

Basant Kumar Vishwakarma Vs. the State of M.P. and anr.

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Court : Madhya Pradesh

Decided On : Oct-29-2012

Appellant : Basant Kumar Vishwakarma

Respondent : The State of M.P. and anr.

Judgement :

Basant Kumar Vishwakarma versus State of MP and otheRs.29.10.2012.

Shri P.R.Bhave, Senior Advocate, with Shri Bhanu Pratap Yadav for the petitioner.

Shri B.P.Tiwari, Panel Lawyer, for the State.

Shri V.K.Shukla for respondent Nos.3 to 5.

Interalia contending that petitioner has not been granted absorption or appointment in the department and further contending that private respondents 3 to 5 have been absorbed vide Annexure P/1 dated 6.2.1999, petitioner has filed this writ petition.

Petitioner and various other persons were posted as Section Writers on temporary and adhoc basis vide order-dated 19.11.1993.

Petitioner continued to work on the said post when vide Annexures P/1 and P/2, various persons like respondents 3 to 5 have been granted regular appointment in the department whereas petitioner has been discriminated upon and no

appointment has been granted to him.

Accordingly, claiming similar benefit as has been granted to private respondents, petitioner has filed this writ petition with a prayer that a mandamus be issued, directing appointment of the petitioner as Assistant Grade III, as has been done in the case of private respondents.

In paragraph 5.7 of the writ petition, the following specific averments are made with regard to the challenge made to appointment of respondents 3 to 5: 5.7 As the petitioner is praying for parity in the matter of appointment as Assistant Grade-III and not for quashing the impugned order - Annexure P/1, above- 2 Basant Kumar Vishwakarma versus State of MP and otheRs.referred two persons have not been impleaded in the array of the respondents.

Shri P.R.Bhave, learned Senior Advocate appearing for the petitioner, submits that petitioner and respondents 3 to 5 were appointed together as Section Writers on temporary basis, but not a different treatment is granted to the private respondents, they have been regularly appointed as Assistant Grade III whereas similar benefit is denied to the petitioner.

Contending that the petitioner is also entitled to be appointed as Assistant Grade III and the act of the respondents in not appointing the petitioner is unsustainable, this writ petition has been filed.

On notice being issued, respondents have filed reply and it is stated by the respondents that after the appointments were made in the year 1993 and when the temporary work was over, the services of the employees came to an end.

Thereafter, in the year 1995 again certain temporary vacancies were created for election work and, therefore, an advertisement was issued for filling up these vacancies.

The petitioner appeared alongwith various other candidates in pursuance to the advertisement issued, selection process and interviews were conducted and in the said selection process only Shri Kuldeep Parasher was appointed.

The petitioner participated in the process of selection, but he failed and, therefore, he was not appointed.

Again in the year 1998, vacancies arose in the post of Peon and, therefore, respondents Kamlesh Prasad Badgaiyan and Krishna 3 Basant Kumar Vishwakarma versus State of MP and otheRs.Kumar Tiwari submitted their application for appointment on the post of Peon.

Petitioner did not submit any application, did not participate in the selection and vide Annexure R/3, private respondents Kamlesh Prasad Badgaiyan and Krishna Kumar Tiwari were appointed as Peon.

It is stated that at that point of time petitioner did not submit any application for appointment as Peon but sought his appointment on the post of Assistant Grade III, and as no post of Assistant Grade III was available, his case was not considered.

After working for about two years as Peon, Kamlesh Prasad Badgaiyan and Krishna Kumar Tiwari were absorbed as Assistant Grade III on the vacant post that was created in the year 1999, but as the petitioner was not working in the department at that point of time, it is stated that the petitioner was not granted any benefit.

In paragraph 4 of the return filed by the State Government, it is indicated that in the year 1999 when certain staff like Kamlesh Prasad Badgaiyan, Krishna Kumar Tiwari and Kuldeep Parasher were declared as surplus, they were granted absorption in other vacant posts available after following a due process, but at that point of time petitioners case could not be considered as he was not working in the department and as his services were already brought to an end.

It is stated that private respondents participated in the process of selection for appointment on the post of Peon, they were selected, petitioner did not participate and as the private respondents were already working as Peon and as they were declared surplus, they were further granted appointment after proper selection as Assistant Grade III in connection with the 4 Basant Kumar Vishwakarma versus

State of MP and others. election duty and accordingly respondents have explained the matter by pointing out the circumstances under which the private respondents were appointed.

From the aforesaid averments made by the respondents in the return and the facts that have come on record, it is clear that petitioner cannot compare his case with private respondents 3 to 5, for the simple reason that they participated in the process of selection for appointment on the post of Peon and at that point of time petitioner did not submit his candidature and did not participate in the process of selection.

Now, even if the absorption of respondents 3 to 5 on the post of Assistant Grade III is not correct, but in view of the specific averment made by the petitioner in paragraph 5.7 to the effect that he is not challenging their appointment or absorption on the post of Assistant Grade III, their absorption on the post even if it is found to be illegal, cannot be interfered with for the simple reason that petitioner has no grievance with regard to their absorption or appointment as Assistant Grade III.

However, the only grievance of the petitioner is that he has been discriminated and similar benefit is denied to him.

The question of discrimination does not arise for the simple reason respondents 3 to 5 were already working as Peon in the department, they were appointed as Peon after facing a selection process in the year 1998 and as at that point of time petitioner did not participate in the process of selection, he cannot make a complaint about discrimination.

The case of the petitioner and that of respondents 3 to 5 are entirely different 5 Basant Kumar Vishwakarma versus State of MP and others. and, therefore, as the cases of the employees are different, there is no question of any discrimination.

Accordingly, finding no case made out for any interference on the grounds of discrimination as canvassed, this writ petition is dismissed.

(RAJENDRA MENON) JUDGE AKS/-

