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WP-16091-2018

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 24th OF MARCH, 2026WRIT PETITION No. 16091 of 2018*BHAGWANDEEN**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Quazi Fakhruddin - Advocate for the petitioner.

Smt. Janhavi Pandit, Additional Advocate General for the State.

Shri Brajesh Nath Mishra, Advocate for respondents No. 2 and 3.

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ORDER

Per. Justice Pradeep Mittal

This petition is filed against the order dated 28.10.2017 passed by the respondent No. 3 whereby the petitioner has been removed from service on the ground that the appointment of the petitioner on the post of peon has been found contrary to the procedure provided for the appointment.

2. The facts leading to the filing of the present petition are that the father-in-law of the petitioner, while serving under Respondent No. 03, sought voluntary retirement in 1995 on personal and medical grounds under Rule 42 of the Madhya Pradesh Civil Services (Pension) Rules, 1976, and requested consideration of the petitioner (his son-in-law) for appointment.



The petitioner, being wholly dependent and falling within the definition of “family,” applied accordingly.

3. At the relevant time, the policy dated 10.06.1994 governing compassionate appointments was in force. The petitioner was subjected to a regular selection process, including an interview, and was duly appointed as a Peon vide order dated 06.05.1995 (effective from 03.08.1995). He has been in continuous service since then.

4. Pursuant to the directions issued by the Hon’ble High Court in *Mansukh Lal Saraf vs. Arun Kumar Tiwari*, a scrutiny of appointments was undertaken. In 2017, the petitioner was issued a show cause notice alleging that his appointment was irregular and contrary to the applicable policy and the Madhya Pradesh Civil Services (Medical Examination) Rules, 1972. The petitioner submitted a detailed reply stating that his application preceded the circular dated 03.01.1995, that due process was followed, and that he possessed the requisite qualifications.

5. However, Respondent No. 03, relying on committee reports, passed the impugned order dated 28.10.2017 removing the petitioner from service on the ground that his appointment was illegal.

6. It is submitted by the learned counsel for the petitioner that the impugned action is arbitrary and contrary to law, as the petitioner was duly selected through a proper process, without any fraud or misrepresentation, and has rendered over 22 years of service. The authorities failed to consider that the policy dated 10.06.1994 was applicable, and that the subsequent circular dated 03.01.1995 was not issued in accordance with Article 166 of



the Constitution. Applying such criteria retrospectively would adversely affect similarly situated employees.

7. It is also submitted that the impugned order dated 28.10.2017 is illegal, arbitrary, and contrary to settled principles of law. The petitioner's appointment, made in accordance with the prevailing policy and after due selection, was neither tainted by fraud nor misrepresentation and, therefore, could not have been reopened after more than two decades.

8. That there were no recruitment rules governing Class-IV posts in the District Court establishment at the relevant time, the petitioner's appointment cannot be termed illegal or in violation of any rules. Similar appointments were made following the same procedure.

9. That the impugned order is based on a misinterpretation of the directions issued in *Mansukh Lal Saraf vs. Arun Kumar Tiwari* and is contrary to the law laid down by the Hon'ble Supreme Court in *State of Karnataka vs. Umadevi* (2006) 4 SCC 1. That the impugned action is arbitrary and violative of Articles 14, 16, and 21 of the Constitution of India.

10. Per contra, learned counsel for Respondents No. 2 and 3 submits that *Mansukh Lal Saraf* had filed a Public Interest Litigation challenging appointments made to public posts in an arbitrary and illegal manner in the State of Madhya Pradesh, which resulted in denial of fair opportunity of employment to eligible candidates. In the said petition, being Writ Petition No. 198/1999 titled *Mansukh Lal Saraf v. Arun Kumar Tiwari & Ors.*, reported in (2016) 2 MPLJ 283, it was contended that the action of the State Government in making such appointments was arbitrary and resulted in



undue favour being extended to certain individuals. Upon receipt of the aforesaid reply the Committee again applied its mind in its meeting held on 15.09.2017 and was pleased to find that an application dated 02.05.1995 was submitted by father-in-law of the petitioner for seeking voluntary retirement simplicitor. In the said application dated 02.05.1995,, the petitioner's father-in-law has requested for appointment of his son-in-law in place of him because he has no issues because his son-in-law has promised to take care of him after retirement.

11. The Division Bench of this Court, after hearing the parties at length, passed a detailed order holding that such appointments were made contrary to the selection procedure prescribed under the relevant recruitment rules. It was further directed that all future appointments to public posts must be made strictly in accordance with the prescribed recruitment rules.

12. The Division Bench further directed the Chief Secretary of the State of Madhya Pradesh to require the Secretaries of all departments to examine whether any appointments had been made on a regular basis without following the prescribed selection procedure. It was directed that appropriate action be taken against such appointees as well as the officers responsible for such appointments, in accordance with law, and that a report be submitted to the Chief Secretary within four months. The Chief Secretary was also directed to initiate necessary steps for issuance of a general Government Order or to revoke such illegal appointments on a case-to-case basis. It was further directed that the services rendered by such appointees, upon revocation of their appointments, shall be treated as contractual for the



relevant period, without conferring any benefits available to regularly appointed employees.

13. It is submitted that, in compliance of the aforesaid directions, an enquiry was initiated to identify appointments made dehors the rules, and information in this regard was sought from all District Judges.

14. It is further submitted that the posts to which the petitioner was appointed is public posts, and his appointments and service conditions is governed by statutory rules framed by the State Government. In this context, reference is made to the Madhya Pradesh Civil Services (Medical Examination) Rules, 1972 and the Madhya Pradesh Civil Services (Pension) Rules, 1976 (hereinafter referred to as the “Medical Examination Rules” and the “Pension Rules”, respectively).

15. The Medical Examination Rules empower the State Government to terminate the services of a government servant if, on the basis of medical opinion, the employee is found to be suffering from a contagious disease or any physical or mental disability affecting the discharge of duties. Rule 42(1) (a) and (b) of the Pension Rules permits a government servant to seek voluntary retirement or be retired in public interest upon fulfilment of the prescribed conditions. Rule 35 of the Pension Rules provides for grant of invalid pension where a government servant is rendered permanently incapable of service due to bodily or mental infirmity, subject to certification by a competent medical authority.

16. It is further submitted that, in order to comply with the directions issued in Mansukh Lal Saraf (supra), and pursuant to communications



(Annexure R-1 and Annexure R-2), a three-member committee was constituted to examine and verify appointments made during the relevant period under the medical disability clause of the policy dated 10.06.1994. The Committee submitted its report on 30.03.2016, wherein, with respect to the present petitioner, it was found that the appointment had been granted on compassionate grounds under the said policy.

17. However, upon enquiry, the Committee concluded that the father of the petitioner was neither suffering from any medical disability nor declared unfit for service in accordance with the provisions of the Medical Examination Rules, 1972. Consequently, it was held that the appointment of the petitioner was contrary to law. It was further stated that there was no material to indicate that the father of the petitioner had been retired on medical grounds or declared unfit by a competent medical authority, and therefore, no occasion arose for granting compassionate appointment to the petitioner.

18. In the para wise reply, the respondents have denied all allegations made by the petitioner and have contended that appointments made in contravention of statutory rules are void ab initio. Accordingly, it is prayed that the writ petition deserves to be dismissed.

19. This court has already concluded the issue involved herein in W.P. No. 11415 of 2018 (Mohd. Shamim and others Vs. State of M.P. and others) and other connected matters vide order dated 28.01.2026 by passing a detailed order. The relevant paragraph 44 of the aforesaid order is reproduced herein below.

"44. In the aforesaid discussion, we are of the considered opinion



that the judgment in Rakesh Dubey passed by this Court cannot be followed in the present petitions. The appointment of the petitioners was not illegal or void ab initio; at the most, it suffered from an irregularity which, after the petitioners rendered about 25 years of service, stood automatically cured. The Constitution Bench of the Supreme Court in Secretary, State of Karnataka & Others v. Umadevi & Others, (2006) 4 SCC 1, has opined that past cases should not be reopened, and in view of the said judgment, the appointment of the petitioners cannot be treated as an illegal appointment. The decision in Mansukh Lal applies only to illegal appointments and not to irregular appointments. There was no misrepresentation of facts by the petitioners, and the Department, with open eyes, considered their claim and appointed them. Therefore, the termination after about 22 years of service is bad in law. Accordingly, the petitions deserve to be allowed. "

20. The policy came into force on 10/07/1994 and was withdrawn on 03/01/1995. The father-in-law of the petitioner submitted his resignation on 02/05/1995, which was accepted on 02/08/1995. The petitioner was appointed on 06/05/1995 as a Class IV employee. It has been submitted by the respondent that the son-in-law is not entitled to compassionate appointment. Appointment was made after the withdrawal of the policy. The M.P. Health Rules were not followed. As per the appointment policy, Rule 17 provides that where there is no son or daughter to take care of the employee, he or she has the right to nominate a near relative who will take care of them. Therefore, the contention of the respondents that the son-in-law is not entitled to appointment is not acceptable. Secondly, the petitioner was not at fault for the alleged non-compliance of the M.P. Health Rules in securing the appointment in place of his father-in-law. Due to the fault of the employer, the father-in-law of the petitioner lost service and pension on the assurance given by the employer that a job would be provided to the petitioner. Therefore, after a lapse of 20 years, it cannot be said that the



appointment was illegal due to the fault of the employer. All these issues have already been dealt with by the Division Bench of the Court in W.P. No. 11415 of 2018 and other connected matters vide order dated 28.01.2026, and the present case is squarely covered by the aforesaid judgment.

21. Accordingly, the writ petition is allowed and the impugned order dated 28.10.2017 is quashed and the petitioner is reinstated to his respective posts without back wages and all consequential promotional and service benefits in accordance with law.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE

MSP