

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 623 of 2018

- Municipal Council Patthalgaon Through The Chief Municipal Officer, Patthalgaon, Tehsil Patthalgaon, District Jashpur, Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through The Principal Secretary, Department of Urban Administration, Mahanadi Bhawan, (Old DKS Bhawan), Mantralaya, New Raipur (Old Raipur), District Raipur, Chhattisgarh.
2. Collector, Jashpur, Jashpurnagar, District Jashpur, Chhattisgarh.
3. Commissioner, Bilaspur, Division, Bilaspur, Chhattisgarh.
4. Shyam Sunder Prasad S/o Shri Munsri Mohanlal Aged About 58 Years R/o Patthalgaon, District Jashpur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Pawan Shrivastava, Advocate
For Respondents/State	:	Shri Gary Mukhopadhyay, Government Advocate
For Respondent No.4	:	Shri Amrito Das, Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, Ajay Kumar Tripathi, Chief Justice

24.08.2018

1. The order dated dated 16.03.2018 passed by the learned Single Judge is under challenge in appeal under Section 2 of the Chhattisgarh (Appeal to Division Bench) Act, 2006.
2. The private respondent preferred the appeal because he was aggrieved by two decisions (Annexures P/1 and P/2) which were taken by the Municipal Council of Pathalgaon. By the said resolutions it seems that the private respondent had been absorbed on the post of Moharir on a fixed pay.
3. There is a long service history of the private respondent. He entered into service in the said Municipal Council as a Secretary in the year 1969. He

was supposedly absorbed vide Annexure P/3 to the writ application on 28.11.1980 on the post of Head Clerk-cum-Accountant-cum-Deputy Revenue Inspector. While performing such duty his services came to be terminated on 12.04.1985. The order of termination was challenged before the Collector, who allowed the appeal on 19.06.1985 remitting the matter back to the Council for passing fresh order after holding an enquiry. After the enquiry, a fresh order of termination again came to be passed on 01.04.1986, which again was challenged before the Collector, but this time the Collector dismissed the appeal. The second appeal preferred before the Commissioner was also rejected, which took the private respondent before the Madhya Pradesh High Court in a writ application which was registered as M.P. 79/88.

4. The Madhya Pradesh High Court allowed the writ petition on 23.07.1998, set aside the order of termination, directed for reinstatement in service with all consequential benefits. Other details are not required to be gone into.
5. However, once the private respondent was reinstated, in absence of the requisite qualification and eligibility etc. he was absorbed on the post of a Moharir from which post he superannuated on 30.06.2009. All his post retiral benefits from the post of Moharir was settled, but then, the private respondent not being satisfied, returned to the Court.
6. After hearing the parties, the learned Single Judge had this to observe in the following paragraphs :

“7. Having heard the contentions put forth on either side and on perusal of the record so far as the first part of dispute as to the consequential relief is concerned, there cannot be any doubt that once when the order of termination dated 01.04.1986 has been set aside by the High Court of MP, the position would stand as if the order of termination was never in existence. By all means, the petitioner has to be brought back on the same place that he was holding on the date of termination i.e. prior to 01.04.1986 which undisputedly was a post of Head Clerk-cum-Accountant-cum-Deputy Revenue Inspector. Moreover, since the High Court on 23.07.1988 in MP 79/88 had specifically ordered for reinstatement in service with consequential benefits, it implies that the petitioner would have to be brought back to the post of Head Clerk-cum-Accountant-cum-Deputy Revenue Inspector and he would be entitled for all the wages and other benefits that he was drawing prior to his termination. Even if Annexure P-2 is taken into consideration, it does not reflect that it has a retrospective effect. The reference in the decision on the basis of which Annexure P-2 has been passed also is a decision that of the year 2000 itself. Thus, till Annexure P-2 was passed on 23.11.2000, there cannot be any dispute whatsoever that the petitioner would be entitled for all the benefits that he was drawing on the date of termination i.e. on the post of Head Clerk-cum-Accountant-cum-Deputy Revenue Inspector.

8. We need not go into the veracity of Annexure P-1 since it was never acted upon nor any formal order was passed demoting the petitioner based on Annexure P-1 at any point of time. Thus, the same now is of no consequence.

9. So far as the contention of the counsel for the petitioner that Annexure P-2 is not sustainable for the reason that the petitioner in fact had all the requisite qualifications for the post of a Head Clerk which is established from Annexure P-5 issued from Jagjeewan College, Gaya which is a certificate of Pre Arts and is equivalent to a higher secondary certificate is concerned, the same cannot be accepted. Moreover, it is beyond the scope of judicial review in the present writ petition for deciding the equivalence of a particular course. Admittedly, the petitioner has not shown any proof of his having a higher secondary certificate with which he could have said that he fulfills the eligibility

criteria so far as the post of Head Clerk is concerned. Given the said facts, this Court finds it difficult to interfere with Annexure P-2 at this juncture and the prayer for quashment of Annexure P-2 thus stands rejected.”

7. From reading of the above reasoning provided by the learned Single Judge, there was no option but to allow to the private respondent all consequential benefits of the post of Head Clerk-cum-Accountant-cum-Deputy Revenue Inspector from 01.04.1986 to 23.11.2000 i.e. the date on which the services of the private respondent got absorbed as a Moharir. This benefit was extended to the private respondent under the historical background that the post which the private respondent was holding at the time of termination was required to be restored to him in terms of the decision of the Madhya Pradesh High Court. Since that order had attained finality, the benefit which flew from the said order could not be taken away in another judicial proceeding. But also keeping in mind that the private respondent did not have the requisite qualification and he tried to procure some kind of a certification from somewhere to show his eligibility, but not being satisfied with the bonafide of such certification no person can be allowed to hold a post without having the eligibility or the qualification so needed and that is why the absorption on the post of Moharir was not interfered with.
8. The facts being what they are which has been taken note of in the earlier part of the order, we are not satisfied that the decision of the learned Single Judge requires any interference especially when the benefits which had been granted to the private respondent between 01.04.1986

to 23.11.2000 was sustained otherwise it would have had the effect of taking away the benefit granted to him by a judicial order, passed years ago by the Madhya Pradesh High Court.

9. The appeal has no merit. It is dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge