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HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT

JABALPUR

Writ Appeal No.182/2014

Dilip Sonavane

Vs.

State of Madhya Pradesh & Others

Writ Appeal No.186/2014

Praveen Tare

Vs.

State of Madhya Pradesh & Others

Writ Appeal No.184/2014

Ejaz Uddin

Vs.

State of Madhya Pradesh & Others

Writ Appeal No.185/2014

Bhagwan Patil

Vs.

State of Madhya Pradesh & Others

Writ Appeal No.190/2014

Suresh Yadav

Vs.

State of Madhya Pradesh & Others

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Writ Appeal No.191/2014

Ghanshyam Jadhav

Vs.

State of Madhya Pradesh & Others

Writ Appeal No.187/2014

Ramesh Jadhav

Vs.

State of Madhya Pradesh & Others

Writ Appeal No.188/2014

Satish Shah

Vs.

State of Madhya Pradesh & Others

Writ Appeal No.183/2014

Sanjay Chaudhary

Vs.

State of Madhya Pradesh & Others

Present: **Hon'ble Shri Rajendra Menon, J. &**
Hon'ble Shri Alok Verma, J.

Shri Manoj Agrawal, learned counsel for the appellants.

Shri Aditya Khandekar, learned counsel for the respondents.

ORDER

(30/6/2014)

As common questions of law and facts are involved in all these appeals, all these appeals are being decided by this common order. For the sake of convenience the pleadings and material available in the record of W.A. No.182/2014 is being referred to.

2. Appellants were working as daily wages employees in the establishment of Municipal Corporation, Burhanpur. It was their case that they have worked in the said capacity for more than 20 years and as their claims were not being considered, matter came to this Court in various Writ Petitions for eg. in W.P. No.18485/2011 a Assistant Grade III claimed regularization in service. In W.P. No.6762/2011 one Sanjay Choudhary claimed regularization. A bench of this Court considered these questions and on 29.2.2012 passed an order in W.P. No.6762/2011 and the following directions were issued :-

"Learned counsel for the respondent No.3 fairly submits that the case of the petitioner shall be considered expeditiously and if the vacant posts are available as per roster and if the petitioner is found eligible, the benefit of regularization shall be extended to the

petitioner from the date of conferment of said status."

(Emphasis Supplied)

3. Based on the same a Committee was constituted by the Commissioner of Municipal Corporation, Burhanpur on 1.5.2012. The Committee examined the case of each of the appellants herein for regularization in its meeting held on 6.12.2012 and recommended for regularization of the employees on various posts. However, when the matter was taken up by Municipal Corporation, it was found that as per the policies and circulars issued by the State Government in the Urban Administration and Development Department vide No.F-4/143/2007/10-1 dated 18.10.2008 a maximum cap has been fixed in the matter of establishment cost i.e. 65%. The circular stipulates that establishment cost of a Municipal Corporation should not exceed 65% and if the establishment cost exceeds 65% action will be taken as the same is not permissible. The claim of each of the appellants based on the recommendations of the Expert High Level Committee which met on 6.12.2012 was examined in the light of this Circular and it was found that if the appellants are regularized, then the establishment cost comes to 80.32% which is more than cap of 65% fixed vide Circular dated 18.10.2008 and therefore, it was ordered that in the current financial year claim for

regularization can not be considered but the claim would be considered again in the subsequent financial year subject to fulfillment of limit of 65% towards establishment cost. When such an order was passed on 11.7.2012 in the case of each of the appellant denying the benefit of regularization, they approached this Court and the writ petitions having been dismissed, these writ appeals have been filed under Section 2(1) of the M.P Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005.

4. Shri Manoj Agrawal, learned counsel for the petitioner, took us through the relevant material and documents available on record and argued that when the earlier writ petition was disposed of by a Single Bench vide order dated 29.2.2012 as reproduced herein above, no such contention with regard to fixation of a limit in the matter of establishment expenditure was indicated. It is said that such a ground having never been raised in the earlier round of litigation, respondents are not entitled to raise such an objection now. That apart, he tried to emphasize that in an unreasonable manner and without any justification prayer of the appellants have been rejected even though in its detailed recommendations given on 6.12.2012 the High Power Committee has recommended for regularization. That apart, learned counsel tried to challenge the contention of the

respondents that regularization of the petitioners would have the effect of increasing the establishment cost from 65% to 80.32%. It is argued that this assertion is not correct.

5. Shri Aditya Khandekar, learned counsel appearing for the respondents refuted the aforesaid and argued that as reasonable consideration has been made and as the Circular issued by the State Government on 18.10.2008 prohibits establishment cost to be more than 65%, the respondents have not committed any error in the matter. It is argued by learned counsel for the respondents that the decision taken by the State Government on 18.10.2008 is a policy decision, executive in nature based on due consideration and therefore, once a ceiling limit has been fixed in the matter of establishment cost, such a decision cannot be challenged or interfered with by a writ Court and no mandamus in this regard can be issued until and unless statutory rules or regulations or constitutional provisions are shown to be violated in doing so.

6. We have heard learned counsel for the parties and perused the record. On going through the record it is clear that the only question now warranting consideration in these writ appeals are as to whether respondents were correct in denying the benefit of regularization to the petitioners only on the ground that their regularization

would render establishment cost to increase beyond 65% which is not permissible in the light of Circular dated 18.10.2008 fixed by the State Government ?

7. As far as the stipulations contained in the Circular dated 18.10.2008 and its implications are concerned, we have no doubt in our mind that this is a policy decision of the State Government which is executive in nature and no mandamus can be issued for interfering with such a policy decision until and unless it is brought to our notice that the same is in violation of statutory rules or regulation or statutory provisions or arbitrary or irrational. No such provision is brought to our notice. Once the executive thought it appropriate to fix a ceiling limit for the purpose of meeting an establishment cost and if in the matter of regularization and appointment of employees the said provision is strictly adhere to a writ Court cannot substitute its decision to that of executive authority by issuing a mandamus and compelling the authority to act in contravention of its own policy until and unless the policy itself is found to be unreasonable or contrary to law. That being so, we are of the considered view that once the State Government has taken a policy decision and has fixed a ceiling limit with regard to expenditure to be incurred on establishment cost, no mandamus can be issued by this Court to grant appointment or regularization to any employee which has

a result of exceeding the limit fixed in the policy dated 18.10.2008 i.e. 65%. That apart, merely because the appellants are empaneled and are found entitled for regularization or appointment, that itself will not give any right to them to seek appointment or regularization. Empanelment of a person does not give a legally enforceable right to seek appointment to a post. The appointment even after such empanelment is subjected to various conditions and it is a settled principle of law, that empanelment of a person cannot result in a legal right accruing in his favour for seeking appointment. That being so, merely because the Committee has recommended for regularization of the appellants, we cannot issue a mandamus for regularization of the appellants until and unless the appellants are found to be eligible for appointment after all the conditions required for their appointment including the policy decision of the State Government are fulfilled.

8. Accordingly, mere empanelment of the appellants does not give them any legally enforceable right for seeking a mandamus for appointment. The same is always subjected to the respondents discretion to fix other conditions in the interest of administration and if the said act is found to be reasonable or justifiable, no mandamus can be issued .

9. As far as contention of the appellants that no such ground was raised when order was passed in W.P. No.6762/2011, we are of the considered view that mere non raising of aforesaid ground will not operate as an estoppel in preventing the respondents from implementing the policy decision which are applicable in the matter of appointment or regularization of an employee in the service of Municipal Corporation.

10. As far as contention of the appellants that the establishment cost by their regularization will not exceed 65% is concerned, it is a pure question of fact which has be adjudicated on due enquiry to be held into the matter. On a perusal of the Pleadings of the appellants in the writ petition and on a perusal of the order passed, it is clear that this objection is raised for the first time in these appeals and was never raised before the Writ Court. That being so, We see no reason to go into the said question now. If the appellants feels that they have a right for appointment and the contention of respondents with regard to establishment cost increasing more than 65% is not correct, they are at liberty for approaching the Competent Authority separately and it would be for the said authority to consider this aspect of the matter and take a decision. Except for the aforesaid observation in the matter of granting certain limit liberty to the appellants in the facts and circumstances we see no error committed

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by the learned Writ Court in rejecting the writ petitions on the grounds as are indicated in the order impugned.

11. Accordingly, finding no case for interference in these writ appeals, all the writ appeals are disposed of with the liberty to the petitioners to make representations as is indicated herein above.

12. Appeal is dismissed with no order on cost.

(Rajendra Menon)
Judge

(Alok Verma)
Judge