

PETITIONER:  
ISHWAR CHAND

Vs.

RESPONDENT:  
STATE OF MADHYA PRADESH & ANR.

DATE OF JUDGMENT 10/05/1995

BENCH:  
KULDIP SINGH (J)  
BENCH:  
KULDIP SINGH (J)  
VENKATACHALA N. (J)

CITATION:  
1995 SCC Supl. (3) 175 JT 1995 (4) 508  
1995 SCALE (3) 396

ACT:

HEADNOTE:

JUDGMENT:

THE 10TH DAY OF MAY, 1995

Present:

Hon'ble Mr. Justice Kuldeep Singh  
Hon'ble Mr. Justice N. Venkatachala  
Mr. Pramod Swarup, Adv. for the appellant  
Mr. S. K. Agnihotri, and Mr. S. S. Khanduja, Advs. for the  
Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 4637 OF 1985.

Ishwar Chand ..Appellant

Versus

State of Madhya Pradesh & Anr. ..Respondents

J U D G M E N T

Kuldeep Singh, J.

The Madhya Pradesh Municipalities Act, 1961 (the Act) came into force on February 1, 1962. Ishwar Chand, the appellant before us, was employed in the Municipal Council, Burhanpur as an accountant from a date prior to the coming into force of the Act. The Municipal Council by the resolution dated March 30, 1962 created a post of accounts officer. As required under Section 94 of the Act the copies of the resolution were sent to the Collector and to the State Government for grant of sanction. The State Government granted the necessary sanction by the order dated April 23, 1964. Thereafter, sometime in the year 1964 the appellant was appointed to the newly created post of accounts officer. The said appointment was approved by the State Government and finally the appellant was confirmed against the post of accounts officer in the Municipal Council, Burhanpur.

The pay-scale of the post of accounts officers working in various Municipal Councils was revised with effect from April 1, 1964 in accordance with the recommendations of

Tarachand Pay Commission. The appellant was paid salary under the revised pay-scale till February 28, 1965. Thereafter till September 30, 1966 he was reverted to the unrevised pay-scale on the ground that the Municipal Council was not in a position to meet the burden of the revision of the pay-scale. However, from October 1, 1966 till April 30, 1970 the appellant drew his salary in accordance with the revised pay-scale but was not permitted to draw increments.

The Municipal Council redesignated the appellant as accountant with effect from May 1, 1970 and started paying him the salary of the said post which was lesser than the salary of the post of accounts officer to which he was initially appointed. The appellant challenged the action of the respondents by way of a civil suit seeking a declaration that he was entitled to hold the post of accounts officer and was entitled to draw the salary, allowances etc. of the said post. Various other reliefs were also sought in the civil suit. The trial court decreed the suit. The Lower Appellate Court, however, set aside the judgment and decree of the trial court and dismissed the suit. The High Court in second appeal upheld the judgment of the Lower Appellate Court. This appeal by way of special leave is against the judgment of the Lower Appellate Court as upheld by the High Court.

The stand of the State Government and the Municipal Council before the trial court was that the State Government, in exercise of the power under Section 95 of the Act, framed Rules called "the Madhya Pradesh Municipal Services (Scale of Pay and Allowances) Rules, 1967 (the Rules) whereunder the post of accounts officer in the Municipal Council Burhanpur was equated to that of an accountant and as such the Municipal Council was justified in redesignating the appellant as accountant and as a consequence paying him the salary of the said post.

To appreciate the rival contentions of the parties, it would be useful to examine the relevant provisions of the Act and the Rules. Sections 94(1), 94(4), 94(5) and 95 of the Act are as under:-

"APPOINTMENT OF STAFF (1) Every Council having an annual income of five lakhs of rupees or more shall, subject to rules framed under Section 95, appoint a Revenue Officer and an Accounts Officer and may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties.

(4) The appointment of Revenue Officer, Accounts Officer, Sanitary Inspector, Overseer, Revenue Inspector and Accountant shall be subject to confirmation by the State Government and no such post or the post of any other officer or servant as may be specified by the State Government in this behalf shall be created or abolished and no alteration in the emoluments thereof shall be made without the previous approval of the State Government and every appointment to and dismissal from such post, shall be subject to a like approval.

(5) No order of suspension for a period exceeding one month shall be passed against any officer mentioned in

or specified under sub-section (1) and no resignation tendered by any such officer shall be accepted without previous approval of the State Government.

95. STATE GOVERNMENT TO MAKE RULES.-- The State Government may make rules in respect of qualification, recruitment appointment, leave, scale of pay, all allowances by whatever name called, loans, pension, gratuity, compassionate fund, provident fund, annuity, dismissal, removal conduct and other departmental punishment and appeal and service conditions for Municipal employees other than a member of the State Municipal Service."

Rules 7, 8 and 10 of the Rules are as under:

"Rule 7. EQUATION OF POSTS.- The present posts in each Municipal Council will be equated with the posts mentioned in Schedule III as per Schedule IV. The State Government will have the power to add, delete or make any amendment in the equation of the post made and shown in Schedule IV after consulting the municipal council concerned, posts other than those of whose equation has been made as per Schedule IV will continue to be designated as at present until their designation is altered by the State Government.

8. ABSORPTION.- Except for posts mentioned in sub-section (4) of section 94 of the Madhya Pradesh Municipalities Act, 1961 and such other posts as may be specified under this section and the posts of Chief Municipal Officer, Health Officer and Engineer mentioned in Section 87(1) and 88(1) of the said Act, the employees working on any post, of which equation has been made as per Rule 7, will be absorbed against such equated posts as follows:.....

10. ABSORPTION OF EMPLOYEES HOLDING UNEQUATED POST.- Employees working on posts on which equation has not been made as per Rule 7 will be absorbed against their present posts."

Schedule III to the Rules provides the pay scales and qualifications in respect of various posts named therein and to be created in different classes of Municipal Committees, In Class A committees the pay scale of the post of accounts officer as shown in Schedule III was Rs.190-10-250-EB-12 1/2-300. Schedule IV to the Rules gives the statement showing equation of present posts with the posts in the new set up. Under the heading Class A Municipal Councils at Serial No.4 it was mentioned as under:

| S.No. | Designation of posts in the new set up and pay scale | Name of the Municipal Council | Designation of present posts of which equation has been made. |
|-------|------------------------------------------------------|-------------------------------|---------------------------------------------------------------|
|-------|------------------------------------------------------|-------------------------------|---------------------------------------------------------------|

4. Accountant  
Rs.130-5-160-6-190- Burhanpur Accountant  
plus Special pay  
Rs.15/- p.m.

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It is not disputed that the Municipal Council Burhanpur has an annual income of Rs.5 lakhs or more and as such is a Class A Municipality. Under section 94 of the Act Municipal Council Burhanpur has to appoint an accounts officer, subject to the rules framed under Section 95. It is further not disputed that the appellant was appointed as accounts officer under Section 94 with the approval of the State Government and he was confirmed in the said post. The Rules came into force with effect from September 29, 1967, years after the appointment of the appellant to the post of accounts officer. The appellant having been validly appointed to the post of accounts officer under the Act he could only be removed or reduced in rank by following the procedure provided under law. The respondents have reverted the appellant on the ground that the post of accounts officer held by him was equated to the post of accountant under the Rules. The stand of the respondent is factually unsustainable and legally untenable. Under Rule 7 of the Rules "present posts" in each municipal council were to be equated with the posts mentioned in Schedule III as per Schedule IV. Under Schedule III Class A Municipal Councils were to have accounts officers as one of the posts. Schedule IV nowhere mentions that the existing post of accounts officer in Burhanpur Municipal Council was to be equated with that of accountant. The said schedule only mentions that the existing post of accountant in the Burhanpur Municipal Council was to be equated with accountant. It is thus obvious that rule 7 read with Schedule IV could not have been made applicable to the post of accounts officer which was held by the appellant since prior to the coming into force of the rules. Rule 10 of the rules clearly states that the employees which were not equated under rule 7 would be absorbed against their present posts. Since there was no equation provided under Schedule IV read with rule 7 of the rules regarding the post of accounts officer in Burhanpur Municipal Council the appellant was entitled to be absorbed in the post of accounts officer after coming into force of the Rules. Therefore on the bare reading of the provisions of the Act and the Rules, the respondents were wholly unjustified in equating the higher post of accounts officer held by the appellant with the lower post of accountant.

Learned counsel for the appellant has vehemently contended before us that under Section 94 of the Act it is mandatory to have a post of accounts officer in Class A Municipal Committees. He further states that Section 95 of the Act only provides the procedure for appointment and conditions of service in respect of the post of accounts officer. According to him the post of accounts officer which has been provided under the Act cannot be taken away by the Rules framed under Section 95 of the Act. The view we have taken on the interpretation of the Rules, it is not necessary for us to go into these contentions raised by the learned counsel for the appellant.

We allow the appeal, set aside the judgment of the Lower Appellate Court and the impugned judgment of the High Court. We restore the judgment of the trial court and decree the suit with costs. We quantify the costs as Rs.20,000/- to be paid by the State Government.

JUDIS