

Rohit Vs. State of M.P. and Others

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Court : Madhya Pradesh

Decided On : Mar-28-2014

Judge : Shantanu Kemkar & Jarat Kumar Jain

Appeal No. : Writ Appeal (S) No. 556 of 2013

Appellant : Rohit

Respondent : State of M.P. and Others

Judgement :

Shantanu Kemkar, J.

1. By filing this intra Court appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, the appellant/writ petitioner of Writ Petition No. 4393/2011 has challenged the common order dated 5-12-2012 passed in Writ Petition No. 4393/2011 and in Writ Petition No. 2314/2011.

2. Briefly stated, in pursuance to the advertisement dated 14-6-2008 issued by Gram Panchayat, Sajwani inviting applications for appointment on the post of Panchayat Karmi, the appellant submitted his application. In the merit list of the candidates prepared by the Gram Panchayat the appellant's name was at Serial No.1. However, no order of appointment was issued in favour of the appellant and the Chief Executive Officer, Janpad Panchayat, Barwani, on behalf of Gram

Panchayat, Sajwani, issued a fresh advertisement on 1-1-2009 inviting applications for appointment on the said post. The appellant again applied for the said post. Again his name was at Serial No. 1 in the merit list of the candidates. This time also, no appointment order was issued and instead the post was re-advertised vide advertisement dated 3-6-2009.

3. In pursuance to this third advertisement dated 3-6-2009 the appellant again submitted his application for being appointed on the said post of Panchayat Karmi. In this process of appointment, the 5th respondent stood first in the merit list and as such an order of appointment dated 27-6-2009 was issued in favour of the respondent, appointing him as Panchayat Karmi. Thereafter, he was conferred with the powers of Secretary under Section 69 (1) of the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 vide orders dated 18-8-2009 issued by the Chief Executive Officer on approval of the Collector.

4. When the matter stood thus, the Chief Executive Officer, on approval of the Collector, Barwani, issued an order dated 9-6-2010 revoking the Secretarial powers of the 5th respondent on the ground that the appointment made by the Gram Panchayat was illegal as for the third time the advertisement was issued only to favour the 5th respondent. Feeling aggrieved, the 5th respondent filed Writ Petition No. 2314/2011 challenging the order dated 9-6-2010 whereas the present appellant filed Writ Petition No. 4393/2011, seeking directions to appoint him on the post of Panchayat Karmi stating therein that since he had received the highest marks in the earlier two rounds of selection process, he ought to have been given appointment.

5. The learned Single Judge by the impugned order allowed Writ Petition No. 2314/2011 filed by the 5th respondent and set aside the order dated 9-6-2010, and dismissed the appellant's Writ Petition No. 4393/2011 claiming appointment on the basis of earlier two selection processes. Aggrieved, the appellant has filed this appeal.

6. It has been argued by the learned Counsel for the appellant that the learned Single Judge has committed error in allowing the writ petition of the 5th respondent on the basis of the judgment passed by a Division Bench of this Court

in the case of Lalla Prasad Burman Vs. State of Madhya Pradesh, reported in 2008 (3) MPLJ 394. She submits that in the earlier two rounds of process of appointment, the appellant being the most meritorious, the third advertisement could not have been issued by the Gram Panchayat.

7. On the other hand, learned Counsel appearing for the respondents have supported the impugned order passed by the learned Single Judge and have prayed for dismissal of the writ appeal.

8. We have considered the rival submissions and have gone through the impugned order as also the record.

9. It is not in dispute that in the earlier process of making appointment, the appellant was kept at the top in the merit list. However, it is also clear from the record that no appointment was made in the earlier two processes of appointment but the post was re-advertised on 3-6-2009. In response to the advertisement dated 3-6-2009, the appellant again applied and participated in the selection process. In this process of selection, the 5th respondent being the most meritorious candidate amongst all the candidates including the appellant, an order of appointment was issued in his favour.¹⁰ From the narration of the aforesaid facts, it is undoubtedly clear that the appellant who is claiming his appointment on the basis of earlier two processes of appointment had participated in the third round of process of appointment in which he was not successful. It is now well-settled that having unsuccessfully participated in the process of selection without any demur, the candidate is stopped from challenging the selection process on account of principles of estoppel, acquiescence, waiver and doctrine of approbate and reprobate. [See : Dhananjay Malik and others Vs. State of Uttaranchal, (2008) 4 SCC 171, Vijendra Kumar Verma Vs. Public Service Commission, (2011) 1 SCC 150, Utkal University etc. Vs. Dr. Nrusingha Charan Sarangi and others, 1999 (1) JT 101 and (1992) 4 SCC 683].

11. Undoubtedly, on earlier two occasions, the appellant was merely put in the merit list and no order of appointment was ever issued in his favour. Now, it is also well-settled that on the basis of mere selection, the candidate is not entitled to demand the appointment. [See : Government of Orissa Vs. Harprasad Das and

others, AIR 1998 SC 375 as also a Division Bench of this court in the case of Ramswaroop Vs. Union of India. Writ Petition (S) No. 483/2005, decided on 14-1-2005 at Jabalpur].

12. As regards reliance on the Division Bench judgment of this Court passed in Lalla Prasad Burman (supra), we are of the view that the same has rightly been relied by the Writ Court for allowing Writ Petition No.2314/2011 filed by the 5th respondent as before passing the order, dated 9-6-2010 denotifying the 5th respondent Panchayat Karmi as a Panchayat Secretary no enquiry was held as required under Rule 7 of the M.P. Panchayat Service (Discipline and Appeal) Rules, 1999.

13. In view of the aforesaid clear legal position and in view of the fact that the appellant had participated in the 3rd round of selection process and on being unsuccessful it was not open for the appellant to challenge the selection process and also to seek appointment on the basis of selection list, as prepared in pursuance to the first and second advertisements as on the basis of merit list alone, the appellant could not claim the appointment.

15. In the result, the appeal fails and is hereby dismissed.

No order as to the costs.

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