

Dev Kumar Sahu and Others Vs. State of Chhattisgarh and Others

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Court : Chhattisgarh

Decided On : Aug-08-2011

Judge : Satish K Agnihotri

Appeal No. : WRIT PETITION 227 Nos. 1151 of 2009, 1263 & WRIT PETITION S No 2848 of 2009

Appellant : Dev Kumar Sahu and Others

Respondent : State of Chhattisgarh and Others

Judgement :

(Delivered on 08th day of August, 2011)

(Writ Petitions under Article 226/227 of the Constitution of India)

1. Since WP (227) Nos.1151 and 1263 of 2009, WP (S) Nos.2848, 2935, 7140 and 7481 of 2009, WP (S) Nos.1159 and 2108 of 2010, WP (S) No.1345 of 2009, involve common facts and question of law, thus, they are being disposed of by this common judgment.

2. Challenge in these petitions is to the orders dated 23-12-2008, 23-12-2008, 23-12-2008, 30-1-2009 and 23-12-2008 passed by the Director Panchayat in WP (227) No.1151/2009, WP (S) No.2935/2009, WP (S) No.2848/2009, WP (227) 1263/2009 and WP (S) No.2108/2010, respectively and the orders dated

24-11-2008, 16-11-2009, 16-11-2009 and 16-11-2009 passed by the Collector in WP (S) No.1345/2009, WP (S) No.7140/2009, WP (S) No.7481/2009 and WP (S) No.1159 of 2010, respectively, by which the appointment of the petitioners on the post of Shiksha Karmi Grade - III has been cancelled.

3. The brief facts of the case, as projected by the petitioners, are that the petitioners were appointed on the post of Shiksha Karmi, Grade III after due selection process and after due verification of the documents. The selection process of the petitioners was conducted in accordance with the provisions as enshrined in Chhattisgarh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 (for short 'the Rules, 1997'). Thereafter, some complaints were received by the Collector, Raipur preferred by some unsuccessful candidates who had participated in the selection process. The Sub Divisional Officer conducted an enquiry on the basis of the aforesaid complaints and submitted an enquiry report to the Collector. Thereafter, the Collector, cancelled the appointment of the petitioners to the post of Shiksha Karmi Grade III by the orders as stated in para 2 of this judgment. Thus, these petitions.

4. Shri Manoj Paranjape, Ms Sharmila Singhai, Shri Jitendra Pali, Shri Varun Sharma and Shri Sunil Sahu, Advocates, learned counsel appearing for the respective petitioners, would submit that while passing the impugned orders, the Collector has acted with material irregularity and illegality. The Collector has not at all appreciated the provisions of Section 85 of the Chhattisgarh Panchayat Raj Adhinyam, 1993 (for short "the Adhinyam, 1993") in its true perspective. The enquiry proceedings have been initiated behind the back of the petitioners and the copy of enquiry report has not been supplied to the petitioners. The impugned orders have been passed without following the basic principles of natural justice, which is not at all sustainable in the eyes of law.

5. Learned counsel would further submit that the impugned orders have been passed on the allegations that the petitioners have obtained the appointment by playing fraud and stigmatic order has been passed without holding proper enquiry. The Director Panchayat has also passed the impugned order without

appreciating the grounds raised in memo of appeal and has further upheld the order of the Collector in holding that the Collector has exercised the power under Section 85 (1) of the Adhiniyam, 1993 rightly.

6. On the other hand, Shri M.P.S. Bhatia, Deputy Government Advocate for the State, Shri Arun Sao, Shri Pankaj Shrivastava and Shri Dinesh RK Tiwari, Advocates for the respective respondents, would submit that the after receipt of the complaints with regard to some illegalities at the time appointment of Shiksha Karmis, the enquiry committee was constituted and during the course of enquiry proceedings, the Tahsildar recorded the statements of the petitioners in which they categorically stated that they have not submitted any forged documents and their appointment was in accordance with law. In the meanwhile, the enquiry committee ascertained about the veracity of documents from the concerned institutes from where it was found that the documents produced by the petitioners were forged one. After completing all the process, the enquiry report was prepared and submitted before the authorities. On the basis of the enquiry report, proper show cause notices were issued to the petitioners, after receipt of their reply, recorded the statements of the petitioners and after going through all the aspects of the matter, the cancellation of appointment of the petitioners was passed. Therefore, it cannot be said that the impugned action has been taken behind the back of the petitioners. Thus, the petitioners are not entitled to any relief and the petitions may be dismissed.

7. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

8. The Collector by order dated 27-11-2007 (Annexure -R4/6) directed the Sub Divisional Officer (Revenue), Baloda Bazar, District Raipur, to hold an enquiry on the complaint made by one Dinesh Kumar Chandrakar regarding irregularities and illegalities, as under:

LANGUAGE

9. The Sub Divisional Officer (Revenue), pursuant to the abovestated order, constituted an enquiry committee comprising of Tahsildar, Palari, Block

Education Officer, Palari, Block Education Officer, Baloda Bazar and In-charge Principal, Pandit Laxmi Prasad Tiwari Government Girls Higher Secondary School, Baloda Bazar, to examine the documents and record the statements of all the candidates by order dated 27-11-2007 (Annexure - R4/7).

10. After completion of the enquiry, by memo dated 28-1-2008 (Annexure - R4/8) the Sub Divisional Officer came to the conclusion holding that out of 133 Shiksha Karmis, information could be received in case of 97 candidates. In all the 97 cases, the documents submitted by them were found forged, as the said documents were not issued by the concerned departments/ institutions. It was held that since the testimonials submitted by them were forged/false and, as such, they were not eligible for selection.

11. FIR was lodged against the Chief Executive Officer, Janpad Panchayat, Palari, on 24-5-2008 for offences punishable under Sections 467, 468, 471 and 420 of the Indian Penal Code in police station Palari vide crime No.135/2008. Thereafter, show cause notices were issued to the petitioners asto why their appointment orders may not be cancelled under the provisions of Section 85 (1) of the Adhinyam, 1993.

12. The petitioners submitted their reply and on consideration of the reply and after recording the statements of the petitioners, again, as averred in para 5 of the return filed by the respondent No.4 in W.P. (227) No.1151/2009, the order canceling the appointment of the petitioners has been passed. Some of the petitioners have gone thereagainst to the Director (Panchayat) in appeals. The appeals were also dismissed confirming the order passed by the Collector.

13. Section 85 (1) of the Adhinyam, 1993 reads as under:

"85. Power to suspend execution of orders, etc.-(1) The State Government or the prescribed authority may by an order in writing and for reasons to be stated therein suspend the execution of any resolution passed, order issued, licence or permission granted or prohibit the performance of any act by a Panchayat, if in his opinion,-

(a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorised;

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or is contrary to any law; or

(c) the execution of such resolution or order, or the continuance in force of such licence or permission or the doing of such act is likely-

(i) to cause loss, waste or misapplication of any money or damage to any property vested in the Panchayat;

(ii) to be prejudicial to the public health, safety or convenience;

(iii) to cause injury or annoyance to the public or any class or body of persons;
or

(iv) to lead to a breach of peace."

14. The Collector exercising his power under Section 91 of the Adhiniyam, 1993 read with Rule 5 of the Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995 (for short "the Rules, 1995") took up the matter suo motu in revision and reversed the order of appointment after affording proper opportunity of hearing to the petitioners.

15. Contention of learned counsel appearing for the petitioners that a show cause notice, after preliminary enquiry, without supplying a copy of the preliminary enquiry report was violative of basic principles of natural justice, as the petitioners were not in a position to respond to the report when on the basis of the said report final order was proposed to be passed, cannot be countenanced.

16. In support of the contention, learned counsel appearing for the petitioners placed reliance upon several decisions of the Supreme Court as well as this Court.

17. The Supreme Court in *State of U.P. v. Mohammad Nooh*, held that "it cannot then be laid down as an inflexible rule of law that the superior court must deny the writ when an inferior Court or tribunal by discarding all principles of natural justice and all accepted rules of procedure arrived at a conclusion which shocks the sense of justice and fair play merely because such decision has been upheld by another inferior court or tribunal on appeal or revision."

18. The facts of *Mohammad Nooh* (supra) are not applicable to the instant case, as the basic requirement of natural justice to afford an opportunity of hearing in the preliminary enquiry and thereafter, second show cause notice before passing the impugned order was afforded to the petitioners and this is also not a case where the writ Court has declined to entertain this petition on the ground that the order of Collector has been affirmed by the Director Panchayat.

19. The Supreme Court in *Union of India and Ors. V. S.K. Kapoor*, held that copy of the report has to be supplied in advance to delinquent employee. This is a case where the enquiry was conducted in absence of the delinquent employee whereas in the instant case the delinquent employees were afforded full opportunity of hearing.

20. The case of *Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others*, is not applicable to the facts of the present case.

21. The case of *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai and others*, which was the case of land acquisition, is not applicable to the facts of the present case. The other decision cited by the petitioners i.e. *Hukum Chand Shyam Lal v. Union of India and others*, is also not applicable.

22. The decision of the Supreme Court in *U.P. State Road Transport Corporation and another v. Mohd. Ismail and others* deals with the exercise of discretion by the holder of a public office. The exercise should be judicious and in furtherance of accomplishment of the purpose of power.

23. In the instant cases, I have not found that exercise done by the Collector was in any way deficient or irregular, as contended by the learned counsel for the petitioners.

24. Reliance of the petitioners upon the decision of this Court in *Durgesh Prasad Sinha v. State of Chhattisgarh* and other connected matters, is not relevant in this case, as the petitioners were granted proper opportunity of hearing before the orders were passed.

25. This Court in *Bhishmadeo Hota v. State of Chhattisgarh and Others*, observed as under:

10. This Court, in *Mrityunjay Shukia and Others v. Municipal Corporation, Raipur and Others* relying on *Nehru Yuva Kendra Sangathan v. Mehbub Alam Laskar, State of Punjab and Others v. Constable Avtar Singh (Dead) through LRs, Ashok Kumar Sonkar v. Union of India and Others, State of Manipur and Others v. Y. Token Singh and Other, Jaswantsingh Pratap Singh Jadeja v. Rajkot Municipal Corporation and another, Inderpreet Singh Khalon and Others v. State of Punjab and Others, Mohd. Sartaj and another v. State of UP. and Others Viveka Nand Sethi v. Chairman, JandK Bank Ltd. and Others, Canara Bank and Others v. Debasis Das and Others, Basudeo Tiwari v. Sido Kanhu University and Others, D.K Yadav v. J.MA. Industries Ltd., and Others and Shrawan Kumar Jha and Others v. State of Bihar and Others*, decisions rendered by the Supreme Court, observed as under:

"21. There is a common thread that the principle of natural justice is not unruly horse. The principles of natural justice are required to be complied with, having regard to the facts situation obtained therein. Thus, the principles of natural justice may not be required to be followed in the cases, where the facts are admitted. Secondly, that it is practically impossible or highly improbable to afford an opportunity of hearing in the event of quashing of selection on account of irregularity committed on mass scale, or en-masse cancellation. Thirdly, no useful purpose would be served by affording an opportunity of hearing."

26. The contention of the petitioners that the Collector ought not to have exercised his power to cancel the appointment under the provisions of Section 85 (1) of the Adhiniyam, 1993, as it deals with only suspension, does not merit acceptance.

27. So far as power of the Collector is concerned, there is no gainsaying that the Collector has no power to set aside the order of appointment. The Collector in exercise of his revisionary power under Rule 5 of the Rules, 1995 can take up the matter suo motu and take final decision to reverse the order of appointment after affording proper opportunity of hearing to the petitioners.

28. Admittedly, the petitioners were afforded an opportunity of hearing during enquiry and thereafter show cause notice was issued before passing the order of cancellation of appointment. Even it is stated, at the bar, by the respondents that after show cause notice the petitioners were afforded an opportunity of hearing and got their statements recorded, before the Collector. From the said facts, it is crystal clear that the principles of natural justice was complied with full force. There was no violation of fair play-in-action.

29. So far as power of the Collector is concerned, it is well established that "when there are two sources of power, even if one is not applicable, the order will not become invalid if the power of the statutory authority can be treated to another source." (See: High Court of Gujarat and Another v. Gujarat Kishan Mazdoor Panchayat and Others).

30. The Supreme Court in J. Kumaradasan Nair and Another v. IRIC Sohan and Others, observed as under:

"18. It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not..."

31. In view of foregoing and applying the well settled principles of law to the facts of the present case, in the sequel, all the writ petitions are dismissed.

32. There shall be no order as to costs.

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