

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SANJAY DWIVEDI
ON THE OF APRIL, 2025
WRIT PETITION No. 13195 of 2024
SANJAY KUMAR ANDHWAN
Versus
STATE OF M.P. AND OTHERS

Appearance:

Shri Manoj Sharma – Senior Advocate with Ms. Lavanya Verma – Advocate for the petitioner.

Shri Girish Kekre – Government Advocate for the respondent Nos.1 and 2/State.

Shri Shashank Shekhar – Senior Advocate with Shri Samresh Katare – Advocate for the respondent No.3.

Heard on : 25.03.2025

Pronounced on : 21.04.2025

ORDER

Pleadings are complete. With the consent of counsel for the parties, matter is finally heard.

2. This petition is under Article 226 of the Constitution of India questioning the validity of order dated 15.03.2024 (Annexure P/1) whereby the respondent no.3 has been granted contract appointment for a period of one year to the post of Engineer-in-Chief, Public Health Department from the date of his

retirement i.e. 31.05.2024.

3. Shri Manoj Sharma, learned senior counsel appearing for the petitioner has challenged the order of appointment mainly on the ground that the impugned order is arbitrary, illegal and in violation of fundamental right of the petitioner and also on the ground that other similarly situated persons who are senior most regular officers in the Department can be given the charge of the post of Engineer-in-Chief instead of respondent No.3 who is already retired from service. As per learned senior counsel, the petitioner is the senior regular Chief Engineer with the requisite qualification for promotion and instead of taking services of a retired employee when DPC is not being convened for considering the case of promotion, the petitioner can be given the charge instead of giving the charge of the said post to respondent No.3 who is already superannuated. Shri Sharma has relied upon a decision passed by the Division Bench of this Court recently in case of **Josh Singh Kusre and another Vs. State of M.P. and Others (W.A. No.1445/2024)** decided vide judgment dated 20.11.2024 and submitted that in the light of the same, the impugned order can be quashed.

4. On the other hand, counsel for the respondents have opposed the submissions made by learned counsel for the petitioner and submitted that there is nothing wrong committed by the respondents in issuing the impugned order appointing respondent No.3 on contract basis on the post of Engineer-in-Chief. They have submitted that the judgment passed by this Court in case of **Josh Singh Kusre** (supra) is not applicable in the facts and circumstances of the case in hand. They have further submitted that the submission made by learned senior counsel for the petitioner is based upon the judgment passed by the Division Bench, on the contrary respondents' counsel have tried to distinguish the case of the Division Bench saying that facts of the said case are not similar to that of the case in hand and, therefore, the analogy applied by the Division Bench cannot be applied in the

present case.

5. Considering the submissions made by counsel for the parties and on perusal of record especially the judgment passed by the Division Bench in case of **Josh Singh Kusre** (supra), this Court is of the opinion that the case on which learned senior counsel for the petitioner is relying upon is a case of giving contractual appointment to the post of Superintending Engineer on contract basis but thereafter a person appointed on contract basis to the post of Superintending Engineer has been given additional charge of Chief Engineer and then of Engineer-in-Chief. It is argued before the Court that a person who was not in the feeder cadre of the post of which he is holding the additional charge, cannot be given such a charge and as such, it is illegal whereas according to counsel for the respondents, the present case is not similar to the case on which counsel for the petitioner is relying upon. The observation made by the Division Bench in paragraph 29 of the order reads as under:-

‘29. In the present case, the State has given current charge of promotional post to a person who is not in the feeder cadre being contractual appointee on a specific lower post with a provision in the terms of appointment Order and in the Rules to be given charge of any other “equivalent” post. The Rule making authority was conscious of this position that a contractual appointee is not a member of the cadre and is not a member of service. He is not in a promotion channel to the higher post and therefore, no provision for giving current charge of higher post has been carved in the Rules and only a provision for being considered for equivalent post either by way of additional charge or by way of transfer has been created by Rule 15(4) of the Rules of 2017. The State authorities in the present case have misinterpreted and overlooked their very own Rules.’

6. According to Shri Shashank Shekhar, learned senior counsel and Shri Girish Kekre, learned Government Advocate appearing for the respondents, it is not a case in which respondent No.3 was not a member of feeder cadre of the post of Engineer-in-Chief. According to them, the feeder cadre of Engineer-in-Chief is the post of Chief Engineer and undisputably, the respondent No.3 retired from the post of Chief Engineer and at the time of retirement, he was holding the additional

charge of Engineer-in-Chief which can be ascertained from the impugned order itself and, therefore, if after retirement he was appointed on the post of Engineer-in-Chief on contract basis, nothing illegal has been committed and, therefore, petitioner's claim is absolutely unfounded and misconceived. According to them, the case which has been decided by the Division Bench is relating to a person appointed on contract basis to the post from which he retired but later on he was given additional charge to the post for which he was even not in the feeder cadre and as such, that appointment and additional charge of the post which is steps away for the employee appointed on contract basis was contrary to law. The Division Bench while concluding the judgment has observed as under:-

‘30. It was vehemently argued by learned counsel for the respondents that the contractual appointment could have been given on promotional post. However, for the reasons best known to the Department, the Department gave him contractual appointment on the post of Superintending Engineer and by a blatant colourable exercise of powers, given him current charge of the promotional post though he is not a member of the feeder cadre being not a regular employee in the cadre.’

7. Here in this case, when the respondent No.3 was already holding the additional charge of Engineer-in-Chief and undisputably, the DPC was not being convened then the right of the petitioner to hold the post of Engineer-in-Chief in any manner does not violate any legitimate expectation because he was already working on the post of feeder cadre and was also a member of service.

8. As per the respondents, it is not a case in which the respondent No.3 has been given the charge to the post for which he was not otherwise eligible and was not working but here in this case the respondent No.3 was already working and after retirement for a period of one year, he was allowed to continue to hold the charge of the said post.

9. As far as opinion of this Court is concerned, undisputably, the facts of the case which have been decided by the Division Bench and that of the case which is in hand, are altogether different and the case of the respondent no.3 is at a

different footing as compared to the case of the petitioner which was before the Division Bench. However, at the same time, it is to be considered whether the appointment of respondent No.3 was contrary to the rules, i.e. known as “Madhya Pradesh Contractual Appointment to Civil Post Rules, 2017”. The Division Bench, in my opinion has considered the fact that a person appointed on contract basis on a particular post cannot be given the additional charge of the higher post than that of the post on which he has been appointed. Thus, in my opinion, the case of the Division Bench on which reliance has been placed, is not applicable in the present case. The Division Bench has basically considered the provision of Rule 15(4) of Rules, 2017. For the purpose of convenience and to resolve the issue involved, the amended provision i.e. Rule 15(4) is reproduced herein below:-

‘(4) During the contract appointment of retired government servants, he/they may be transferred to equivalent post in other offices and he/they may also be given additional responsibility in addition to the work of contract post which shall be mandatory for him/them to accept.’

10. Thus, in the facts and circumstances of the case, in my opinion, the respondent No.3 was earlier holding the additional charge of the post of Engineer-in-Chief which is the feeder cadre of the post and has not been given any additional charge of any higher post, the appointment cannot be said to be quashed only on the ground that petitioner was also in the channel of promotion to the post of Engineer-in-Chief and instead of giving appointment to respondent No.3, it should have been given to the petitioner. As has already been held that the State is empowered to make contract appointment and considering the factual circumstances when DPC is not being convened and there is no Engineer-in-Chief available in the Department and there is only one post of Engineer-in-Chief in the Department, it is not required to give the charge of the said post to a person who is regularly holding the substantive post of feeder cadre, i.e. Chief Engineer. Even otherwise, looking to the facts and circumstances when appointment of respondent

No.3 was only on contract basis that too for a period of one year started with effect from 01.06.2024, I am of the opinion that the State Government may consider it as to whether appointment of the respondent No.3 has to be maintained or some regular appointment has to be made on the post of Engineer-in-Chief. In fact, any such temporary arrangement on a higher post is deprecated and the State is under obligation to make appointment on substantive basis so as to avoid this type of controversy. In the present case, this Court is of the opinion that the case of the petitioner cannot be equated with that of the case decided by the Division Bench and, therefore, I am disposing of this petition directing the State Government to take appropriate decision as to whether additional charge of the post of Engineer-in-Chief should be given to a person holding the regular post of Chief Engineer or it is appropriate to give charge of the post of Chief Engineer to a person regularly holding the post of feeder cadre. Moreover, it is expected from the State to convene a DPC and to make regular appointment to the post of Engineer-in-Chief.

11. With the aforesaid, the petition stands **disposed of**.

(SANJAY DWIVEDI)
JUDGE