HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

W.A. No.799/2010

Surya Prakash Shrivastava
-Versus-
The State of M.P. and others

Shri G.P. Kekre, Advocate for the appellant.
Shri A. Rajeshwar Rao, Govt. Advocate for the respondent No.1.
Shri Amit Seth, Advocate for the respondents No.2 and 3.

CORAM :

Hon'ble Shri Justice Sanjay Yadav, Acting Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

J U D G E M E N T
(Jabalpur, dtd.02.12.2020)

Per : Vijay Kumar Shukla, J.-

The present intra-court appeal has been filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalay (Khand Nyaypeeth ko Appeal) Adhiniyam, 2005 being aggrieved by the order dated 30-7-2010 passed in WP-2370-1997, whereby the writ petition filed by the petitioner-appellant has been dismissed and the order passed by the State Government, dated 19-5-1997, cancelling the order of promotion of the appellant has been affirmed.

2. The learned counsel for the appellant submitted that the appellant was given regular promotion to the post of Health Officer after getting approval from the State Government, vide order dated

26-03-1996, however, by order dated 19-5-1997, after elapse of a period of more than one year, the said promotion has been cancelled by the respondents without affording an opportunity of being heard to the appellant and, therefore, the said order cannot be sustained in the eyes of law.

3. The facts of the case adumbrated in a nutshell, are that the petitioner-appellant is a Bachelor of Electro Homeopathy Medicines and Surgery. He is also registered as a medical practitioner in Electro Homeopathy with the competent authority. He was appointed as Sanitary Inspector in the Municipal Corporation, Dewas by order dated 01-6-1984. He joined the service on 18-6-1984. While so working, vide notification dated 13th July 1994, he was notified as Food Inspector for the purpose of taking action under the Prevention of Food Adulteration Act, 1954. The case of the appellant is that sometimes in the year 1994 the Municipal Corporation, Dewas prepared a note-sheet for constituting a Departmental Promotion Committee (DPC) for filling-up one post of Health Officer available in the Municipal Corporation. It is the case of the appellant-petitioner that the need of filling-up the post arose, as the erstwhile Health Officer was sent on deputation. It is stated that vide resolution dated 24-12-1994 the Municipal Corporation resolved to send the proposal to the State

Government. It is further stated that in pursuance to the same, a Departmental Promotion Committee (DPC) was convened on 20-01-1994 to consider the eligible candidates for promotion/appointment to the post of Health Officer and the appellant-petitioner having found suitable, the Chairman of the Standing Committee also resolved for recommending the case of the appellant. Accordingly, the resolution dated 16-5-1995 was passed and the Commissioner had written the Government seeking approval for appointment of the appellant.

4. According to the appellant-petitioner, vide order dated 5-02-1996 the State Government granted approval for appointment of the appellant and thereafter, he was promoted to the post of Health Officer in the payscale of Rs.2000-3050. The appellant submitted his joining on 26-03-1997 to the Corporation and has been working since then. However, in the meanwhile on 25-7-1996 he was transferred on deputation as Health Officer to the Municipal Corporation, Durg. Thereafter, he came back and posted in the Municipal Corporation, Bhopal.

5. The learned counsel for the appellant submitted that the approval granted by the State Government and the order passed promoting the appellant, has been cancelled/withdrawn in an

arbitrary and illegal manner, even though the Departmental Promotion Committee has recommended the case of the appellant and the Standing Committee has also resolved on 15-5-1995 to grant promotion to the appellant. It is further stated that a civil suit was filed by one Mohd. Hanif Khan challenging the promotion of the appellant on the post of Health Officer and the respondents in their written statement justified the promotion granted to the appellant and, therefore, they are estopped from going back on their statement filed in the civil suit of the said Mohd. Hanif.

6. Combatting the aforesaid submissions the respondents submitted that the promotion of the appellant on the post of Health Officer is totally illegal and arbitrary. The appellant was not possessing the requisite qualification for the post of Health Officer. According to the respondents a candidate to be eligible for appointment on the post of Health Officer has to possess an MBBS degree or DPS, or any degree equivalent to the same. It is stated that the appellant is only an Electro Homeopath from a Homeopathy Medical Institute and the same is not a basic qualification for appointment to the post in question. It is emphasized that the appellant is neither an MBBS nor DPC nor does he holds a degree equivalent to the same. It is also stated that the so called resolution dated 15-5-1995 which is said to have been passed for promotion of

the appellant, is not available in the records of the Municipal Corporation. The original records of the Corporation were produced before the learned Single Judge.

7. Another objection was raised by the respondents that the DPC did not conduct its deliberation properly. Cases of eligible persons who were senior to the appellant were not taken note of at all and the DPC conducted its proceedings in an arbitrary manner. It is pointed out by the respondents that three other persons, namely, Mohd. Hanif Khan, Dashrath Babulal Bali and Ramsingh Manohar Singh Kelkar are senior to the appellant and even though, they are well qualified. The DPC did not ascribe any reason as to why the appellant, who was at Sr. No.4, in the seniority list, is promoted in comparison to other three persons. Apart from this, it was also stated that the Coram of DPC was not complete. The DPC consisted of three members, namely, Deputy Commissioner, Sub-Fire Officer and Executive Engineer of the Municipal Corporation, Dewas. However, the Executive Engineer of the Corporation was absent and in absence of all the Members, the DPC has conducted its deliberation. The learned Single Judge perused the original record and recorded a finding that in the resolution and agenda, dated 15-5-1995, there is nothing in this document to show that any meeting

was convened on 15-5-1995, wherein the Standing Committee recommended or resolved for promoting the appellant.

8. It is not in dispute that the service condition of the appellant is governed by the By-laws filed by the respondents. A copy of the said By-laws of 1990, which is admittedly applicable to the case of the appellant was placed on record. As per Schedule appended to the Bye-laws, the basic qualification prescribed for the post of Health Officer is prescribed - an MBBS degree from a recognized University or D.P.S. with five years experience in the Public Health Department and knowledge in Hindi language. The promotion to the post of Health Officer lies from the channel of Assistant Health Officers who are having five years experience. It would be seen that the appellant is B.Sc., LL.B, B.E. and is not having the requisite qualification for the post of Health Officer, i.e. degree in MBBS or D.P.S., or any degree equivalent to the same. The appellant is only a graduate in Electro Homeopathy and there is no material placed before the Court that how the qualification possessed by the appellant is treated equivalent to the qualification prescribed in the Recruitment Rules.

9. Thus, the appellant inherently lacks the basic qualification for appointment on the post of Health Officer. Further,

the learned Single Judge has recorded a specific finding that there was no material indicating any recommendation for promotion of the appellant-petitioner to the post of Health Officer. The proceeding dated 15-5-1995 does not record any recommendation for promotion to the post of Health Officer. In addition to that, the learned Single Judge has also found that constitution of the DPC was not complete, as one of the Members - Executive Engineer of the Municipal Corporation, Dewas was absent and in absence of this Member the DPC has conducted the deliberation. It has also been noted that the names of the eligible candidates being Mohd. Hanif Khan at Sr. No.1; Dashrath Babulal Bali at Sr. No.2; Ramsingh Manohar Singh Kelkar at Sr. No.3; and the petitioner-appellant Dr. Surya Prakash Shrivastava at Sr. No.4 were mentioned, but their ACRs were not considered by the DPC. However, surprisingly in the case of all the three other employees except the appellant, the ACR of only year i.e. from 1991-1992 was obtained and perused, whereas in the case of the appellant, five years ACRs from 1088-89 to 1993-94 were perused.

10. The argument as regards the plea of estoppel against the Municipal Corporation on the ground that in the statement filed by one Mohd. Hanif Khan challenging the promotion of the appellant on the post of Health Officer, the respondents have justified the

promotion of the appellant, the learned Single Judge has taken into consideration the enquiry report dated 27-03-1997, Annexure-R-1/2. After filing of the written statement an enquiry was conducted and it was found that the petitioner-appellant was not possessing the requisite qualification for the post of Health Officer, therefore, no estoppel would operate against the Corporation on the said ground, and the appellant cannot take advantage of the pleadings in the civil suit, when the entire promotion exercise is found to be vitiated, for the reasons indicated hereinabove.

11. The learned counsel for the appellant vehemently argued that the impugned order has been passed without giving any show cause notice or an opportunity of hearing to the appellant. To substantiate his submissions he has placed reliance on the judgments of the Apex Court rendered in the cases of **Gadde Venkateswara Rao vs. Government of Andhra Pradesh and others, AIR 1966 SC 828,** *para 14* and **S.L. Kapoor vs. Jagmohan and others, (1980) 4 SCC 379.** The aforesaid judgements would not render any assistance to the facts of the present case. In the present case, the State Government has cancelled the approval mainly on the ground that the appellant was not having the requisite educational qualification for promotion on the post of Health Officer and, in fact, promotion of the appellant on the said post was *void ab initio*

and nullity, as the qualification possessed by the appellant was not as per Bye-laws which is admittedly applicable to the appellant, the appointment of the petitioner-appellant was illegal.

12. In the case of **Nagar Nigam Harijan Karmchari Sangh, Jabalpur and another vs. The Municipal Corporation, Jabalpur, (1975) 1 LLJ 6 = 1974 SCC Online MP 73,** it is held that the Bye-laws framed by the Municipal Corporation for governing the service conditions of its employees, are statutory in nature and binding. In the case at hand, the appellant was not possessing the requisite educational qualification – an MBBS degree or any equivalent degree, as prescribed under the Bye-laws for the post of Health officer. Therefore, the State Government was absolutely justified in passing the impugned order, cancelling the approval for promotion granted to petitioner-appellant, as the promotion of the appellant was *void ab initio* and nullity.

13. In the case of **State of M.P. and others vs. Shyama Pardhi etc.etc., 1996 AIR SCW 2709,** the Apex Court ruled that the appointment of a candidate not possessing requisite qualification and wrongly selected for appointment by way of initial selection to undergo training, cancellation of such appointment is legal and

question of violation of principle of natural justice would not arise in such case.

14. In view of the aforesaid submissions and proposition of law, we do not perceive any illegality in the impugned order passed by the learned Single Judge warranting any interference in this intra-court appeal. Accordingly, the **writ appeal deserves to and is hereby dismissed**. There shall be no order as to costs.

(Sanjay Yadav)
Acting Chief Justice

(Vijay Kumar Shukla)
Judge

ac.

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