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WP-20363-2017

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 8th OF JULY, 2026WRIT PETITION No. 20363 of 2017*KALYAN SINGH PAWAR**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Praveen Dubey - Advocate for the petitioner.

Ms Shraddha Tiwari - Panel Lawyer for the respondents/State.

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ORDER

The petitioner has filed the present petition under Article 226 of the Constitution of India seeking following relief:

- "a. To issue a writ in the nature of *Certiorari* quashing impugned order dated 18.10.2017 (Annexure P/1) passed by respondent No. 2;
- b. To issue a writ in the nature of *Mandamus* commanding respondent to continue petitioner in service on the post of Assistant Grade III and grant him all the regular salary with all the consequential benefits, arising thereof;
- c. To call for the relevant records for kind perusal of this Hon'ble Court;
- d. Any other relief's deemed fit on facts and circumstances of the instant case."

2. In short, the facts of the case are that the petitioner was registered with the Employment Exchange. In 1985, a vacant post of Daftary was lying vacant under respondent No.3. The name of petitioner was recommended by the Employment Exchange and as such appointed as Daftary on daily wages on 23.01.1985, which reflects from the certificate dated 10.03.1987 (Annexure P/2) issued by the respondents.



3. Thereafter, by order dated 13.03.1987 (Annexure P/3), the petitioner was appointed on ad-hoc basis for six months or till a regular appointment was made on the post.

4. The ad-hoc appointment of the petitioner was extended from time to time by various orders issued between 1987 and 1990 vide Annexure P/4. The petitioner was also granted the benefit of special pay by order dated 07.08.1989 (Annexure P/5).

5. Pursuant to the State Government notification dated 09.01.1990, the services of the petitioner along with other employees were regularized by order dated 27.01.1990 (Annexure P/2). The Petitioner's name appears at Serial No. 24 in the order. After regularization, the name of the petitioner was continuously included in the gradation list issued from time to time, which is apparent from Annexure P/7.

6. Pursuant to the recommendation of Departmental Promotion Committee, vide order dated 28.01.2015 (Annexure P/8), the petitioner was granted the benefit of the Second Time Scale of Pay with effect from 27.01.2010. Thereafter, by order dated 28.04.2015 (Annexure P/9), the petitioner was promoted to the post of Assistant Grade-III.

7. It is averred that after serving the department nearly for 30 years, the petitioner was issued a show cause notice dated 20.11.2015 (Annexure P/10) alleging that his initial appointment on the post of Daftary was irregular as it was a promotional post, by proposing termination of his service. The Petitioner submitted a detailed reply to show cause notice vide Annexure P/11



8. During pendency of the matter, the petitioner also filed W.P. No. 20428/2015, which was disposed of by order dated 16.12.2015 (Annexure P/12) with a direction to the respondents to consider the reply of the petitioner and pass a reasoned order. However, by the impugned order dated 18.10.2017, respondent No. 2 cancelled the Petitioner's regularization referring Rules of 1978 and also the order passed in WP No. 198/99 on the ground that the post of Daftary was a 100% promotional post and, therefore, petitioner's initial appointment was not valid. The cancellation was made after about 27 years of regular service despite the fact that the petitioner continued in service on the basis of orders issued by the respondents themselves from time to time and also earned promotion and other service benefits.

9. It has been contended by the learned counsel for the petitioner that initially the petitioner was appointed on daily wages vide order dated 23.01.1985, which is reflected in the certificate issued vide Annexure P/2 dated 10.03.1987. It is submitted that the petitioner was thereafter given appointment on ad-hoc basis vide order dated 13.03.1987 (Annexure P/3). The petitioner was given the benefit of Revision of Pay Rules, 1987 vide order dated 07.08.1989 (Annexure P/5). Thereafter, the petitioner was regularized vide order dated 27.01.1990 (Annexure P/6). The petitioner was also given benefit of time bound pay scale vide order dated 28.01.2015 (Annexure P/8). Thereafter, the petitioner was promoted to the post of Assistant Grade-III vide order dated 28.04.2015 (Annexure P/9).

10. It is submitted that in between the petitioner has been served with a



show cause notice dated 20.11.2015 (Annexure P/10) in the light of the direction issued by the Division Bench of this Court vide order dated 06.08.2015 in WP No. 198/1999-Manshukhlal Saraf vs. Arun Kumar Tiwari & others to show cause that as the petitioner's appointment has been found to be irregular, why it should not be cancelled. The petitioner had submitted reply vide Annexure P/11.

11. It is submitted that the petitioner had also filed a writ petition i.e. WP No. 20428/2015, which was disposed of vide order dated 16.12.2015 (Annexure P/12) directing petitioner to file representation against the show cause notice and finally vide impugned order dated 18.10.2017, the services of the petitioner have been terminated.

12. It has been contended by the learned counsel for the petitioner that the petitioner was duly appointed by seeking names from the Employment Exchange after following due process of law on a vacant post. The petitioner was time and again given benefit of service and regularized. Thereafter time bound scale of pay and promotion were also given, but in the wake of the direction issued by this Court in WP No. 198/1999, the petitioner has been served with a show cause notice, which he has duly replied, but, instead of considering the fact that the petitioner was appointed after following due process of law, the services of the petitioner have been terminated after serving about nearly 28 years, therefore, the impugned order deserves to be quashed.

13. Per contra, learned counsel for the respondents has submitted that in compliance of the direction issued by this Court vide order dated



06.08.2015 in WP No. 198/1999 (Annexure R/2), the petitioner was served with a show cause notice and it was found that as the appointment of the petitioner was irregular, the services of the petitioner have been terminated vide order dated 18.10.2017 (Annexure P/1).

14. It is submitted that for appointment on the post of Daftari, the M.P. Nagar Evam Gramin Niyojan (Chaturth Shreni) Seva Bharti Niyam, 1978 (For short 'Rules of 1978') are applicable. It is submitted that as per Schedule appended to the Rules of 1978, the post of Daftari is 100% promotional post. Therefore, no direct appointment could have been granted to the petitioner. Consequently, finding it to be irregular appointment, the services of the petitioner were terminated in compliance of the order passed by this Court in WP No. 198/1999. Therefore, the order passed by the authority cannot be faulted with.

15. The respondents have also filed reply contending that the post of Daftari is governed by the Rules of 1978 (Annexure R/1). The Schedule to the Rules provides that the 100% posts of Daftari are to be filled by promotion and there is no provision for direct recruitment.

16. It is submitted that although the petitioner claims that he was initially appointed on daily wages, thereafter on ad hoc basis and regularized in the year 1990, but such appointment and regularization were contrary to the statutory Rules of 1978, as the post could not have been filled by direct recruitment.

17. It is submitted that this Court in *Manshuk Lal Saraf vs. Arun Kumar Tiwari* reported in (2016 (2) MPLJ 283), has directed the State to



examine appointments made without following the applicable recruitment Rules and to take action against such illegal appointments. This Court further directed to revoke all such illegal appointments made without following the selection procedure prescribed under relevant recruitment rules.

18. It is submitted that the aforesaid judgment was challenged before the Hon'ble Supreme Court in SLP (C) No. 6697/2016, wherein it was clarified that no adverse action shall be taken against the employee without issuing notice and affording an opportunity of hearing.

19. In compliance with the aforesaid directions, after scrutiny the respondents found that the petitioner's appointment was made by direct recruitment against a promotional post. Accordingly, a show cause notice dated 20.11.2015 was issued and the petitioner was given full opportunity to submit his reply. The petitioner filed reply to show cause notice, which was duly considered, but found unsatisfactory. Consequently, the impugned order dated 18.10.2017 was passed after following the principles of natural justice.

20. Heard learned counsel for the parties and perused the record.

21. It is evident from Annexure P/2, the certificate issued by the authority, that the petitioner's engagement was in accordance with law after inviting names from the Employment Exchange. Thereafter, the petitioner was appointed on ad-hoc basis on the post of Daftari at the minimum of pay scale of the regular pay scale vide order dated 13.03.1987 (Annexure P/3). Afterwards services of the petitioner were regularized vide order dated 27.01.1990 (Annexure P/6) on the post of Daftari. The petitioner was granted time bound scale of pay vide order dated 28.01.2015 (Annexure P/8) on the



post of Daftari. Thereafter, the petitioner was granted promotion as AG-III vide order dated 28.04.2015 (Annexure P/9).

22. Looking to the aforesaid orders, it is found that the respondents at no point of time have found that the appointment of the petitioner was irregular and extended the service benefits time and again. It is only when the order passed in WP No. 198/1999 to scrutinize the appointments of the employees, made irregular in the State of M.P., issued to the Chief Secretary, the matter of appointment of employees has been scrutinized and in such compliance, it is found that as the petitioner was appointed on the post of Daftari, which is a promotional post, the appointment being irregular in the light of the order passed in WP No. 198/1999, deserves to be revoked. The Division Bench of this Court in **Manshukhlal Saraf (supra)** has issued the following directions:-

"(i) The impugned appointment order dated 21.05.1998 issued by the respondent No.2 in favour of respondent No.1, is quashed and set aside.

(ii) Further direction is issued to the State of Madhya Pradesh, compliance whereof must be ensured by the Chief Secretary, to initiate appropriate legal action against the respondent No.1 and all concerned who were instrumental in the appointment of respondent No.1 knowing fully well that it was contrary to the selection procedure prescribed by the recruitment rules and would also result in defeating or nullifying the judgment of this Court dated 11.09.1997 in Writ Petition No.2673/1995 against the respondent No.1 quashing his regularization on the post of Sub-Engineer in Nagar Panchayat, Mauganj, District Rewa.

(iii) The respondent/State of Madhya Pradesh and all its functionaries are directed to make all future regular appointments on the public posts in the respective departments strictly in conformity with the selection procedure specified in the concerned recruitment rules.

(iv) The Chief Secretary of the State of Madhya Pradesh shall call upon the Secretary of the respective departments of the State, to enquire into whether any employee in his Department has been or was appointed on regular basis without following the selection process prescribed in the relevant rules framed therefor after coming into force of such rules; and to proceed against all such



persons as also against the person(s) responsible for making such appointment, in accordance with law; and submit report in that behalf to the Chief Secretary of the State of Madhya Pradesh within four months from today. The Chief Secretary of the State of Madhya Pradesh must then initiate necessary proposal for issuance of a general Government order or on case to case basis, to formally revoke all such illegal appointments made in similar manner without following the selection procedure prescribed by the relevant recruitment rules. The services rendered by such persons consequential to revocation of appointment be treated as only contractual appointment during the relevant period and that no other benefit shall be given or will accrue to them as in the case of regular appointee appointed as per the prescribed selection process for recruitment.

(v) The Chief Secretary to submit compliance report, within four weeks from the expiry of initial four months granted to the Secretary of the concerned Department.

(vi) The petition, though disposed of in terms of this judgment be notified in the third week of January, 2016, under caption "Direction" for consideration of the compliance report."

23. However, from the perusal of the record, it is found that as the petitioner has rendered a respectable period of service in the respondent-department and the respondents finding it to be irregular ought to have considered the case of the petitioner for revocation from the post of Daftari to regularize it on the post of direct recruitment. The respondents instead to file compliance of the order passed by this Court has chosen the way to terminate the services of the petitioner, which he has rendered for a respectable period in the respondent-department. From perusal of the record as well as return, it is nowhere mentioned that the petitioner has ever misrepresented and obtained the appointment by fraud. It is nowhere the case that the appointing authority has ever been subjected to any departmental enquiry for granting the petitioner an appointment on the post which was a promotional post.

24. The Hon'ble Apex Court in the case of **State of Karnataka vs. Uma Devi** reported in (2006) 4 SCC 1 has held as under:-



53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC 1071], *R.N. Nanjundappa* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

25. Thus, from the above enunciation of law, it is clear that the State being a welfare State cannot be allowed to remove a person who spent a respectable time in rendering service in the respondent-department. The State authority instead of removing the petitioner from service could have taken the stand of regularizing the appointment of the petitioner after 28 years by regularizing his services on the post which was of the direct recruitment and accordingly adjusted his salary, emoluments received by him on the higher post of promotion. Therefore, in the considered opinion of this Court, the respondents/State has not acted in accordance with law and the action of the respondents is not justified qua the facts and circumstances of the present case.



26. Consequently, the impugned order dated 18.10.2017 (Annexure P/1) is hereby quashed and respondents are directed to regularize the services of the petitioner on the post of direct recruitment may be lower in scale and amount so received by the petitioner of the post of promotion be accordingly adjusted/recovered within a period of 3 months from the date of production of certified copy of this order.

27. With the aforesaid, the petition is allowed and disposed of.

(DEEPAK KHOT)
JUDGE

RAGHVENDRA