

B.B. Mathur and Another Vs. Subhash Saxena and Others

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Court : Madhya Pradesh

Decided On : Jul-18-2014

Judge : S.K. Gangele & B.D. Rathi

Appeal No. : R.P. No. 209 of 2014

Appellant : B.B. Mathur and Another

Respondent : Subhash Saxena and Others

Judgement :

1. Heard.

2. The petitioners have filed this petition for review of the judgment dt.24th April 2014 passed in Writ Appeal No.327/2013.

3. This court dismissed the Writ Appeal filed by the appellants and confirmed the order passed by the Writ Court.

4. The respondent No.1 was appointed as Sub Engineer in Special Area Development Authority (SADA) Malajkhand on 24.6.1982. He was promoted to the post of Assistant Engineer vide order dt. 3.11.1987 w.e.f. 7.9.1987. He was on probation for a period of one year. He was transferred to SADA Chirmiri, that order was modified by another order dt.20.12.1988 and he was posted as Assistant Engineer at Gwalior Development Authority (GDA). A provisional gradation list was published by the GDA showing the position of Assistant Engineer on 30.6.1995. In

the aforesaid gradation list the name of the respondent No.1 was placed at S.No.2 and his date of appointment as Assistant Engineer was shown as 7.9.1987. In the remark column, it was mentioned that service of the respondent No.1 was merged in GDA in pursuance to the letter of Housing and Environment Department dt.9.11.1995. Thereafter, the petitioners submitted representation against the placement of the respondent No.1. It was accepted vide order dt.30.7.2003. Then the respondent No.1 challenged the order in Writ Petition, that was allowed. Thereafter a Writ Appeal was filed that was dismissed.

5. Learned Senior Counsel appearing on behalf of the petitioners has contended that the transfer of the respondent No.1 from one Development Authority to another Development Authority was not permissible as held by this court in M.D.Awasthy vs. State of M.P. and another reported in 1989 JLJ 25. It is further submitted that seniority to the respondent No.1 was illegally assigned. Learned senior counsel has further submitted that the State Government issued notification dt.22.6.1995 in regard to abolition of SADA Malajkhanda and assets of the authority were vested in the Municipal Council Malajkhanda. The respondent No.1 was an employee of Housing and Environment Department and his absorption and seniority has to be assigned in accordance with the notification dt.1.7.1995 issued by the government in exercise of powers vested in the government under the provisions of Section 76-B (1) of M.P.Nagar Tatha Gram Nivesh Adhiniyam, 1973. Hence, the review petition is maintainable.

6. We have considered the legal points in detail and the factual aspects in para 19 of the order under review. We have observed as under :-

19. Initially as mentioned above in the order, Rules of 1976 were applicable, subsequently the government framed another rules named as Madhya Pradesh Development Authority Services (Officers and servants) Recruitment Rules, 1988 in exercise of powers under Section 85 and Section 76-B (2) of the Act of 1973. These rules came into force w.e.f. 1.4.1988 from the date of publication in the gazette. In accordance with Rule 3 (2) of the Rules of 1988 and Rule 3 (2), which was in the Rules of 1976, the State government was authorised to transfer an employee from one authority to another authority. Hence, the transfer of the

respondent No.1 to GDA was in accordance with the provisions of the rules and it was in the capacity of Assistant Engineer. Subsequently, respondent No.1 was absorbed in the services of GDA. The same fact has been mentioned in the final gradation list published by GDA showing the position of Assistant Engineers on 30.6.1995. The final publication was building on 1.7.2003. Subsequently, on the representation the department observed that the respondent No.1 could not be treated as employee of the GDA, however, the aforesaid order passed by the government is not in accordance with law because as mentioned in the gradation list earlier vide letter dt.9.11.1995 services of the respondent No.1 were merged in GDA. There was provision in the rule to this effect. The Act of 1973 also prescribes the provision. When respondent No.1 was assigned proper seniority to the post of Assistant Engineer, his seniority could not be disturbed or lowered.

7. From the observation, it is clear that we have upheld the transfer of the respondent No.1 in GDA and his absorption in the capacity of Assistant Engineer and we have clearly held that the State Government had power to do so.

8. The judgment cited by the learned senior counsel appearing on behalf of the petitioners is distinguishable on facts. In the aforesaid judgment the court has held that the petitioner therein could not be transferred to Katni Town Improvement Trust, however, the present case is in regard to transfer of the respondent No.1 from SADA Malajkhand, which was subsequently dissolved.

9. Hon'ble Supreme Court in Kamlesh Verma Vs. Mayawati and others reported in (2013) 8 SCC 320, as held as under in regard to the facts that in which circumstances the review petition is not maintainable:

When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.

10. Looking to the principle of law laid down by the Hon'ble Supreme Court, in our opinion, the merits and demerits of the judgment can not be re-agitated or considered in a review petition. Hence, we do not find any merit in this petition. It is here dismissed.

No order as to costs.

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