the writ petitioner has been allowed directing the appellant to consider the claim of the respondent No.1, the appellant is in appeal.

2. The present appeal has been filed on the ground that the case of the respondent No. 1 was not considered in the light of judgment in the case of Uma Devi and the order in Contempt petition no.1273/2005 dated 17/06/2006 directing the appellant to consider the case of the



respondent no.1 for regularization after giving him an opportunity of hearing. However, on account of one criminal case which was registered by the State Economic Offence Wing in case no. 92/96 and Lokayukt case no. 67/2001, due to certain irregularities in procuring building material and other procurements and on account of this the services of respondent no.1 was terminated on 04/02/2006.

3. Counsel for appellant submits that the judgment referred in case of Deepak Kalosia & Anr. Vs. State of M.P. & Ors (W.P. No. 5268 of 2017) referred by the Writ Court wherein paragraph 11 of the said judgment has been reproduced referring to the Section 94(5) of the Act, 1961. The said judgment is distinguishable on facts and law of the present case. Since, the Writ Court as observed in para 8 referring to amended provision in the Act, 1961 and held that for regularization of services of Sub-Engineer the approval of State Government is not required, the provision under section 94(3) of the amended Act, 1961 has not been considered in its entirety, as the case of Deepak Kalosia was under the purview of President-in-Council in terms of section 94(5) and no others, therefore the judgment of Deepak Kalosia has no applicability in the present case.

4. *Section 94 of the amended Section is reproduced as under:*

*"94. Appointment of staff.-(1) Every Council shall, subject to rules framed under Section 95 and in addition to the appointment of members of the Municipal Services of the State under sub-section(1) of section 86, appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties, as per the norms specified from time to time by the State Government.*

*(2) A Council may appoint a temporary Health Officer on such terms and conditions as the State Government may approve in this behalf.*

*(3) The appointment of Revenue Officer, Revenue Inspector,*



*Office Superintendent 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 prior approval of the State Government, and every appointment to and dismissal from such post, shall be subject to a like approval.*

*(4) No order of suspension for a period exceeding one month shall be passed against any officer mentioned in or specified under sub-section (3) and no resignation tendered by any such officer shall be accepted without prior approval of the State Government.*

*(5) Unless the State Government otherwise directs, the power of appointing Municipal Officers \_and servants other than those mentioned in or specified under sub-section (3), shall vest in the President-in-Council.*

*(6) The State Government may transfer any officer or servant of a Council mentioned in sub-section (1) and (2) to any other Council of same category.*

*(7) The State Government may prescribe the classes or grades of officer 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.*

*(8) The authority hearing an appeal made under sub-section (7) shall have power to set aside or reduce the punishment against which the appeal is preferred.*

*(9) The President-in-Council may, with prior permission of the State Government, appoint subject specialists and personnel on contract for specified period and the manner and terms and conditions of appointment of such specialists and personnel on contract shall be such as may be prescribed by the State Government."*

(5) It is stated by the learned counsel for appellant that the said amendment in the provisions of the Act, 1961, the State Government in exercise of the powers conferred by sub-section (1) and sub-clause (a) and (b) of clause (iv) of sub-section (2) of section 355 read with sub-section (1) of section 86 of the Madhya Pradesh Municipalities Act, 1961 made rules called as "Madhya Pradesh State of Urban Engineering Service (Recruitment and Conditions of Service) Rules, 2015" whereby after the commencement



of the said rules, the Urban Engineering services are governed by the Rules, 2015.

(6) Counsel for the appellant further submits that it is important to refer to the definition of “Appointing Authority” and “Service” given under Rule 2(b) & (n) respectively, for ready reference the same is reproduced below:-

*Section 2(b) “Appointing Authority” in respect of service or post means the Government or competent authority;*

*Section 2(n) “Service” means the State Urban Engineering Service;*

(7) He submits that the services of respondent no.1 are governed under the State Engineering service and Municipal Council is not empowered to regularize the services of respondent no.1 as the section 94 of the Act, 1961 must be read conjointly with the Rules, 2015, particularly Rule 4 and Rule 6 that provide for conditions of the service and Method of recruitment respectively. In case of respondent no. 1 Rule 4 sub-rule (ii) and Rule 6 sub-rule(4) would apply which prescribes that in case exigencies of the services so require, the Appointing Authority may, after obtaining prior concurrence of the General Administration Department, adopt such method of recruitment to the service other than those specified in the said sub-rule. Thus, the present appeal deserves to be allowed and the order passed by the writ court is to be set aside.

(8) It is not in dispute that appellant/respondent No. 4 in the writ petition had passed resolution on several occasions recommending regularization of the writ petitioner but at the relevant point of time they were not the sole authority to take decision about regularization of employees of



the Municipal Council and as such, they forwarded the same to the State Government for its confirmation vide order dated 07.08.2006, the representation of the petitioner for regularizing his services has been rejected by the Commissioner, Urban Administration and Development Department.

(9) The writ petitioner on earlier occasion, filed petition being W.P. No. 3902 of 2007 and the same was allowed to the extent that the order of de-regularization was set aside with a direction to the respondents to consider the matter afresh. A review petition was also filed i.e. MCC No.3283/2003 by the Municipal Council which was disposed of vide order dated 29.10.2003 but the order passed in the writ petition was not disturbed and modified.

(10) It was stated before the writ court that the writ petitioner in pursuance to the direction submitted a representation to the Chief Municipal Officer and fresh resolution was passed in favour of the writ petitioner for regularizing his services with all benefits and that resolution was forwarded for seeking confirmation with the State Government. The Dy. Director to Commissioner recommended approval of the regularization of the petitioner and the petitioner was further regularized and the matter was sent to the State Government for its approval but State Government rejected the regularization of the petitioner although no reason was assigned for rejecting his claim. Consequently, the contempt Petition No. 1039/2004 was filed by the petitioner which was disposed of directing the respondents to pass a fresh order. Although, in the meantime, services of the writ petitioner were terminated from the post of Sub-Engineer on account of his alleged



involvement in one criminal case i.e. Criminal Case No.92/96 and the recommendation made by Chief Municipal Officer for regularizing his services was also rejected. The petitioner also made a representation for reinstatement in service and for recalling the order dated 04.02.2006 but the Commissioner, Urban Administration and Development Department passed an order reinstating the writ petitioner as a daily wager but no regularization was ordered.

(11) The writ court observed that in pursuance to the order passed by the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka Vs. Uma Devi and others (2006) 4 SCC 1** as also in view of the circular issued by the State Government for regularizing the services of daily wagers, the writ petitioner submitted a representation and requested the Municipal Council, Nepa Nagar, Burhanpur to consider his claim for regularization. It is also mentioned in the petition that the Urban Administration and Development Department has introduced a new set-up in which technical posts were also sanctioned even in the Municipal Council where the writ petitioner was posted. Against those sanctioned posts, new incumbents i.e. respondent Nos. 5 and 6 have been given appointment but petitioner was not regularized.

(12) It is not in dispute that the claim of the writ petitioner was considered by the Scrutiny Committee for regularization and his name was further recommended but the respondent/State rejecting the recommendation for regularizing the services of the petitioner had not granted any confirmation to that proposal. However, it was submitted that in a petition



i.e. W.P. No.5268/2017 decided by order dated 28.01.2022 (Deepak Kalosia and another Vs. State of M.P. and Others), the Co-ordinate Bench of this Court has decided that approval from the State Government is not required and observed in paragraph 11 as under:-

*"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 Government meaning thereby no sanction for appointment on the post of class III and class IV employees is necessary. Admittedly, the petitioner is class IV employee. Therefore, the President -in-councils 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 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"."*

13. Depending upon the amendment made in the provision whereby only certain categories of posts if are to be regularized then approval from the State Government is necessary. The amended provision in the Act, 1961 now does not require to seek any approval in respect of regularization of regularization of services of Sub-Engineer. As per the amended provision i.e. Section 94(3) of the Act, 1961, such approval of the State Government for the post of Sub- Engineer is not required. Since in view of the observation made by the High Court, the writ petitioner who is holding the post of Sub-Engineer as a daily wager can be regularized by the authority without taking



the approval of the State.

14. In view of the above, we do not find any infirmity or illegality in the order passed by the writ court directing the appellant to consider the claim of writ petitioner for regularization without referring the same to State Government for confirmation and to take note of its' earlier recommendation in favour of regularization of writ petitioner. We hereby affirm the same. The writ appeal being devoid of substance and merit is accordingly dismissed.

15. The concerned authority is directed to comply with the order passed by the writ court within four weeks from the date of receipt of copy of this order.

**(SURESH KUMAR KAIT)**  
**CHIEF JUSTICE**

**(VIVEK JAIN)**  
**JUDGE**

MSP