

Ayaz Khan Vs. State of MP and Others

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Court : Madhya Pradesh

Decided On : Jan-21-2015

Judge : Rajendra Menon & S.K. Gangele

Appeal No. : Writ Appeal No. 796 of 2007

Appellant : Ayaz Khan

Respondent : State of MP and Others

Advocate for Pet/Ap. : Shri. K.C. Ghildiyal

Judgement :

1. This appeal under section 2(1) of the MP Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 calls in question tenability of order-dated 26.4.2007 passed by the learned Writ Court in Writ Petition No.2323/2007(S), dismissing the writ petition filed by the appellant/petitioner.

2. Facts in brief goes to show that appellant herein was appointed as a daily wages draftsman in the office of Divisional Forest Officer vide order - Annexure A/1, in the year 1988. Thereafter, he continued to work as a draftsman and ultimately vide order-dated 7.6.1999 - Annexure Nos. A/3 and A/4, he was regularized on the post of draftsman. This was done in accordance to a policy formulated by the State Government for regularization of all such employees who were appointed prior to 31.1.1988. After this regularization in the year 1999, the appellant continued to work on the said post when the State Government issued a

Circular on 12.3.2004 - Annexure P/10, in the record of the writ petition, whereby it was directed that in all such cases where an employee working as a muster roll employee or a daily wage employee have been regularized on a higher post, such regularization should be undone. Based on the aforesaid, it seems that claim of the appellant/petitioner was considered and holding that appellant's regularization is not in accordance to the Policy as he has been regularized on a higher post, his regularization was cancelled. Challenging the same writ petition filed having been dismissed, this appeal has been filed.

3. Shri K.C. Ghildiyal, learned counsel for the appellant, took us through the documents and material available on record and the findings recorded by the learned writ Court in the order in question dated 26.4.2007, and points out that the learned Court has dismissed the writ petition on two counts. It was held by the learned Court that as induction of the appellant in the department as a draftsman is contrary to the recruitment rules namely - MP Class III (Non-clerical) Forest Service Recruitment Rules, 1967, the appointment of the appellant/petitioner falls in the category of illegal appointment as laid down by the Supreme Court in the case of Secretary, State of Karnataka and others Vs. Umadevi and others, (2006) 4 SCC 1, accordingly, holding the appointment to be illegal, it is held that he is not entitled for regularization. That apart, it is found by the learned Single Judge that the appellant has been regularized on a higher post of draftsman, which is contrary to the circular of the State Government.

4. Learned counsel for the appellant points out that both these contentions are incorrect. As far as regularization of the appellant is concerned, it is stated that as the appellant/petitioner was appointed as a draftsman much before 31.12.1988 and he was regularized as per the policy of the State Government in this regard, he is entitled to the protection available to him as held by the Supreme Court, in the case of Umadevi (supra). Learned counsel refers to the following observations of the Supreme Court in the case of Umadevi (supra) to say that cases of regularization already finalized should not be reopened. The observations made by the Supreme Court in paragraph 53 and referred to by the learned counsel for the appellant, reads as under:

"53. ... We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

5. On the second count, learned counsel for the appellant invites our attention to the circular-dated 12.3.2004 - Annexure P/10, and argues that this Circular contemplates that all such orders of regularization which have been undertaken on a higher post than the post on which the employee was inducted as a daily wage employee be cancelled. Referring to the appointment order of the appellant dated 16.12.1988 and again on 23.10.1990 - filed collectively as Annexure A/1, Shri Ghildiyal points out that the appellant's initial induction on 16.12.1988 in the office of Divisional Forest Officer, Chhatarpur was as a draftsman on daily wages and, therefore, when he is regularized as draftsman itself, it cannot be said that the appellant has been regularized on a higher post.

6. Shri Rahul Jain, learned Deputy Advocate General, refuted the aforesaid contention and took us through the findings and reasons given by the learned Single Judge and tried to justify the order of the learned Single Judge.

7. We have considered the rival contentions and we have also gone through the records.

8. As pointed out by Shri K.C. Ghildiyal, on a perusal of the findings recorded by the learned writ Court and the reasons given for dismissing the writ petition, it is clear that on the two counts as are indicated interference has been made by the learned Single Bench. We would take up the second question with regard to regularization of the appellant on a higher post and, the applicability of the circular of the State Government dated 12.3.2004 - Annexure P/10, in the matter first.

9. The Circular dated 12.3.2004 - Annexure P/10 clearly contemplates that in such cases where an employee has been regularized on a higher post than the post on which he has been appointed initially as a daily wage or muster roll employee, then action should be taken for de-regularization after issuing show-cause notice and hearing him. In the case of the appellant/petitioner, the documents pertaining

to his appointment - Annexure A/1 and A/2 and the order of regularization - Annexure A/3 goes to show that the appellant was inducted in the department in the year 1988 initially as a daily wages draftsman. The appointment order clearly contemplates that he is appointed on a vacant post of draftsman and his appointment is temporary and as a daily wage employee. Thereafter, when he is regularized and when the order - Annexure A/4 regularizing him in service is issued, it is again indicated that appellant is working as a draftsman on daily wages and now he is being regularized as a draftsman in the pay scale indicated in the order. That apart, the certificate issued by the competent authority - Annexure A/2 goes to show that appellant is working as a draftsman ever since his induction in the year 1988. A perusal of these documents clearly show that appellant was initially appointed as a draftsman and thereafter based on the policy of the State Government to regularize all such employees who were appointed prior to 31.12.1988, he was regularized on the post of draftsman in which he was initially appointed as a daily wage employee.

10. That being so, the finding recorded by the learned Single Judge which goes to say that the appellant has been regularized on a higher post than the one on which he was appointed seems to be patently incorrect. In the light of the aforesaid, the circular and the policy of the State Government dated 12.3.2004 - Annexure P/10 would not be applicable. As such, action taken for de-regularization of the appellant vide circular dated 12.3.2004 is clearly illegal and is, therefore, unsustainable.

11. Having held so, the second question as to whether the appellant's regularization is liable to be cancelled on account of the fact that it is an illegal appointment. While considering the question of regularization and various other aspects of the matter, the Constitution Bench of the Supreme Court in the case of Umadevi (supra) has clearly clarified and laid down the principle that if any order of regularization has already been made and if such regularization is not sub judice, it need not be reopened based on this judgment. That being the import of the law laid down in the case Umadevi (supra), once the appellant was regularized in the year 1999 vide Annexure A/3, much prior to the judgment in the case of Umadevi (supra) and when there is a clear cut stipulation in paragraph 53, of the aforesaid

judgment, to say that in cases where regularization has already been undertaken it should not be reopened.

12. That being so, the learned Single Judge has again committed an error in directing for de-regularization on the ground that regularization done is not in accordance to the law laid down by the Supreme Court in the case of Umadevi (supra). The case of the appellant falling in the exempted category cannot be reopened.

13. In view of the above, we allow this appeal. The impugned judgment passed by the learned Single Judge and the order passed by the department dated 5.2.2007 are quashed. The respondents are directed to treat the appellant/petitioner to have been regularized vide Annexure A/3 dated 7.6.1999 and treating him, permit him to work on the post on which he has been regularized.

14. The appellant shall be entitled to all consequential benefits flowing out of his regularization vide order Annexure A/3 dated 7.6.1999.

15. With the aforesaid observations, the appeal stands allowed and disposed of.

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