

22/05/23/0001 (3)

wp 9109/03
02A 3140/94CF

BEFORE THE MADHYA PRADESH STATE ADMINISTRATIVE TRIBUNAL

J A B A L P U R

3140
O.A. No. /94.

BETWEEN

APPLICANTS

- 1 Malthill Sharan Ahlwar,
son of Shri Khachorelal,
aged about 26 years,
occupation Gram Sahayak,
resident of Vill: & Post Thona,
tehsil Niwari, Distt. Tikamgarh, M.P.
- 2 Rajendra Prasad Awasthy,
son of Shri Ram Bahai Awasthy,
aged about 28 years,
occupation Gram Sahayak,
Development block Bijapur,
Distt. Bastar, M.P.
- 3 Umashanker Sharma
son of Ram Sewak Sharma,
aged about 27 years,
occupation Gram Sahayak,
Development Block Bhairamgarh,
Distt. Bastar, M.P.
- 4 Rajendra Prasad Yadav,
son of Shri Sitaram Yadav,
aged about 28 years,
occupation Gram Sahayak,
Development Block Orchha,
Distt. Bastar, M.P.
- 5 Rajendra Kumar Upadhyay,
son of Pt. Kanshi Prasad Upadhyay,
aged about 26 years,
occupation Gram Sahayak,
Block Development Bhairamgarh,
Distt. Bastar, M.P.

Pravin

- (5) (3)
- 6 Anil Kumar Sharma
son of Shri Ramkumar Sharma,
aged about 27 years,
occupation Gram Sahayak,
Development Block Konta, Distt. Bastar, M.P.
 - 7 Parwendra Kumar Sawita,
son of Sopal Prasad Sawita,
aged about 28 years,
Gram Sahayak, Development Block Konta,
District Bastar, M.P.
 - 8 Dilip Kumar Mishra, son of Awadh Bihari Mishra,
aged about 27 years, occupation Gram Sahayak,
Development Block Konta, Distt. Bastar, M.P.
 - 9 Badam Singh Yadav son of Asharam Yadav,
aged about 29 years, occupation Gram Sahayak,
Development Block Koylibeda, Distt. Bastar
 - 10 Bipin Bihari Sharma son of Dayaram Sharma,
aged about 30 years, occupation Gram Sahayak,
Development Block Usoor, Distt. Bastar, M.P.
 - 11 Santosh Kumar Kalawat, son of Nathuram Kalawat,
aged about 22 years, occupation Gram Sahayak,
Development Block Koylibeda, Distt. Bastar
 - 12 Harnarayan Goswami son of Uktilal,
aged about 29 years, occupation Gram Sahayak,
Development Block Bhairamgarh, Distt. Bastar
 - 13 Kashiram Ahirwar, son of Kamta Prasad,
aged about 34 years, occupation Gram Sahayk,
Development Block Dantewar, Distt. Bastar
 - 14 Kailash Prasad Sahu, son of Nathuram Sahu,
aged about 28 years occupation Gram Sahayak,
Development Block Bijapur, Distt. Bastar.
 - 15 Dayaram Bedia, son of Ramdas Bedia, aged
about 27 years, occupation Gram Sahayak,
Development Block, Usoor, Distt. Bastar
 - 16 Surendra Kumar Pastore, son of Shambhu Prasad
Pastore, aged about 25 years, occupation
Gram Sahaya, Development Block Koylibeda,
Distt. Bastar, M.P.
- 217

- (S) 4
- 17 Manoj Kumar son of Shri Hagroo Ram, aged about 27 years, occupation Gram Sahayak, Block Developmeny Charama, district Bastar, M.P.
 - 18 Rajendra Kumar Yadav, son of Chhotelal Yadav, aged about 28 years, occupation Gram Sahayak, Development Block ^{Amfargah} ~~Charama~~, Distt. Bastar, M.P.
 - 19 Rakesh Kumar Pastore, son of Kanta Prasad aged about 27 years, occupation Gram Sahayak, Development Block Bhopal Patnam, Distt. Bastar, M.P.
 - 20 Rajendra Kumar Goswami, son of Ramswaroop, aged about 27 years, occupation Gram Sahayak, Development Block ~~Sakma~~ ^{Sakma}, Distt. Bastar, M.P.
 - 21 Vijay Singh Bhadoriya, son of Kunwar Singh Bhadoriya, aged about 28 years, occupation Gram Sahayak, Block Development Konta, district Bastar, M.P.
 - 22 Pradeep Kumar Mishra, son of Awadh Bihari, aged about 23 years, occupation Gram Sahayak, Development Block Konta, district Bastar, M.P.
 - 23 Bali Ram son of Gopal Ram, aged about 30 years, occupation Gram Sahayak, Development Block Koylibeda, Distt Bastar

AND

- RESPONDENTS .. (1) State of Madhya Pradesh, through the Secretary Deptt. of Panchayat & Social Welfare, Bhopal, M.P.
- (2) Joint Director, Panchayat and Social Welfare, Raipur.
- (3) Dy. Director, Panchayat & Social Welfare, Bastar, Distt. Bastar, M.P.
- Prin*

4 The Director,
Panchayat and Social Welfare, Directorate,
Bhopal, M.P.

6

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION (S) NO.23 OF 2006

PETITIONERS

Maithili Sharan Ahirwar & Others

Versus

RESPONDENTS

State of Madhya Pradesh (now
Chhattisgarh) & Others

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

Present :- Shri Rajeev Shrivastava & Shri Ved Prakash Nema,
Advocates for the petitioners.

Shri Satish Gupta, Govt. Advocate for the State.

ORDER (ORAL)

(Passed on this 29th day of April, 2011)

1. Heard learned counsel for the parties.
2. Learned counsel appearing for the petitioners submits that the respondent authorities created the posts of Gram Sahayak in the Department of Panchayat and Social Welfare. The age limit for the said post was between 21 to 33 years and the qualification for the said post was possession of 10 + 2, examination certificate. Pursuant to the said scheme, the petitioners were appointed on the post of Gram Sahayak by order dated 8.7.1994 (Annexure A-2) on temporary basis. Thereafter, the petitioners joined in their respective place of posting and performed their duties with great sincerity and honestly. Even the petitioners were sent for training. However, all of a sudden by the impugned order dated 19-11-1994 (Annexure A-1), the services of the petitioners were terminated. The impugned order has been passed by the respondent authorities without following the basic principles of natural justice and without affording proper opportunity of hearing to the petitioners. Thus, this petition.

C-123

3. Per contra, learned counsel appearing for the State submits that the petitioners were not appointed in accordance with the constitutional scheme of employment, as they were appointed on the basis of their applications, without their being any advertisement or publication of notice, inviting application for all the eligible candidates for the post.
4. It is evident that the petitioners were not appointed in accordance with the constitutional scheme of employment, as without any advertisement or examination or interview, the appointments were made. The appointment of the petitioners was purely on temporary basis. It is an admitted position that the petitioners were not appointed against any sanctioned post. The appointments were made on the basis of memo dated 6.6.1994 (Annexure R-3) issued by the Deputy Secretary, Panchayat & Rural Development Department, Government of the then State of Madhya Pradesh. On query, it was found that no such memo was issued by the Government, the memo itself was forged. The respondents in their return submits that on enquiry, it was found that the Commissioner, Bastar Division, did not make any selection and did not issue any select list of the candidate for appointment of the petitioners. The Commissioner, Bastar Division, informed the Joint Director, Panchayat & Social Welfare, Raipur, that no select list of candidates was sent by him. Thereafter, the Additional Secretary in the office of the Chief Minister had informed to the Director, Panchayat & Social Welfare on 23.11.1994 (Annexure R-6) to take steps against the officers responsible for the same.

2124

5. The Secretary, Panchayat & Rural Development Department, the then State of Madhya Pradesh, by letter dated 11.11.1994 (Annexure R-7), informed the Director, Panchayat & Social Welfare, that the appointment of the Gram Sahayak in District Bastar have been made on the basis of forged letter dated 6.6.1994, and subsequent letters dated 16.08.1994 & 30.08.1994, were also fabricated. The appointment order was based on letter dated 6.6.1994, sent by the Deputy Secretary, which was found forged. Thus, the Director, Panchayat & Social Welfare, was directed to take steps for removal of the Gram Sahayak, who were illegally appointed and to initiate departmental action against the Joint Director, Panchayat & Social Welfare, who had indulged into such illegal practice.
6. On enquiry, it was found that the appointments were not made under any scheme or by alleged selection made by the Commissioner, Bastar Division. Accordingly, the petitioners were removed from service by the impugned order. The appointment of the petitioners were based on the forged documents. Thus, the appointments were bad from its inception and it cannot be validated on the basis that they had been sent for training. The Supreme Court, while considering the identical scenario in the matter of *R.S. Garg v. State of U.P.*¹ observed as under :-

"18. At the relevant point of time, the Rule provided for selection through the Public Service Commission. The same having not been done, the appointment of the 3rd respondent was *void ab initio*. The question of regularisation of his services, therefore, did not arise."

¹ (2006) 6 SCC 430

125

7. In *State of Orissa & Another v. Mamta Mohanty*² the Supreme Court observed as under :-

"37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/ development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (Vide *Upendra Chandra Gogoi v. State of Assam*, *Mangal Prasad Tamoli v. Narvadeshwar Mishra* and *Ritesh Tewari v. State of U.P.*)"

8. The next contention of the petitioner that they ought to have been afforded an opportunity of hearing in compliance with the principle of natural justice, fails on a simple ground that the petitioners were appointed on the basis of forged and fabricated documents, and as such, termination of their services, as being the only consequence. The facts are indisputable. Thus, observance of the principles of natural justice would be nothing more than an empty formality. (See - *Union of India v. Bishamber Das Dogra*³)
9. Applying the well settled principles of law to the facts of the present case and for the reasons mentioned hereinabove, the writ petition, being devoid of merit, is liable to be and is hereby dismissed.
10. There shall be no order as to costs.

Sd/-
S.K. Agnihotri
Judge

² (2011) 3 SCC 436

³ (2009) 13 SCC 102