SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Ajay Tripathi and ors. Vs. State of Madhya Pradesh and ors.

Ajay Tripathi and ors. Vs. State of Madhya Pradesh and ors.

SooperKanoon Citation : sooperkanoon.com/508398

Court : Madhya Pradesh

Decided On : Feb-27-2008

Reported in : 2008(5)MPHT195

Judge : R.S. Garg and ;S.C. Sharma, JJ.

Appellant : Ajay Tripathi and ors.

Respondent : State of Madhya Pradesh and ors.

Advocate for Pet/Ap. : Shri. Rusia

Disposition : Petition dismissed

Judgement :

R.S. Garg, J.

1. By this writ petition filed under Article 226 of the Constitution of India the petitioners are challenging the constitutional validity of Madhya Pradesh Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, 2005 (hereinafter referred to as 'Rules of 2005') as ultra vires the Constitution of India and being violative of the provisions of Madhya Pradesh Panchayat Raj Awam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'Panchayats Act 1993'). They are also seeking a direction that the Court may by issuing appropriate writ, direction or order strike down Sub-rules (1) to (13) of Rule

6 of 2005 Rules and the Court may issue appropriate writ declaring that Madhya Pradesh Panchayat Samvida Shala Shikshak (Employment and Conditions of Services) Rules, 2001, dated 11-7-2001 to be valid piece of legislation and issue appropriate writ, direction or order quashing the entire process of selection of Samvida Shala Shikshak which commences from 4-5-2006.

2. According to the petitioners, the petitioners are elected Vice President of Janpad Panchayat falling within territorial jurisdiction of Zila Panchayat, Jabalpur. They are interested and concerned in maintaining power, authority and responsibilities of the Panchayats. According to them the State Government cannot enact any law which runs contrary to Article 243-G of the Constitution of India and/or Section 47 of the Panchayat Act.

3. For proper appreciation of the dispute between the parties it would be necessary to note that before coming into force of 2005 Rules, the appointment of Samvida Shala Shikshak was to be governed and controlled by Madhya Pradesh Panchayat Samvida Shala Shikshak (Appointment and Conditions of Service) Rules, 2001. The said Rules provided that the appointments shall be made by a Selection Committee as provided under Rules 2 (c) and 5 of the said Rules. The Samvida Shala Shikshak were classified into Class I, Class II and Class III, for Class I Appointing Authority was Zila Panchayat while for Class II and Class III Appointing Authority was Janpad Panchayat. The Schedule II provided for constitution of different committees for selection and appointment of Class I, Class II and Class III Samvida Shikshak. Number of appointments were made under the said Rule and such appointments came to be challenged before various authorities on ground of illegalities, nepotism, favoritism and fraudulent action on the part of the Appointing Authority. However, we would not discuss the said matter further because we are concerned with the Rules of 2005.

4. Vide Notification dated 6-5-2005, in exercise of the powers conferred by Sub-section (1) to Section 95 read with Sub-section (2) of Section 70 of Madhya Pradesh Panchayat Raj Awam Gram Swaraj Adhiniyam, 1993 (No. 1 of 1994) the State Government made the rules known as Madhya Pradesh Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, 2005. The Rules

also provided that after coming into force of 2005 Rules, the Rules of 2001 and all other rules corresponding to 2001 Rules exising in force immediately before the commencement of 2005 Rules shall stand repealed with effect from the date on which date the 2005 Rules come into force.

5. Rule 2 provides the definition of various words and phrases. Clause (f) of Rule 2 defines the 'Employing Authority' in relation to 'Samvida Shala Shikshak' an authority specified in Column (4) of Schedule I. Clause (i) defined 'Panchayat' to mean 'Zila Panchayat or Janpad Panchayat, as the case may be, constituted under the Panchayats Act'. Rule 3 provides that the rule would apply to Samvida Shala Shikshak employed by Janpad Panchayat or Zila Panchayat, as the case may be, for the schools under their control. Rule 4 requires committee constituted under the Chairmanship of the Collector to assess the vacancy for appointment of Samvida Shala Shikshak. Rule 5 provided for classification of Samvida Shala Shikshak and contract remuneration should be such, as may be specified in Schedule I.

6. Rule 6 which in particular is under challenge before this Court refers to selection and method of employment. Sub-rule (8) refers to receipt of the application by Panchayat. Sub-rule (9) of Rule 6 refers to criterion of selection while Sub-rule (10) and Sub-rule (11) refer to preparation of provisional select list and publication of provisional and final select list.

7. Rule 7 makes special provision for Primitive Tribes whereas Rule 8 refers to compassionate appointment and Rule 9 relates to extension in contract period. Rule 10 provides that discipline and control of Samvida Shala Shikshak shall be under the hands of Zila Panchayat/Janpad Panchayat. If any party is aggrieved by any order passed under the Rules he would have a right of appeal under Rule 11. We are not concerned with rest of the rules at this stage.

8. Schedule I provides for classification of Shala Samvida Shikshak as Grade I, Grade II and Grade III. For the Grade I the Employing Authority is Zila Panchayat while for Grade II and Grade III Janpad Panchayat would be the Employing Authority. Schedule II refers to age, qualification, disqualification and constitution of the Appellate Committee for Samvida Shikshak. Schedule III refers to

constitution of contract extension committee while Schedule IV is in consonance with Rule 6(13)(b).

9. The grievance of the petitioner in nutshell is that the State Government by issuing these rules has withdrawn all the powers which the Zila Panchayat and Janpad Panchayat enjoyed under Section 47 of the Panchayats Act and are also making an inroad into the powers of the Janpad Panchayat and Zila Panchayat and, the action of State Government runs contrary to Article 243-G of the Constitution of India. It is submitted by Shri Rusia, learned Counsel for the petitioners, that 2001 Rules provided for constitution of a Selection Committee and in the said committee the control was in the hands of the office bearers of the Panchayals. According to him the Stale Government could not resume all powers in its hands, denude the Panchayat of their powers and simply require the Panchayat to fill in the blanks in accordance with the employment rules and offer employment. It is also submitted by him that the selection process as provided in Rule 6 is also bad because 20% marks have been offered to a person who holds additional qualifications like B.Ed. and D.Ed. etc. His submission is that ordinary villagers would not be in a position to obtain such degrees and under the circumstances the local people would not get any appointment. The submission in fact is that for up-keep, betterment and the future of citizens every power should be given to the Panchayat because they know what are the local conditions.

10. Referring to Section 47 it is submitted that subject of education is within the domain of the Zila Panchayat and/or Janpad Panchayat, therefore, also the powers of appointment could not be assumed by the State Government.

11. Shri Rahul Jain, learned Counsel for the State, on the other hand submitted that the Rules of 2005 in fact are more scientific and do not leave anything in the hands of the human agency. According to him the manner in which the marks are to be distributed clearly show that 65% marks are to be awarded to the candidate in proportion to the marks obtained by the candidate in the Samvida Shala Shikshak eligibility examination. Maximum 15 marks shall be awarded for teaching experience in any School, for experience of one, two and three years, 5, 10 and 15 marks shall be awarded respectively and a maximum 20 marks are to be awarded

to the candidate to the different grades of the Samvida Shala Shikshak on their proving that they hold a particular degree or diploma. According to Shri Jain when a system is evolved for making the appointments then such system should always be foolproof and there should be no scope in the rules for any interference by any human agency. He also submitted that on earlier occasions State Government received thousands of complaints in relation to illegal appointments and hundreds of petitions were filed in this Court against the illegal appointments. His submission is that the State Government which has general power of superintendence and has the authority to confer additional power on Panchayat or withdraw the existing powers can always make rules for betterment of the public. It is submitted by him that Section 47 has at all not been violated because the Education Committee would still continue to function but the appointments are to be made in accordance with the rules. His further submission is that the provisions of Article 243-G of the Constitution of India have at all not been violated. We have heard the parties at length.

12. Article 243-G of the Constitution of India reads as under:

243-G. Powers, authority and responsibilities of Panchayat.- Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to:

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

Article 243-G provides that Legislature of a State may, by law, endow the Panchayats with such powers and authority which may be necessary to enable then to function as institutions of the Self Government. The 1993 Panchayats Act

in fact is an Act in consonance with Article 243-G of the Constitution of India. There is no challenge to any of the provisions of the Panchayats Act, therefore, we are not entering into the said details. The question before us is that whether 2005 Rules violate the Preamble of Panchayats Act, 1993 and the provisions contained in Section 47 of the Act.

13. The Preamble says that 1993 Act is an Act to consolidate and amend the law relating to establishment of Panchayat with a view to ensure effective fulfillment of the Panchayat Raj Institution in the Local Administration and Development Activities. It would be clear from the Preamble that the intention of the Government was to consolidate and amend the law relating to establishment of the Panchayats and the laudable object was to ensure effective involvement of the Panchayat Raj Institution in the Local Administration and Development Activities. The grievance of Shri Rusia, learned Counsel for the petitioners, was that as the power of appointment has been withdrawn from the Janpad Panchayat and the Zila Panchayat, the said Panchayats would not now have effective involvement in the local administration and development activities.

14. Present is not a case where the powers to appoint or the power of local administration or the power for development activities have been withdrawn from the Zila Panchayat or Janpad Panchayat. The Panchayats will have power of local administration and can still effectively involve in the development activities. Under 2005 Rules the Employing Authority is Zila Panchayat and Janpad Panchayat. These Panchayats would have the effective control over the Samvida Shala Shikshak and in case it is found that they are not discharging their duties properly then these Panchayats would be entitled to take proper action against them. It is also to be noted that in the contract extension committee the office bearers/some office bearers of the Panchayat/Education Committee have an effective say. If they are of the opinion that a particular contract need not be extended then such contract cannot be extended.

15. In our opinion the Scheme/Rules of 2005 do not run contrary to the Preamble of the Act.

16. Section 47 of 1993 Act provides for constitution of Standing Committees of Janpad Panchayat and Zila Panchayat. These Panchayats shall be obliged to constitute five Standing Committees viz. (a) General Administration Committee; (b) Agriculture Committee; (c) Education Committee; (d) Communication and Works Committee; (e) Cooperation and Industries Committee. Section 47 (2) provides that in addition to the five Standing Committees a Janpad Panchayat or Zila Panchayat may with the approval of the Prescribed Authority constitute one or more of such committees for other matters not specified in Sub-section (1).

17. The grievance of the petitioner is that if under Section 47 there is a Standing Committee known as Education Committee which is for education, including adult education, social welfare etc., then these committees only are authorized to look into the work of education including adult education and make appointments.

18. In our opinion the submission made by learned Counsel for the petitioner cannot be accepted. True it is that an Education Committee would be constituted for education including adult education etc. but that does not mean that such Education Committee shall be entitled to make every appointment. When the State Government is entitled to exercise general powers of superintendence as provided in Section 53 and Section 86 and other allied sections to have control over the Panchayats then the State Government would be entitled to issue such directions. Section 53 of 1993 Act reads as under:

53. Power of State Government in relation to functions of Panchayats.- (1)(a) Subject to such conditions as may be specified by general or special order issued by the State Government, the Panchayat at the appropriate level shall have the powers and authority as may be necessary to enable them to function as institutions of self Government in relation to matters listed in Schedule IV, including preparation of plans, implementation of schemes for economic development and social justice, and other duties and functions assigned to them under Sections 49, 49-A, 50, 52 and Chapter XIV-A.

(b) The State Government may by notification endow Panchayats at the appropriate level with powers and responsibilities for the selection, recruitment, appointment and management of any cadre or cadres of employees required for

the efficient implementation of schemes, subject to the staffing pattern approved by the State Government and such other conditions as it may deem fit.

(2) The State Government may, by general or special order, add to any of the functions of Panchayats or withdraw the functions and duties entrusted to such Panchayats, when the State Government undertakes the execution of any of the functions entrusted to Panchayat. The Panchayat shall not be responsible for such functions so long as the State Government does not re-entrust such functions to the Panchayats.

A fair understanding of Sub-section (2) would make it clear that the State Government may by general or special order, add to any of the functions of Panchayats or withdraw the functions and duties entrusted to such Panchayats, when the State Government undertakes the execution of any of the functions entrusted to Panchayat.

19. If the Panchayat is required to make appointment of Samvida Shala Shikshak then that is a functions assigned to the Panchayats. If the Government is of the opinion that such function or duty entrusted to Panchayats is required to be withdrawn then the Government certainly can withdraw such functions or the duties. In the present matter however, it is to be noted that the power of appointment is still with the Panchayats as they are the Employing Authority. The appointed persons would be under the supervision, superintendence and control of the Employing Authority. The Employing Authority would be the Disciplinary Authority and would also have an effective control in the contract extention committee.

20. From these rules it only appears that the members of the Panchayats or the office bearers of Janpad Panchayats and/or Zila Panchayat would have no power to appoint people of their liking. The grievance of the petitioners that no interview marks are kept at their disposal in fact would prove that to disturb the foolproof system of appointment they wish to exercise the discretion and disturb the entire system.

21. We are unable to understand as to how the petitioners are aggrieved if a scientific procedure is provided to complete the procedure of appointment, particular marks are to be given on happening of a particular event and no discretion is left with the members of the Panchayat or the State Government. The system appears to be foolproof and in fact is a system to achieve the best possible result.

22. It was then submitted that Rule 6 of 2005 Rules is ultra vires the Act.

23. After going through the rules we are unable to find that there is any illegality in these rules. Sub-rule (1) of Rule 6 says that the employment shall be in accordance with the provisions of the Rules. Sub-rule (2) says 'Samvida Shala Shikshak Eligibility Examination' shall be conducted for employment of Samvida Shala Shikshak. The examination as per Sub-rule (3) would be conducted by an agency prescribed by the Government, the vacancy and the selection to be made shall be advertised. Sub-rule (4) provides the educational qualifications, Sub-rule (5) provides the minimum percentage of marks to qualify in the eligibility examination. According to Sub-rule (6) the provisions of Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Janjatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994, shall apply to the said employment, according to Sub-rule (7) particular reservation would be made. Sub-rule (8) provides for submission and receipt of the candidature. Sub-rule (9) refers to criterion of selection while Sub-rules (10) and (11) refer to preparation of provisional select list and publication of provisional and final select list. Sub-rule (12) provides for period of contract employment while Sub-rule (13) directs and mandates that the employment shall be from the select list only. All these provisions by no stretch of imagination can be held to be ultra vires the Constitution or ultra vires Section 47 or other provisions of the Panchayats Act, 1993. By making Rules of 2005 the Government in fact has plugged the holes from which the illegality could seep in.

24. The submission that in the selection process the office bearers of the Panchayat have no say and, therefore, the rules are violative of the provisions of Panchayats Act, 1993, in our opinion is an argument of frustration. It appears that the office bearers of the Panchayats when found that they would not be entitled to

exercise powers in favour of the chosen few have filed this petition.

25. After giving our thoughtful consideration to the totality of the circumstances, the laudable object behind 2005 Rules, we are unable to hold that the rules are ultra vires the Constitution of India or they run contrary to the provisions of the Panchayats Act, 1993.

26. The petition deserves to be and is accordingly dismissed. There shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com