

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 71 of 2015**

Yashwant Dwivedi S/o Late Ramnaresh Dwivedi, aged about 57 years, Working on the post of Sub Inspector (Nakedar) Krishi Upaj Mandi Samiti, Pratappur, District Surguja, Permanent Resident at Bauripara, P.S. Ambikapur, District Surguja, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through the Secretary, Department of Agriculture, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. Krishi Upaj Mandi Samiti, Ambikapur, Through its Secretary, District Surguja Chhattisgarh.
3. The Collector, Surguja, Ambikapur, District Surguja Chhattisgarh.
4. Ramji Sharma, Additional Director, Mandi, Madhya Pradesh Jail Road, Mandi Board, Bhopal, Madhya Pradesh.

---- Respondents

For Appellant	:	Shri V.K.Pandey, Advocate.
For Respondents 1&3	:	Shri R.K.Gupta, Deputy Advocate General.
For Respondent No. 2	:	Shri B.D.Guru, Advocate.

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board**Per Navin Sinha, Acting Chief Justice****30/03/2015**

The present appeal arises from order dated 29.1.2015 dismissing Writ Petition No. 595 of 1995. The Learned Single Judge held that the Appellant was ineligible for the domicile certificate as he was not a resident of the then State of Madhya Pradesh. The termination of his service on that ground required no interference.

2. Learned Counsel for the Appellant submits that he was initially appointed as a daily-wage and subsequently regularised in service in the year 1986 preceded by an open advertisement and selection. The advertisement contained a clause that the candidate must produce a domicile certificate. This was contrary to Rule 88(3)(i)(a) of the Madhya Pradesh/Chhattisgarh Krishi Upaj Mandi (Mandi Nidhi Lekha Tatha Rajya Vipnan Sewa Ki Gathan Ki Riti Tatha Anya Vishaya) Niyam, 1980 (hereinafter called 'the Rules'). If the clause of the advertisement was *ultra vires* the Rules and the Appellant submitted any domicile certificate, it has no relevance and cannot be a ground for termination. There is no other ineligibility for appointment alleged against the Appellant. It was lastly submitted that the Appellant has continued in service for the last 29 years and is now approaching superannuation.

3. Learned Counsel for the State opposing the appeal submitted that the advertisement contained a specific stipulation with regard to the applicant having to be a domicile of the then State of Madhya Pradesh. It was next submitted that the ground now being urged of the advertisement being *ultra vires* the Rules has neither been pleaded nor was urged before the Learned Single Judge. The question also arises if the post of Nakerdar on which the Appellant had been regularised, formed part of the cadre structure of the Samiti.

4. We have considered the submissions on behalf of the parties.

5. The Appellant was appointed as a daily-wage on 5.11.1982 by Krishi Upaj Mandi Samiti, Ambikapur. His regularisation by an order dated 6.10.1986 was preceded by an advertisement dated 23.9.1986. One of the clauses in the advertisement required the applicant to be a domicile of the then State of Madhya Pradesh.

6. The Appellant was terminated on 5.5.1988 on the ground that he was not a resident of the State of Madhya Pradesh which was one of the eligibility criteria

for appointment on the post of Nakedar, after complaints were made against him. The appeal preferred against the same was also dismissed on 27.7.1992. The Appellant preferred a revision before the State Government during the pendency of which his domicile certificate was itself cancelled on 6.7.1992.

7. The order of regularisation dated 6.10.1986 states that the Appellant was being temporarily appointed on the regular post of Nakedar. The submission on behalf of the State that Nakedar was not a cadre post of Samiti therefore does not appeal to us. The pleadings in this regard at paragraph 8 of the counter-affidavit is bald stating that the post does not come within the confines of the State Marketing Services. This runs contrary to and is in teeth of the regularisation order explicitly stating that Nakedar was a regular sanctioned post.

8. The issue that the order of termination in violation of principles of natural justice or that a show cause notice was given before the cancellation of the domicile certificate need not engage the attention of the Court as the matter can be disposed on another pure question of law otherwise.

9. Rule 88(3)(i)(a) of the Rules provides that any citizen of India was eligible to apply. The advertisement which restricted the applicants to residents of State of Madhya Pradesh only, was therefore *ultra vires* the Rules. If the Respondents incorporated a condition in the advertisement contrary to the Rules, it is not open for them to contend that the Appellant nonetheless submitted a false domicile certificate. The question of domicile certificate was wholly irrelevant to the appointment and completely superfluous to the controversy. The advertisement being *ultra vires* was specifically pleaded in the writ petition.

10. The Respondents cannot be permitted to take advantage of their own wrong in publishing the advertisement *ultra vires* the Rules. It is not the case of the Respondents that the Appellant was not a citizen of India. Since we have arrived at the conclusion that the action of the Respondents was completely *ultra vires*

the Rules, it is the power under Article 226 of the Constitution which has been invoked to set aside the order of termination. The writ petition is therefore held to be maintainable.

11. We are therefore unable to sustain the order under appeal which is accordingly set aside. The termination dated 5.5.1988 having been ordered on a singular ground is also not sustainable and is set aside.

12. The appeal is allowed.

Sd/-
(Navin Sinha)
ACTING CHIEF JUSTICE

Sd/-
(Pritinker Diwaker)
JUDGE