

HIGH COURT OF MADHYA PRADESH AT JABALPUR

Writ Petition No : 11352 OF 2009

Ramkinkar Vishwakarma

- V/s -

State of Madhya Pradesh and others

Present : **Hon'ble Shri Justice Rajendra Menon.**

Shri K.P.Singh and Shri V.S.Trivedi, learned counsel for the
petitioner.

Shri S.K.Dwivedi, Learned Government Advocate for the
respondent Nos.1, 2 and 3.

Shri V.D.S.Chauhan, learned counsel for Respondent Nos.4
and 5.

O R D E R

(21/10/2010)

2- Challenging the order dated 1.9.2009 Annexure-P10 passed by the Minister of the department concerned exercising powers of revision conferred on him under the M.P. Panchayat Raj and Gram Swaraj Adhiniyam 1993, petitioner has filed this writ petition.

3- Facts in brief necessary for adjudication of this dispute are that an advertisement was issued by the Gram Panchayat concerned namely, Gram Panchayat Banjari under Janpad Panchayat District-Sidhi. The Advertisement was issued vide Annexure-P3 on 8.3.2006 and appointments were to be made in accordance with the procedure stipulated in the circular Annexure-P1 dated 27.1.2006.

4- Records indicate that in pursuance to the advertisement issued, about 8 applications were received. Apart from the petitioner, Respondent Nos.5 and 6 were the candidates who had submitted their applications seeking appointments for the posts in question. The Gram Panchayat held a meeting on 15.4.2006 and even though a merit list was prepared in accordance with merit of the candidates but ignoring the merit, petitioner whose name was at Serial No.6 in the merit list was appointed on the basis of majority of vote casted in his favour by the office bearers of the Gram Panchayat. In the merit list prepared as per the marks in the qualifying examination, Respondent No.5 Ravi Kumar Singh was at Sr. No.1 and Respondent No.6 Pushparaj Singh was at Sr.No.3. However, when appointment was made ignoring the merit and by casting of vote, Respondent No.6 challenged the appointment by filing an appeal before the Collector, Sidhi and the Collector, Sidhi after examination found that the appointment has been made ignoring the merit, is contrary to the provisions of circular Annexure-P1 dated 27.1.2006 and, therefore, quashed the appointment and directed for conducting the proceedings afresh in accordance with rules.

5- Aggrieved by this order of the Collector Annexure-P6 dated 18.8.2006, petitioner Shri Ramkinkar Vishwakarma filed a revision before the Commissioner and the Commissioner also refused to interfere in the matter and observed that the order of the Collector is correct. The order passed by the Commissioner is Annexure-P7 dated 5.8.2008. At this stage, it may be taken note of that when the matter was pending before the Commissioner, Respondent No.5 Shri Ravikumar Singh, who was the most meritorious candidate in the merit list submitted the application for intervention and sought for intervening the proceedings. However, in the

order passed by the Commissioner as contained in Annexure-P7, the Commissioner rejected the application of Respondent No.5 for intervention. However, being aggrieved by his rejection of application for intervention and further challenging the order of the Commissioner, Respondent No.5 Shri Ravikumar Singh filed a further revision before the Minister of the department and the revisional authority upheld the order passed by the Collector and found that as Respondent No.5 Shri Ravikumar Singh was the most meritorious candidate having received 63% marks, therefore, he should be appointed and directed for his appointment. As the Minister of department decided the matter vide Annexure-P8 on 8.9.2008 on the application of Respondent No.5 without notice to the present petitioner Shri Ramkinkar Vishwakarma, the present petitioner filed W.P.No.11744/2008 before this Court and argued that the order of the Commissioner has been interfered with without notice to him and appointment of Respondent No.5 was made by the Minister of the department without hearing the petitioner and without granting him any opportunity. Considering the submission made by the petitioner on 19.6.2009, W.P.No.11744/2008 was decided by this Court vide Annexure-P9, the parties were directed to appear before the Revisional Authority on 13.7.2009 at 10:30 am. and Revisional Authority was directed to decide the matter in accordance with law.

6- In the meanwhile, records indicate that in the light of the merit of the candidates, Respondent No.5 Ravikumar Singh has been appointed as Panchayat Karmi and further notified as Panchayat Secretary and working on the post. These orders are passed in view of the orders passed by the revisional authority. Records further indicate that after the matter was remanded back to the Minister of the department and the Minister

decided the matter on 1.9.2009 and found that the proceedings held by the Gram Panchayat on 15.4.2006 was not correct, it was contrary to the circular Annexure-P1 dated 27.1.2006, appointments should have been made on merit not by majority of vote cast and finding Respondent No.5 Shri Ravikumar Singh to be the most meritorious, having obtained 63% marks, approved his appointment. Challenging this order again passed by the Minister, petitioner is before this Court.

7- During the hearing of this writ petition, learned counsel for the petitioner raised the following grounds.

8- The first ground of challenge was that even after remanding of the matter by this Court, notice and opportunity of hearing was not granted to the petitioner and, therefore, the order passed by the Minister concerned again vide Annexure-P10 dated 1.9.2009 is vitiated. It is further, stated that when Respondent No.5 did not challenge the appointment of the petitioner by initiating proceedings before the Collector and when he is not a party in the proceedings held before the Collector at the instance of this Respondent, the revision was not maintainable, it is stated that he has no locus-standi to approach the Minister concerned. Finally, it was argued that the petitioner is a Scheduled Caste Candidate and if the Gram Panchayat considering the status of the petitioner has appointed him, there is no illegality in the same as appointment by majority and casting of votes is a approved procedure of the Gram Panchayat. Accordingly, on these counts, learned counsel for the petitioner seeks for interference.

9- Shri S.K.Dwivedi, learned counsel submits that authorities concerned including the Minister having directed for appointment of the most meritorious candidate and as the appointment is in accordance with

requirement of circular Annexure-P1 dated 27.1.2006, there is no illegality in the matter warranting interference.

10- Shri V.D.S. Chauhan, learned counsel for Respondent Nos.4 and 5 submitted that as Respondent No.5 is the most meritorious candidate and as appointment is in accordance with merit, on the grounds raised interference into the matter is not warranted. It was submitted by Shri Chauhan that the petitioner has only raised technical objections. It is argued by him that when the matter was remanded by this Court on 19.6.2009 in W.P.No.11744/2008, this Court directed the parties to appear before the Revisional Authority on 13.7.2009 inspite thereof, petitioner did not appear on any date on or after 13.7.2009, kept quite over the matter till the order was passed by the Minister of the department. Accordingly, it is submitted by Shri Chauhan that the petitioner having failed to appear before the revisional authority inspite of knowledge, now he cannot make a complaint with regard to non-grant of opportunity. On behalf of the petitioner, except for contending that he has not been heard, petitioner is unable to demonstrate to this Court as to what is the prejudice caused and in what manner, the appointment of Respondent No.5 is illegal. Inter-alia contending that Respondent No.5 is a most meritorious candidate and, therefore, he is appointed and if he has approached the authorities in the pending proceedings, he has locus-standi to interfere in the matter. It is argued by Shri Chauhan that the Minister has not committed any error and prays for dismissal of this writ petition.

11- I have heard learned counsel for the parties and perused the record. From the submissions made by the petitioner during the course of hearing, it transpires that basically three contentions were advanced at the time of

hearing in support of the petition. The first ground of attack is that inspite of directions issued by this Court on 19.6.2009 in W.P.No.11744/2008, petitioner was not given adequate opportunity of hearing by the Revisional Authority i.e. Minister concerned. The second ground pertains to locus-standi of Respondent No.5 in filing the revision before the Minister concerned and the last ground pertains to preference to be given to the petitioner in the matter of appointment on the ground that he belongs to the Schedule Caste Category.

12- As far as the first ground is concerned, it is clear from the order dated 19.6.2009 passed by this Court in W.P.No.11744/2008 that parties were directed to appear before the Revisional Authority on 13.7.2009 at 10:30 am. The orders of the Minister indicate that neither on 13.7.2009 nor on 18.8.2009 or in any date before 1.9.2009, the present petitioner or his counsel appeared before the authority concerned and no reason is given as to why the petitioner did not appear before the Minister concerned on 13.7.2009 or in any other date till 1.9.2009, when the impugned order was passed. It was intimated that the petitioner was sick on 13.7.2009, therefore, he did not appear on that date. If the petitioner was sick and when there was a specific direction by this Court to the petitioner to appear before the Minister concerned on 13.7.2009, petitioner should have either appeared or in case of inability to appear should have sent an application or documents seeking adjournment, neither of these was done on 13.7.2009, and till 1.9.2009, petitioner has slept over the matter and even did not bother to appear before the Minister concerned i.e. Revisional Authority for more than one and half months i.e. from 13.7.2009 to 1.9.2009 when the matter was pending in the revision, nor does he has given any justification now in this petition

also as to what is the reason for his non-appearance. That apart, even if opportunity of hearing was not granted to the petitioner, the petitioner should have demonstrated the prejudice caused and the difference that would have been made to the final outcome if opportunity was granted to him and as to how the order passed by the authorities namely the Collector, the Commissioner and Minister is illegal.

13- During the course of hearing of this writ petition, except for contending that the petitioner was not heard, no ground is urged on the basis of which it can be said that the petitioner's appointment is proper. If the proceedings held for appointing the petitioner by the Gram Panchayat is scrutinized, it would be seen that when the matter was taken up by the Gram Panchayat and the advertisement issued calling upon the eligible candidates to submit their candidature (the advertisement is Annexure-P3), the records indicate that in pursuance to the advertisement, 8 persons including the petitioner and Respondent Nos.5 and 6 submitted their candidature. On the basis of marks obtained, the Gram Panchayat prepared a merit list and in this list, Respondent No.5 was placed at Sr. No.1 having obtained 63% marks, one Munnalal was placed at Sr. No.2 and Respondent No.6 was placed at Sr. No.3 in accordance with merit. In spite thereof ignoring the merit, by casting of votes, petitioner Shri Ramkinkar Vishwakarma, whose name appears at Sr. No.6 as per the merit list was appointed. When this appointment was made Respondent No.6 Shri Pushpraj Singh whose name appears at Sr. No.3 challenged the same before the Collector pointing out that ignoring the merit, petitioner's appointment is made and the same is illegal. The Collector scrutinized the matter and found that procedure contemplated for appointment was not correct. vide Annexure-P1 dated 27.1.2006 was not followed, under the



Procedure contemplated in Page-2 under Sub-Clause 3 of this circular Annexure-P1, it is clearly stipulated that the applications received should be scrutinized in accordance with merit, seniority and a merit list prepared and, thereafter, action is to be taken. The Collector found that nothing was done and as the appointment was not made in accordance with law, the Collector quashed the entire selection and remanded the matter back to the Gram Panchayat for making fresh selection. Petitioner preferred a revision before the Commissioner and in the pending revision Respondent No.5 sought for intervention on the ground that he is meritorious and is eligible for appointment. Even though, the Commissioner rejected the revision filed by the petitioner and upheld the order dated 18.8.2006 passed by the Collector but refused to grant intervention to Respondent No.5. Respondent No.5, therefore, preferred the revision before the Minister concerned of the department and the Minister after going through the totality of the circumstances and the merit, found that Respondent No.5 was rightly entitled for appointment and he was appointed when the matter was so pending. During the proceedings held before this Court, petitioner is unable to demonstrate to this Court as to what is the error committed by the Minister concerned and authorities in selecting the most meritorious candidates in comparison to the petitioner. In the circular Annexure-P1 dated 27.1.2006, suitability and merit is given due to weightage and ignoring the same, when appointment is made, the authorities have interfered. In view of this, I am of the considered view that interference is not warranted taking note of the fact that the petitioner is unable to show before this Court as to how he is entitled for appointment when the procedure contemplated under circular Annexure-P1 dated 27.1.2009 clearly stipulated appointment of a suitable candidate

on merit. That being so, on the ground of non-grant of opportunity in the absence of prejudice caused and established, I am not inclined to interfere into the matter.

14- As far as second ground is concerned, Respondent No.5 being the most meritorious candidate is entitled to prosecute the matter and if he wanted intervention at the stage when the appeal was pending before the Commissioner, and when prayer was rejected Respondent No.5 had rightly challenged the action before the Minister concerned and the Minister concerned in entertaining the revision has not committed any error. Contention of the petitioner that the Respondent No.5 has no locus-standi in the matter is unsustainable. Respondent No.5 is one of the candidates who had submitted his candidature and was the most meritorious candidate and is entitled for appointment and, therefore, it is a case where Respondent No.5 has a right to agitate the matter as he is aggrieved by his non-selection in accordance with merit. Accordingly, the second ground with regard to locus-standi is also unsustainable and has to be rejected.

15- As far as the preference given to the petitioner being a Schedule Caste Candidate is concerned, in the circular Annexure-P1 dated 27.1.2006, there is nothing to indicate that Schedule Caste person has to be given preference. A Schedule Caste Candidate can claim preference in a case when all other conditions are similar and Schedule Caste Candidate who is identically situated like the other meritorious candidates can claim preference. In the present case, ignoring the merit, petitioner cannot be granted any preference. Accordingly, in the facts and circumstances of the case and finding the revisional authority to have proceeded in the matter and having directed for appointment of Respondent No.5 in accordance



with law, requirement of the circular Annexure-P1 dated 27.1.2006, the merit of the candidate and totality of the circumstances, it is not a fit case where this court should interfere now in a writ petition under Article 226 of the Constitution when the findings recorded by all the three authorities are in accordance with law.

16- Accordingly, finding no merit in the grounds raised by the petitioner in this petition, the petition is dismissed. No order on cost.

(RAJENDRA MENON)
J U D G E

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