

Deshraj Vishwakarma vs The State Of Madhya Pradesh on 4 July, 2013

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W.P No.4021/2010 & 16391/2011

HIGH COURT OF MADHYA PRADESH AT JABALPUR
WRIT PETITION NO.4021/2010

PETITIONER : Deshraj Vishwakarma, Son of Shri
Mathura Prasad Vishwakarma, aged
about 29 years, resident of village
Tattarpura, Block & Tahsil
Prithvipur, District Tikamgarh (M.P.)

Vs.

RESPONDENTS: (1) State of Madhya Pradesh,
Through : Secretary, Department of
Panchayat and Social Justice,
Vallabh Bhawan, Bhopal, (M.P.)

(2) Collector, Tikamgarh, District
Tikamgarh.STATE OF M.P.

(3) Chief Executive Officer, Janpad
Panchayat, Prithvipur, District
Tikamgarh (M.P.)(

(4) Brijendra Kumar Vajpai Son of
Shri Jagdish Prasad Vajpai, aged
about 35 years, resident of
Tattarpura, Block & Tahsil Prithvipur,
District Tikamgarh (M.P.)

AND

WRIT PETITION NO.16391/2011

PETITIONER : Deshraj Vishwakarma, Son of Shri
Mathura Prasad Vishwakarma, aged
about 29 years, resident of village
Tattarpura, Block & Tahsil
Prithvipur, District Tikamgarh (M.P.)

Vs.

RESPONDENTS: (1) State of Madhya Pradesh,
Through : Secretary, Department of
Panchayat and Social Justice,

Vallabh Bhawan, Bhopal, (M.P.)

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W.P No.4021/2010 & 16391/2011

(2) Collector, Tikamgarh,
Tikamgarh.STATE OF M.P.

District

(3) Pannalal Solanki Erstwhile
Incharge Collector, Tikamgarh,
District Tikamgarh (M.P.)

(4) Raghvendra Payak, Erstwhile
Chief Executive Officer, Janpad
Panchayat, Prithvipur, District
Tikamgarh (M.P.)

(5) Brijendra Kumar Bajpayee Son
of Shri Jagdish Prasad Bajpayee,
aged about 35 years, resident of
Tattarpura, Block & Tahsil Prithvipur,
District Tikamgarh (M.P.)

Present : Hon'ble Shri Justice R.S. Jha.

For the petitioner : Shri Vipin Yadav, Advocate.

For the respondent/State : Shri B. P. Pandey, Govt.
Advocate.

For respondent no.3 : Shri Manas Verma,
Advocate.

For respondent no.4 : Shri V. K. Shukla,
Advocate.

For the intervenor : Shri Ashish Upadhyay,
Advocate.

ORDER

(04/07/2013) As the facts of both the cases are similar and the issues involved is intercatly interlinked, therefore, with the consent of the learned counsel for the parties both these petitions are heard and decided concomitantly.

2. The petitioner has filed W.P.No. 4021/2010 being aggrieved by order dated 12.3.2010 passed by the Chief Executive Officer, Prithvipur, District Tikamgarh whereby he has himself cancelled his earlier order dated 23.2.2010 directing handing over of charge to the petitioner. W.P.No. 16391/2011 has been filed assailing the subsequent order dated 6-9-2011 appointing respondent No. 3 as Panchayat Karmi.

3. The brief facts, leading to the filing of both the petitions, are that the Gram Panchayat Tattarpura, Janpad Panchayat Prithvipur, District Tikamgarh had issued an advertisement for appointment of Panchayat Karmi on 10.7.2007 pursuant to which the petitioner was appointed as Panchayat Karmi

by the resolution dated 12.8.2007.

It is stated that while the petitioner was appointed as Panchayat Karmi by the resolution of the Gram Panchayat, respondent no.3 was appointed as Panchayat Karmi by the Secretary of the Gram Panchayat and, therefore, the higher authorities by taking the aforesaid facts into consideration, scrapped the entire selection and directed the Gram Panchayat to issue fresh advertisement and to take up fresh proceedings for making appointment on the post of Panchayat Karmi, being aggrieved by which the respondent no.3 had filed a writ petition before this Court which was registered as W.P No.12829/2007 and was disposed of by order dated 13.9.2007 in the light of the decision of this Court rendered in the case of Girwar Singh Bundela vs. State of M.P. & Others, W.P. No.11710/2007. The respondent no.3, being aggrieved by the order passed by the learned Single Judge, had filed a Writ appeal before this Court which was registered as W.A No.1764/2007.

During the pendency of the aforesaid writ appeal before the Division Bench, as several allegations and counter allegations were made, the Division Bench of this Court had directed the Collector, Tikamgarh to submit a report before this Court after giving due opportunity of hearing to all the parties, pursuant to which Collector, Tikamgarh had submitted a report before the Division Bench on 10.12.2008 in which the following report was submitted:-

^^1- xzke iapk;r rrkjiqjk }kjk iapk;rdehZ dh fu;qfDr ds laca/k esa vkosnu i=ksa dh lgh <ax ls Nku&chu ugha dh xbZ ,oa viw.kZ vkosnu i= izkIr fd;s x;s A ftlesa vkosnu i= dzekad 18 mes'k prqosZnh] vkosnu i= dzekad 19 ljt看 ru; jkejru] vkosnu i= dzekad 20 tkfgj flag] vkosnu i= dzekad 21 /kUuw ,oa vkosnu i= dzekad 22 egs'k fo'odekZ ds viw.kZ vkosnu i= gSa] ftUgsa fujLr djuk Fkk ijUrq fujLr ugha fd;s x;s gSa A 2- foKkiu dh 'krksaZ esa fiNM+k oxZ] vuqlwfpr tkfr ds vH;fFkZ;ksa dks izkFkfedrk ds funsZ'k fn;s x;s Fks ijUrq bu ij dksbZ fopkj ugha fd;k x;k A 3- xzke iapk;r dh izLrko iath 2-4-2007 ls la/kkfjr gksrs gq;s Hkh izFkd ls u;h iath iapk;rdehZ dh fu;qfDr ds laca/k esa QthZ rjhds ls rS;kj dh A 4- ljiap ,oa lfpo xzke iapk;r rrkjiqjk }kjk Hkh iapk;rdehZ dh fu;qfDr ds laca/k esa izfdz;k dk lgh ikyu ugha fd;k x;k gS ftlds fy;s os iw.kZ :i ls nks"kh gSa A 5- ns'kjkt fo'odekZ dh iapk;rdehZ ds in ij fu;qfDr ds laca/k esa ljiap@lfpo }kjk dksbZ fjdkMZ izLrqr ugha fd;k x;k gS A vr% ns'kjkt fo'odekZ dh iapk;rdehZ ds in ij fu;qfDr QthZ izLrko ds vk/kkj ij gksuk ikbZ tkrh gS A** The Division Bench, on the basis of the aforesaid report, recorded a finding to the effect that the alleged resolution, in favour of the present petitioner, was fake and that proceedings under section 40 of the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993, in that respect had been initiated against the Sarpanch by the Collector and, therefore, disposed of the writ appeal by order dated 23.7.2009 by issuing the following directions:-

"13. In view of the aforesaid, we direct the Collector Tikamgarh to decide the pending applications as such in place of inviting fresh applications. Needless to emphasis, the candidature of various incumbents shall be considered on the basis of merit to be assessed on the basis qualification prescribed for the appointment on the post of Panchayat Karmi. The person who is meritorious shall be entitled for the

appointment as per the scheme."

4. Pursuant to the directions issued by the Division Bench of this Court dated 23.7.2009 in W.A No.1764/2007, the Chief Executive Officer, Janpad Panchayat Prathvipur issued an order dated 23.2.2010 directing the Gram Panchayat to hand over charge of the post of Panchayat Karmi of Gram Panchayat Tattarpura to the petitioner. However, when legal opinion on the same was sought, it was pointed out that the order passed by the Chief Executive Officer, Janpad Panchayat Prathvipur was contrary to the directions issued by this Court in W.A No.1764/2007 and, therefore, the Chief Executive Officer, Janpad Panchayat Prathvipur by the impugned order dated 12.3.2010 withdrew the order directing handing over of charge of the post of Panchayat Karmi to the petitioner, being aggrieved by which the petitioner filed the present petition W.P No.4021/2010.

5. Thereafter the respondents against took up the procedure and process of making appointment of Panchayat Karmi in accordance with the direction issued by the Division Bench of this Court, pursuant to which a select list was prepared and thereafter by order dated 6.9.2011 the respondent no.3 was declared selected and appointed as Panchayat Karmi of Gram Panchayat Tattarpura. The petitioner has thereafter assailed the aforesaid order dated 6.9.2011 in W.P No.16391/2011 before this Court.

6. The learned counsel for the petitioner submits that the entire selection process undertaken by the respondents is contrary to law as a bare perusal of the select list itself indicates that the authorities while preparing the list have not recorded the marks of certain other candidates who are more meritorious than respondent no.3 only with the object and purpose of giving benefit to respondent no.3. It is submitted that in such circumstances, the entire action of the respondents and the impugned order dated 6.9.2011 appointing the respondent no.3 as Panchayat Karmi be quashed.

7. The learned counsel for the respondents, per contra, have vehemently opposed the submission of the learned counsel for the petitioner.

8. On 29.9.2011 when the present petition came up for hearing before this Court and the aforesaid submissions were reiterated by the learned counsel for the petitioner, this Court directed the respondent no.2, namely the Collector, Tikamgarh or some Senior Officer authorized by him to conduct an enquiry into the manner as to the preparation of the merit list, Annexure R-6, and submit a report before this Court and also to enquire as to whether any candidate who possesses the requisite qualification was sidelined or ignored deliberately. Pursuant to the order passed by this Court on 29.9.2011 the Project Officer submitted a report which was considered by this Court on 2.2.2012 and it was found that it was not in proper compliance of the directions issued by this Court and, therefore, a detailed report was directed to be submitted by the Collector or the Officer authorized, pursuant to which the respondent State has filed a report alongwith an application on 21.3.2012 which is in the following terms:-

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}kjk ekuuh; mPp U;k;ky; esa izLrqr ,usDpj&6 ds ckjs esa U;k;ky; ds /;ku esa ;g fcUnq
 yk;k x;k Fkk fd gk;j ldsUM^{ah} Ldwy lfVZfQdsV ijh{kk esa izkIr vad dbZ vH;fFkZ;ksa
 ds uke ds vkxs [kkyh NksM+s x;s gSa] muds }kjk fo'ks" k :i ls HkkjrHkw" k.k prqosZnh
 tks dzekad 11 ij gSa] muds gkbZLdwy esa 229@500 vad izkIr djuk ys[k fd;s x;s LFkku
 ds vkxs 12 oha ds vad [kkyh NksM+us dk mYys[k fd;k x;k gS A Jh fofiu ;kno }kjk ;g
 Hkh vkjksi yxk;k x;k gS fd gk;j ldsUM^{ah} Ldwy ijh{kk ds vad ugha n'kkZrs gq,
 mijksDr ijh{kk esa izkIr fd;s x;s vad ds vk/kkj ij esfjV fyLV ugha cukus dk dk;Z fd;k
 x;k gS ftl laca/k esa izfrosnu visf{kr gS A ekuuh; mPp U;k;ky; }kjk ;g funsZ'k fn;k x;k
 gS fd ,usDpj&6 dSls cuk;k x;k gS] bls laca/k esa tkap djsa ,oa izfrosnu izLrqr djsa fd
 D;k esfjV fyLV lgh :i ls cuk;h x;h gS A ;g Hkh funsZ'k fn;k x;k gS fd fdlh vH;FkhZ }kjk
 izLrqr fd;s x;s nLrkost dk laKku ysus ls NwV x;k gS rks laKku ysrs gq;s esfjV fyLV ds
 ckjs esa izfrosnu nsa A mijksDr ds laca/k esa izfrosnu fuEukuqlkj gS%& 1- ,usDpj
 vkj&6 Jh fofiu ;kno ;kfpdkdrkZ ds vf/koDrk }kjk crk;s x;s vuqlkj eq[; dk;Ziky
 vf/kdkjh] tuin iapk;r i`Fohiqj }kjk ugha cuk;h x;h gS cfYd xzke iapk;r ds }kjk rS;kj dh
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 iapk;r esa lfpo fu;qDr fd;s tkus dh dk;Zokgh 100ha esas izkIr vad ds vk/kkj ij fd;k
 tkuk gS A 6- dfFkr esfjV fyLV tks ,usDpj&6 esa gS] mlds ek;/e ls tks vH;FkhZ p;fur
 fd;k x;k gS mldk ,usDpj&6 esa LFkku 90sa uEcj ij gS A pwafr mlds vad 'kklu ds
 funsZ'k vuqlkj lokZf/kd Fks] mldk p;u xzke iapk;r }kjk izLrkfor fd;k x;k gS A
 f'kd;rdkZ ns'kjt fo'odekZ ds 100ha ds vad 43.40 izfr'kr 1/4500 esa ls 217 vad^{1/2} gSa
 ,oa p;fur vH;FkhZ c`tsUnz dqekj ktis;h ds vad 50.61 izfr'kr 1/4650 esa ls 329 vad^{1/2}
 gSa A 7- tgka rd vkosndksa ds uke ds le{k Msl vafdr djus dk iz'u gS] pwafr mijksDr
 izklafxd nLrkost vkosnu i= ds lkFk tek ugha fd;s x;s Fks rks xzke iapk;r }kjk fooj.k
 lwpuk miyC/k u gksus dk mYys[k djuk vuqfpr ugha gS A 8- ,usDpj&6 esa gk;j
 lds.M^{ah} Ldwy ijh{kk esa izkIr vad mYys[k djuk ;k u djuk izklafxd fcUnq ugha gS
 D;ksafd 'kklu ds funsZ'k vuqlkj gkbZ Ldwy ijh{kk 1/4100ha^{1/2} ds vad ds vk/kkj ij p;u
 fd;k tkuk gS A mijksDr fLFkr esa ;fi xzke iapk;r }kjk esfjV fyLV dk uke ekdZ dh lwph
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 funsZ'k vuqlkj c`tsUnz dqekj ktis;h dks 100ha esa lokZf/kd vad gksus ds dkj.k p;u
 fd;k tkuk mfpr izrhr gksrk gS A ;gh Hkh mYys[k gS fd c`tsUnz dqekj ktis;h ds 120ha
 esa vad 51.33 izfr'kr gS tefd ns'kjt fo'odekZ ds 120ha ds vad ek= 42.00 izfr'kr gS A
 vr% 120ha ds vad ds vk/kkj ij Hkh p;fur vH;FkhZ T;knk ik= mEehnokj gS A ;g Hkh
 mYys[k gS fd vU; fdlh vH;FkhZ ds Hkh 120ha ds vad p;fur vH;FkhZ c`tsUnz dqekj
 ktis;h ls T;knk ugha gS A**

9. In addition to the aforesaid, it is also observed that on 27.11.2012 the respondent no.3 pointed out that the petitioner had filed two mark-sheets of Higher Secondary Examination, one from M.P. Sanskrit Mandal and one from the Higher Secondary Education Board, Delhi pursuant to which this Court, on 27.11.2012 in W.P.No.16391/2011(S) passed the following order :-

"To resolve the controversy involved in this writ petition it is absolutely necessary to go through the original records of selection.

Original records are needed to see as to what was the Certificate produced by the petitioner at the time of appointment. Alongwith his application the petitioner has produced a Certificate indicating that he has passed the Higher Secondary Examination from M.P. Sanskrit Mandal but now petitioner has filed a rejoinder and has enclosed a Certificate issued by the Board of Higher Secondary Education Board, Delhi. To ensure as to what was the correct documents filed by the petitioner original records are necessary. Therefore, learned counsel for the State is directed to produce the original record. That apart, if petitioner has filed different document at the time of recruitment it is a serious matter and action should be taken against the petitioner.

Petitioner is, therefore, directed to file an affidavit indicating as to what was the document filed by him at the time of appointment and whether Annexure P/7 was also filed by him alongwith his original application. If it is found that petitioner is making a false averment, action should be taken for misusing the process of law and filing false affidavit in a judicial proceedings."

10. Pursuant to the directions issued by this Court, the record has been produced before this Court and the petitioner has also filed an affidavit in which he has conveniently not made any statement as to which mark- sheet was filed alongwith the original application but has stated that the document, Annexure P-7, had been filed by him before the authorities after remand of the matter by the Division Bench of this Court in W.A No.1764/2007.

11. On a perusal of the record it is clear that the petitioner had in fact filed a mark-sheet of High School Certificate issued by the M.P. Open School, Bhopal in December 2004 and a mark-sheet of Uttar Madhya Certificate Examination issued by the M.P. Sanskrit Board, Bhopal in August 2006 alongwith his original application filed pursuant to the advertisement in which he had obtained far less marks than respondent no.3. It is also evident from a perusal of the record that the subsequent document, Annexure P-7, issued by the Board of Higher Secondary Education, Delhi, which is stated to have been submitted by the petitioner before the respondent authorities after remand of the matter by this Court and filed before this Court alongwith the rejoinder, was not filed alongwith the original application and was not taken on record by the authorities subsequently on account of the fact that there was no such direction by this Court in W.A No.1764/2007.

12. In the circumstances, the act of the petitioner in filing the said mark-sheet alongwith the rejoinder before this Court without disclosing the previous mark sheets and by suppressing facts amounts to deliberate attempt on the part of the petitioner to prejudice this Court, moreso as the marks obtained by the petitioner in Annexure P-7 and the mark obtained by the petitioner in the mark sheet filed alongwith the original application are different and, therefore, the subsequent mark-sheet was filed to prejudice this Court regarding the comparative merit of the petitioner and respondent no.3 and that the said mark-sheet was filed without disclosing the fact before this Court that the mark-sheet, Annexure P-7, was never produced before the authorities or filed alongwith the

original application either in the writ petition or in the rejoinder.

13. From the aforesaid it is clear that the petitioner has not come with clean hands before this Court and has also not filed an affidavit disclosing the true facts even after directions being issued by this Court and has tried to mislead this Court in the present proceedings.

14. The petitions, filed by the petitioner, therefore, deserves to be dismissed on this count alone.

15. Quite apart from the above, it is also evident from a perusal of the report submitted by the Chief Executive Officer, Zila Panchayat Tikamgarh alongwith the application for taking the inquiry report on record filed by the respondent State on 21.3.2012, that there is no illegality in the preparation of the list and that the respondent no.3 is the most meritorious candidate and has, therefore, rightly been appointed as Panchayat Karmi on the basis of comparative assessment of the marks obtained in the 10th class which is the requisite and appropriate criteria prescribed for appointment on the post of Panchayat Karmi as has been held by the Division Bench of this Court in Suresh vs. Chief Executive Officer, Zila Panchayat, Barwani, 2012 (1) M.P.H.T. 74.

16. It is also apparent from the report that the dash indicated in front of the particulars of certain other candidates is on the basis of the fact that they had not produced the relevant documents in relation to the entry concerned and that as the selection is required to be made on the basis of marks obtained in the 10th class, the non-filing of the 12th class mark-sheet by certain candidates was immaterial. This fact is also borne out from a perusal of the record.

17. From a perusal of the aforesaid, it is clear that the respondent no.3 being the most meritorious candidate on the basis of the prescribed qualification, has rightly been appointed by order dated 6.9.2011 and there is no illegality or infirmity in the said order and that the impugned order is in accordance with and in compliance of the directions issued by the Division Bench of this Court in W.A No.1764/2007 in para-13 (quoted above).

18. The petition filed by the petitioner is, accordingly, dismissed with cost of Rs.5,000/- (Rupees Five Thousand) which shall be deposited before the High Court Legal Services Authority, Jabalpur, looking to the conduct of the petitioner within two weeks.

A copy of this order be placed in the record of W.P No.16391/2011.

(R. S. JHA) JUDGE 04/07/2013 mms/-