IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 19th OF JUNE, 2023

WRIT PETITION No. 788 of 2012

BETWEEN:-

BRIJMOHAN SHARMA S/O R.D.SHARMA, AGED-24 YEARS, R/O GRAM PANCHAYAT VIRDHANPURA BLOCK AND DISTRICT BHIND (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SHIVENDRA SINGH RAGHUWANSHI- ADVOCATE)

AND

1. **STATE OF M.P TH: PRINCIPAL SECRETARY, DEPTT. OF PANCHAYAT AND RURAL DEVELOPMENT VALLABH BAHVAN, BHOPAL (MADHYA PRADESH)**
2. **COMMISSIONER CHAMBAL DIVISION MORENA (MADHYA PRADESH)**
3. **COLLECTOR, DIST. BHIND (MADHYA PRADESH)**
4. **GRAM PANCHAYAT VIRDHANPURA BLOCK & DIST. BHIND, THR. ITS SECRETARY (MADHYA PRADESH)**
5. **VIRENDRA KUMAR S/O SHRI MAHADEV PRASAD SHARMA R/O VILLAGE VIRDHANPURA BLOCK & DISTRICT. BHIND (MADHYA PRADESH)**
6. **BACCHU LAL EX-SARPANCH GRAM PANCHAYAT VIRDHANPURA, BLOCK & DIST. BHIND (MADHYA PRADESH)**
7. **SHRIRAMNIWAS, EX-UP SURPANCH GRAM PANCHAYAT VIRDHANPURA BLOCK & DIST.**

BHIND (MADHYA PRADESH)

8. **BENIRAM SAGAR SECRETARY GRAM PANCHAYAT VIRDHANPURA BLOCK & DIST. BHIND (MADHYA PRADESH)**
9. **SATYAJEET S/O SHRI HANSRAM SHAKYA R/O VILLAGE GRAM VIRDHANPURA BLOCK & DIST. BHIND (MADHYA PRADESH)**
10. **MUKESH S/O SHRI RAMSNEHI SHARMA R/O VILLAGE GRAM VIRDHANPURA BLOCK & DIST. BHIND (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SOHIT MISHRA- GOVERNMENT ADVOCATE AND SHRI ANIL KUMAR SHRIVASTAVA- ADVOCATE FOR RESPONDENT)

This petition coming on for hearing this day, ***Hon'ble Shri Justice Milind Ramesh Phadke*** *passed the following:*

ORDER

1. The present petition under Article 226 of the Constitution of India is directed against the order dated 04.10.2011 passed by respondent no.2 in Revision No.25/2010-11, whereby the learned Commissioner had directed for initiating proceedings for appointment of Panchayat Karmi in view of the amended provisions of M.P. Panchayat Raj & Gram Swaraj Adhiniyam, dated 29.03.2011 and the matter has been sent to Zila Panchayat contrary to law laid down by the Hon'ble Apex Court in the case of **P. Mahendra vs. State of Karnataka** reported in **AIR 1990**

SC 405, in the matter of **Sonia vs. Oriental Insurance Company** reported in **2007 vol.10 SCC 627** and in the matter of **Madanmohan Sharma and vs. State of Rajasthan** reported in **2008 (3) SCC 724**. The aforesaid order has been assailed on the ground that once advertisement has been issued on the basis of some circular prevailing at that particular time, the effect would be that the selection process would continue on the basis of the criteria which had been laid down there and cannot be on the basis of the criteria which had been made subsequently. This analogy which is culled down from the judgments of the Hon'ble Apex Court reiterates that subsequent amendment of the rules made during the pendency of the advertisement will have prospective effect and cannot be made effective retrospectively and also cannot be made the basis for the appointments.

2. Brief facts leading to the controversy are that on 20.08.2007 Gram Panchayat Virdhanpura had issued advertisement for filling up the vacant post of Panchyat Karmi and in pursuance to the aforesaid advertisement, total 13 candidates applied and list of the aspirants were published and

affixed on the Board of the Panchayat on 03.09.2007. On 21.09.2007 the Gram Panchayat convened its meeting and on that date issued the list of the eligible candidates and found 9 candidates out of 13, eligible for consideration of the said post. In the meeting convened on 21.09.2007 as per the merit criteria the candidature of the eligible candidates were considered and as per rules and regulations the petitioner was found more meritorious in comparison to other candidates and vide resolution of the same date the petitioner was duly appointed on the said post. Admittedly the meeting convened by the Gram Panchayat on 21.09.2007 was presided by Up-Sarpanch in absence of the Sarpanch and after passing of the resolution the matter has been sent by the Gram Panchayat to the Competent authority informing it about the appointment of the petitioner and for notifying him as Secretary of Gram Panchayat under the provisions of Section 69 (1) of the M.P. Panchayat Raj & Gram Swaraj Adhiniyam. During the pendency of the aforesaid proceedings an appeal has been preferred by the private respondent no.5 against the appointment of the petitioner. Though as per M.P. Panchayat (Appeal and

Revision) Rules, 1999 against the resolution passed by the Gram Panchayat an appeal is maintainable before the SDO, but the same was heard by the Collector and since the very order passed in appeal itself was nunest, the petition preferred against the said order was also *per se* illegal and as both the orders are passed without any jurisdiction, therefore, they are liable to be set aside. The order passed by the Collector in the appeal preferred by the private respondent no.5 was based upon the fact that there was procedural mistake in the proceedings conducted by the Gram Panchayat for appointment of Panchayat Karmi, therefore, the matter was required to be considered afresh by the Gram Panchayat on the applications which were received for appointment on the post of Panchayat Karmi. The revisional order passed by the Commissioner reflects that since the name of the private respondent no.5 was not mentioned in the resolution nor there was merit list of the candidates prepared, therefore, there was a total absence of transparency, therefore, the order passed by the Collector was held to be just and proper which was not the correct factual position as the merit list was prepared by the Gram

Panchayat, proper scrutiny of the applications were done and in absence of any objection by any of the candidates, the result was declared.

3. The State Government after introducing the Rules, of 2011 known as M.P. Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011 repealed the earlier instructions in respect of appointment of Panchayat Karmi and clearly stipulated under Rule 11 that the earlier proceedings shall be considered in accordance with the Rules of 2011 and after introducing said rules the District Cadre of Secretary has been constituted and the services of the earlier appointed secretary has also been absorbed in District Cadre. The learned Commissioner considering the new Rules of 2011 modified the order passed by the Collector and indirectly the right of the petitioner has been permanently curtailed because as per the amended rules the whole procedure has been changed and even the cadre also has been changed for which the respondent Commissioner has no authority because the aforesaid rules shall be applicable only to those vacancies where recruitment will be in

future and the appointment of the petitioner since was already made, the same shall be subject to the decision of the appellate and revisional authority even in case of final decision/remand by such authority, the same rules and regulations shall be applicable which were prevailing at the time of issuance of the advertisement and the selection proceedings and, therefore, modifying the order of the Collector by the Commissioner is contrary to certain legal positions. Aggrieved by the same, the present petition has been filed.

4. Learned counsel for the petitioner had argued that the respondent/Commissioner while considering the new Rules of 2011 had modified the order passed by the Collector and indirectly had curtailed the rights of the petitioner because as per the amended Rules the whole procedure would be changed and even the cadre of the Panchayat Secretary would change to which the learned Commissioner has no authority because those rules were applicable only to those vacancies which fall vacant after promulgation of the said rules.

5. It was further argued that the resolution passed by the

Gram Panchayat has been challenged by the person who has not submitted his candidature and just in order to blackmail the petitioner had preferred an appeal and that too before an incompetent authority and as he was not the aggrieved party, has no locus to challenge the appointment of the petitioner.

6. It was also argued that Hon'ble Apex Court had clearly held that once advertisement had been issued on the basis of a circular obtaining at a particular point of time, the effect would be that the selection should continue on the basis of the criteria laid down at that moment and it cannot be on the basis of criteria which has been made subsequently or brought in effect subsequently.

7. It was further argued that the Hon'ble Apex Court also held that subsequent amendment of Rules made during the pendency of certain procedure will only have prospective effect and cannot be made applicable retrospectively and, therefore, the directions of the Commissioner to consider the case of the petitioner in the light of the subsequent introduction of the Rules of 2011 to the CEO Zila Panchayat, Bhind is *per se* illegal.

8. To bolster his submission with regard to the competency of

the private respondent no.5 to prefer an appeal, reliance was placed in the matter of **Jitendra Singh vs. Rambabu and Ors** reported in **2012 (3) MPHT 183,** wherein it has been held by the Division Bench of this Court that an appeal contemplated under the Rule 3 of the Rules of 1995 can be filed only by a person/party, who is adversely affected by a decision under appeal, and not by a stranger or a busy body.

9. On the contrary, counsel for the respondent no.1 to 3/State while opposing contentions raised by the counsel for the petitioner had submitted that from the order of the Collector, it is very much evident that the resolution passed by the Gram Panchayat did not made it clear as to how the petitioner was meritorious amongst the candidates and the name of respondent no.5 was not considered at the time of passing of the resolution though he was one of the applicants. From the resolution it was also not clear as to how many candidates had applied for the post of the Panchayat Karmi and as the entire procedure was found not to be transparent, therefore, the Collector has rightly remanded the matter back to the Gram Panchayat, which is a well reasoned

and speaking order.

10. It was further argued that the order of the revisional Court affirming the order of the Collector also by a detailed and speaking order had found that there was no transparency in the entire selection process and, therefore, no illegality can be said to have been committed by the learned Commissioner in affirming the order passed by the Collector.

11. Heard the counsels for the parties and perused the record.

12. From the order passed by the Commissioner in the revision it is seen that the present respondent no.5 was also one of the candidates who had applied for the post of Panchayat Karmi, but in the resolution dated 21.09.2007 passed by the Gram Panchayat neither his name was considered nor his name was reflected in the merit list. It has also been observed in the order that the resolution passed by the Gram Panchayat also does not reflect as to how many applications were received for the post of Panchayat Karmi and out of the applications so received how many applications were rejected and on what basis, therefore, it appears that the Gram Panchayat has not maintained transparency in the entire

process. The aforesaid aspect was the basis for affirming the order passed by the Collector.

13. The question which has been raised by the petitioner that since respondent no.5 who had preferred an appeal against the appointment of the petitioner was not one of the candidates and, therefore, he was not having any locus to prefer an appeal does not appears to be the correct factual position and, therefore, reliance placed by the petitioner in the matter of **Jitendra Singh (supra)** is misplaced and has no applicability as respondent no.5 was not a busy body or a stranger to the litigation.

14. Further in the matter of **Mahesh s/o Mohan Jadhav vs. State of M.P. and others** reported in **2010 (3) MPLJ 470** this Court has held that for appointment of Panchayat Karmi merits cannot be ignored. Further similar observation has been made in the matter of **Suresh vs. Chief Executive Officer and Ors.** reported in **ILR 2012 MP 698** wherein also this Court has held that merits should not and cannot be ignored and, therefore, though SDO is the appellate authority so far as the orders passed by Gram Panchayat is concerned, as per Section 3 of the M.P.

Panchayat (Appeal and Revision) Rules, 1999 the order passed by the Collector considering the merits of the case cannot be said to be illegal and so also the order passed by the Commissioner affirming the order of the Collector.

15. Now the only question which is left to be addressed upon is whether the Rules of 2011 can be given retrospective effect as has been directed by the learned Commissioner. In that regard reference of the order passed by the Divison Bench of this Court in the matter of Gopal Singh Gurjar vs. State of M.P and Ors passed in W.A. No.25/2013 dated 16.08.2013 can be taken, wherein the effect of Rule 11 of Rules of 2011 were considered and it was held that the norms or rules as existing on the dated when the process of selection has begins will control such selection and any alteration to such norms would not affect the continuing process, unless the same were given retrospective effect and as the Rules of 2011 had not been made effective with retrospective date, then the process of selection of Panchayat Karmi which has started in the year, 2007 much prior to the date of enforcement of Rules of 2011, would be continued to be

governed under the provisions of the old rules or instructions.

16. This Court does not find any reason to depart from the aforesaid analogy and keeping in consonance with the same while partly allowing the petition, the part of the order of the Commissioner whereby it had directed the CEO District Panchayat to proceed with the matter in accordance with the Rules of 2011 is hereby set aside keeping rest of the order intact.

17. With the aforesaid, the petition is **partly allowed and disposed of.**

CC as per rules/directions.

(Milind Ramesh Phadke)
Judge

chandni/-

CHANDNI
NARWARIYA
2024.01.06
14:35:27
+05'30'