

Devendra Pratap Singh Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Oct-09-2012

Appellant : Devendra Pratap Singh

Respondent : The State of Madhya Pradesh

Judgement :

1 Writ Appeal No.332 o

09. 10/2012 Shri R.K.Verma, Advocate for the appellant.

Shri Jaideep Singh, Deputy Government Advocate for the State.

Shri Abhay Raj Singh Chouhan, Advocate for respondent no.6.

This appeal is directed against an order dated 06/03/2012 passed in Writ Petition No.8924/2009(S).by which a writ petition preferred by the respondent was allowed and the orders passed by the Sub-Divisional Officer, Collector and Commissioner were quashed.

These orders have been assailed by the appellant on the ground that the certificate produced by the respondent no.6 was a fake certificate, but inspite of this the learned Single Judge has set aside the aforesaid ordeRs.All the three authorities have recorded concurrent findings that the certificate produced by respondent no.6 was a fake certificate.

The learned Single Judge ought not to have interfered in the aforesaid findings.

Learned counsel for the State and respondent no.6 have also supported the order passed by the Single Judge on the ground that the certificate in respect of local resident was not correct and the appointment of respondent no.6, could not have been quashed.

To appreciate the contention of the parties, it would be appropriate if the factual position of the case is stated :- The Janpad Panchayat, Hanumana, District Rewa issued an advertisement on 28/01/2008 inviting application for 2 the post of Panchayat Karmi.

Apart from the parties in this appeal, other 19 person, total 21 candidates had submitted their applications.

The merit list was prepared on 04/02/2008, in which respondent Harkeshav Singh was placed at serial no.1.

The appellant herein had filed a complaint before the Sub-Divisional Officer that respondent no.6 was not a resident of village Biradei and he had produced a forged resident certificate.

The complaint submitted by the appellant was sent to the Tahsildar by the Sub-Divisional Officer on the ground that the Tahsildar was the competent authority to look into the matter of residence.

The Tahsildar on 13/03/2008, after an enquiry, has held that the respondent no.6 was resident of village Biradei.

Against the order of Tahsildar, the appellant herein preferred an appeal before the Sub-Divisional Officer.

The Sub-Divisional Officer vide order dated 18/12/2008 had cancelled the residence certificate issued to the respondent no.6.

While passing such an order, the Sub-Divisional Officer found that the Sarpanch and the member of Janpad Panchayat had issued the certificate that respondent

no.6 was not the resident of village Biradei.

On the basis of the school admission register and the voter list of village Amiliya and Sihawal, the Sub-Divisional Officer had found that the respondent no.6 was not the resident of village Biradei.

This order was challenged by the respondent no.6 in appeal before the Collector but it was dismissed on 28/05/2009.

Thereafter, Second Appeal preferred by the appellant before the Commissioner was also dismissed on 10/06/2009.

These orders were under challenged before the writ Court.

3 The learned Single Judge has found that criteria for appointment was merit, so the candidature of the respondent no.6 could not have been cancelled.

The writ petition was allowed and the orders passed by the Sub-Divisional Officer, Collector and Commissioner were set aside.

This order is under challenge in this appeal.

Learned counsel for the appellant submitted that the criteria were fixed by the State government for appointment of Panchayat Karmi vide Annexure P/4 dated 13/10/2007.

Apart from other requirement, condition no.5 was that such candidates should be local so that appointee may perform his work conveniently.

It was submitted that because of the certificate in favour of the respondent no.6, his candidature was considered and he was appointed.

From perusal of the record, we find that the eligibility criteria no.5 was that 'as far as possible the candidate should be local, so that the work may be performed conveniently'.

From the perusal of the aforesaid, it is apparent that the condition of local candidature was not a mandatory requirement and merely on the basis of such

requirement, the respondent no.6 was not selected, though he was more meritorious.

A Division Bench of this Court in Writ Appeal No.421/2007 (Smt.

Sadhna versus State of Madhya Pradesh & others on 11/07/2007 at Indore has held that merit is the sole criteria for appointment to the post of Panchayat Karmi and it cannot be superseded only on the basis that the meritorious candidate was not a local resident.

A similar view has been reiterated by another Division Bench in Writ Appeal No.497/2011 in Suresh versus State of Madhya Pradesh dated 07/09/2011 reported in ILR 201.MP 698.

In view of the aforesaid two views of two Division Bench, the criteria of local resident was not mandatory and candidature of such applicant could have been decided on the basis of the merit.

Apart from this a condition that a candidate should be a local, for permanent appointment, is violative to Article 14 of the Constitution of India.

For a permanent appointment under the State, such a condition can not be imposed normally, unless and until it is provided under some statutory provision.

So far as the production of resident certificate of the respondent no.6 in respect of the local resident is concerned, it was not a fake document.

It was issued by the Tahsildar, though some incorrect facts were placed for issuance of certificate.

The order passed by the Tahsildar was though reversed by the Collector and Commissioner, but no findings were recorded that the certificate was a fake document.

In view of the aforesaid, learned single Judge rightly set aside the aforesaid orders in which we do not find any error.

This appeal has no merits and is dismissed.

At this stage, respondent no.6 has submitted that after the order passed by the Single Bench, respondent no.6 had joined, but because of ad-interim writ, he was not permitted to continue in service and not as the writ appeal itself is dismissed, the respondent no.6 may be permitted to join the services.

The aforesaid factual position is not disputed, hence the prayer of respondent no.6 is allowed.

He is permitted to join the duties as directed by the Single Bench.

In view of the aforesaid, this appeal is dismissed, with no order as to costs.

CC as per rules.

(Krishn Kumar Lahoti) (Smt.Vimla Jain) JUDGE JUDGE manju

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