

Keshav Narayan Gupta and Others

Vs

Jila Parishad, Shivpuri (MP) and Another

Civil Appeals Nos. 4954 and 4955 of 1992

(Sujata V. Manohar, D. P. Wadhwa JJ)

04.11.1997

ORDER

1. The facts in both these appeals are similar. For the sake of convenience we are setting out the facts in CA No. 4954 of 1992. The appellant was appointed in the office of Zila Parishad, Shivpuri (M.P.) as a Lower Division Clerk temporarily and for a period of 30 days on 5-6-1985. This temporary appointment was continued after a short break for another 30 days and it was thereafter renewed with short breaks from time to time. The appellant in CA No. 4955 of 1992 was similarly appointed temporarily by the same Zila Parishad as a driver for short periods with breaks. The appellants in both the appeals continued in service up to 1992.

2. Under a Circular dated 1-10-1984 issued by the Government of Madhya Pradesh Panchayat and Rural Development Department, 4 posts were sanctioned for District Panchayats in 29 districts except the districts of Madhya Bharat. The Zila Panchayat of Shivpuri falls in Madhya Bharat. By another Resolution dated 22-1-1987, 2 additional posts were sanctioned for the District Panchayats. As a result, six posts became available to the District Panchayats including the post of a Lower Division Clerk. The Resolution of 22-1-1987 also makes it clear that in the 16 districts of Madhya Bharat where the staff is working from the time when Mandal Panchayats were in existence, the staff will not exceed the six sanctioned posts. In paragraph six it is provided, inter alia, that until rules are framed for appointment and promotion of employees of District Panchayats the appointments would be made after following the general procedure approved by the Collector. In the Selection Committee the President/his representative should also be included. Even after the Resolution of 19-2-1987 the appellants continued to be ad hoc employees. Ultimately under a directive issued by the Deputy Director, Vigilance on behalf of the Director Panchayat, Social Services, M.P. dated 4-6-1991, it was directed that all irregular appointments made in the District Panchayat, District Shivpuri should be cancelled. Accordingly, by two letters dated 23-3-1992 and 30-7-1992 the appointment of the two appellants was terminated by giving them three months' previous notice in accordance with Rule 150 of the Madhya Bharat Panchayat Rules, Samwat 2008. Orders of termination were challenged by the appellants by filing writ petitions in the High Court. These writ petitions have been dismissed. Hence, the present appeals are before us.

3. It is contended by the appellants, that although appointments were termed as temporary or ad hoc, they were regularly appointed and continued in service for 7 years. Hence, they should be considered as permanent employees. Their services could not have been terminated as was purported to be done. The appellants rely upon certain resolutions passed by the District Panchayat, Shivpuri, under which the Panchayat had sought the Collector's sanction for giving regular appointments to the appellants. No such sanction was, however, given by the Collector.

4. According to the appellants there were no rules prescribing procedure for appointments to these posts and the only requirement was that the approval of the Collector should be obtained. The Resolution of 22-1-1987, however, provides that until rules are framed for appointment or promotion, the appointments should be made by following the general procedure approved by the Collector. There should be a Selection Committee in which the President/his representative should also be included. In the present case appointments were made by the Secretary of the Panchayat concerned. It does not seem as if any applications were invited for these posts. The approval of the Collector was not obtained for any regular appointment. Initially, only temporary appointments for limited periods were sanctioned by the Collector. When the Panchayat passed resolutions seeking regular appointment for these appellants, the approval of the Collector was not given to such regular appointment. Therefore, in any view of the matter it would be difficult to consider their appointments as regular.

5. We, therefore, do not see any reason to take a view different from the view taken by the High Court. It is, however, submitted by the learned counsel for the appellants that these appellants have worked for 12 years by now and there are no complaints regarding their service. Hence, if any regular appointments are made, the cases of the appellants should also be considered by waiving, if necessary, the age bar. We see some force in this contention. We, accordingly, direct that when regular appointments to the posts at present occupied by the appellants are made, the cases of the appellants will also be considered along with the other applicants by waiving the age bar in the case of the appellants, if necessary. Until such regular appointments are made the appellants will continue to function on an ad hoc basis as of now. With these directions the appeals are dismissed.