

(1999) 12 MP CK 0049

In the Madhya Pradesh High Court

Case No : Writ Petition No 1678 of 1998

Arti Bhatnagar (Smt.) and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Madhya Pradesh Panchayat (Appeal and Revision) Rules, 1995 — Rule 5, 5(1)
Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 47, 51, 52, 52(1), 53(1)
Madhya Pradesh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 — Rule 12, 3, 5, 5(1), 5(10)

Citation : (2000) 1 J LJ 349 : (2000) 2 MPLJ 151

Hon'ble Judges : S.P. Srivastava, J; R.B. Dixit, J

Bench : Division Bench

Advocate : Brijesh Sharma and Anil Mishra, for the Appellant; K.N. Gupta, Government Advocate and Arvind Dulawat, for the Respondent

Judgement

S.P. Srivastava, J.

The Petitioners had applied for their appointment on the posts of Shiksha Karmi. Grade-Ik in Janpad Panchayat, Kolaras pursuant to the advertisement dated 12.5.1998 and were selected. After their selection, appointment orders were issued in their favour by the Panchayat. the Respondent No. 3. on 31.8.1998. They were allowed to join their posts. However, on 22.8.1998. the Collector. Shivpuri. the Respondent No. 2. issued an order for holding the interview contemplated under Rule 5 of the Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 for preparation of the select list requiring the Members of the Selection Committee to attend the fresh interview scheduled for 26th. 27th and 28th of August. 1998, The interviews were conducted afresh and a revised list of selected candidates was prepared and published on 21 9.1998 cancelling the earlier select list. In the fresh list so prepared, the names of various candidates which found place in the earlier select list including the present Petitioners were omitted, with the result that their selection and consequential

appointment stood cancelled.

Feeling aggrieved, the Petitioners approached this Court and filed the present writ petition on 28.9.1998 invoking its jurisdiction under Article 226 of the Constitution of India praying for the quashing of the order dated 22.8.98 as well as the revised select list. During the pendency of the present writ petition, the Collector had passed an order on 22.9.1998, whereunder it was indicated that pursuant to the interim orders of this Court, the proceedings for holding the fresh interview had been concluded but the fresh select list prepared will not be implemented awaiting further orders of this Court.

The present writ petition was amended pursuant to the order of this Court dated 15.3.1999 adding a relief seeking the quashing of the order dated 22.9.1998 whereunder the earlier select list had been cancelled to the extent indicated in that order as the revised select list was to be implemented subject to certain directions.

The Petitioners have prayed that the present writ petition may be treated to have been filed in the larger public interest also taking into consideration the large number of youths who may lose their means of livelihood and further taking into consideration the multiplicity of the litigations.

We have heard the learned Counsel for the parties at some length

This writ petition was heard alongwith the writ petition No. 1477/98 and the record relating to the proceedings giving rise to the impugned orders had been produced by the Respondents. No. 1 and 2, which has also been perused.

The facts in brief, shorn of details as they emerge from the perusal of the record and are necessary for the disposal of this case lie in a narrow compass. The proceedings for appointment of Shiksha Karmi Grade-III in the Janpad Panchayat, Kolaras, Badarwas, Narwar and Karera, district Shivpuri were initiated with the publication of the advertisement dated 12.5.1998 inviting applications from the eligible candidates. The recruitment and appointment of the Shiksha Karmis are regulated by the provisions contained in Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997. The selection committee contemplated under the rules prepared a select-list of the candidates for appointment as Shiksha Karmi Grade III on merit on the basis of the assessment of the candidates purporting to act in accordance with the provisions contained in Rule 5(1) to 5(9) (ii) of the aforesaid Rules. In this select-list, the names of the Petitioners were included. Later on, implementing the said select-list, the Respondent No. 3 had issued the appointment orders to the Petitioners and had allowed them to join their posts. However, the Collector Shivpuri, who is the prescribed authority also, as contemplated under the provisions of the M.P. Panchayat Raj Adhiniyam 1993 received various complaints in regard to serious legal infirmities and irregularities vitiating the entire proceedings relating to recruitment and preparation of the select-list and appointment on the posts of Shiksha Karmi Grade-III.

Some appeals had also been filed by various aggrieved persons before the Collector, Shivpuri, challenging the recruitment proceedings regarding preparation of the select-list and the appointments of Shiksha Karmi Grade-III. A report of the Mukhya Karyapalan Adhikari of the concerned Zila Panchayats was called for and the Additional Collector (Vikas), Shivpuri being prima facie satisfied from the perusal of the records that the proceedings relating to the preparation of the select-list and the consequential appointments stood vitiated in law and were manifestly erroneous, arbitrary, injudicious and unfair and further that in the garb of awarding the marks to candidates for their performance in the interview, the select-list had been prepared awarding inflated marks to push up the candidates who had got poor marks for their educational qualifications or awarding deflated marks to pull down the candidates who had got high marks for their educational qualifications without adopting common eligibility criteria for all the candidates and further totally ignoring the reservation policy; submitted his report to the Collector, the Respondent No. 2.

The Collector on a perusal of the report submitted by the Upper Collector (Vikas) called for the entire record relating to the recruitment proceedings conducted in the Janpad Panchayats, Karera, Kolaras, Badarwas, Narvar, Shivpuri, Pohri, Pichhore and Khania-Dhana and directed all the members of the selection committee as well as the Mukhya Karyapalan Adhikarans and Vikas Khand Shiksha Adhikaris to be present alongwith the record before him on 22.8.1998. With this, the Collector, Shivpuri initiated a sua main action exercising his revisory jurisdiction envisaged under Rule 5 of the M.P. Panchayat (Appeal and Revision) Rules, 1995.

On 22.8.1998, the Mukhya Karyapalan Adhikaris of Janpad Panchayats, Karera, Kolaras, Badarwas, Narvar, Shivpuri, Pohri, Pichhore and Khania-Dhana together with the concerned Vikas Khand Shiksha Adhikaris as well as the members of the Shiksha Samiti/Chayan Samiti appeared before the Collector. The reply submitted by the Mukhya Karyapalan Adhikan in the various appeals was also perused and after perusing the entire records the Collector came to the conclusion that the Education Committee/Selection Committee, Kolaras, Badarwas, Narvar and Karera had committed gross illegalities and irregularities in the proceedings relating to the preparation of the select-list contemplated under the aforesaid rules.

The Collector after noticing various illegalities and irregularities going to the root of the matter and vitiating the select-list, passed an order that all the members of the Education Committee/Selection Committee should reconsider their assessment adhering to the criteria prescribed under the Rules and rectify the errors, so that the select list may be strictly in accordance with the statutory requirements, merit being the sole criteria to be assessed in accordance with the prescribed norms. The Collector was "however" of the opinion that the candidates who had already to their credit two to three years' experience of teaching may be exempted from appearing at the fresh interview, so that there

may not be any difficulty in the continuation of the imparting of education. This appeared to be only a tentative arrangement. The fresh interviews were held accordingly.

A perusal of the order dated 30.8.1998 passed by the Collector, the Respondent No. 2. indicates that in the fresh interviews held on 26th, 27th and 28th of August, 1998, so far as Janpad Panchayat, Kolaras was concerned, the attendance of the candidates was only to the extent of 70% and it appeared that some candidates could not be informed of the fresh interview. In this view of the matter, the Collector had directed that all the remaining candidates be intimated fixing 9th, 10th and 11th September, 1998 as the dates for the fresh interview.

On 22.9.1998 when the matter was placed before the Collector including the fresh select-list, which had been prepared on the basis of merit, it was found that in the fresh select-list the position was that 72 of such candidates who had shown to be selected earlier could not secure a place in the revised select-list had been prepared strictly adhering to the norms prescribed and the rules relating to the reservations, etc. In the aforesaid circumstances, the Collector came to the conclusion that the earlier select-list alongwith the appointments, which had been made acting upon the said list, which had not been prepared in accordance with the mandatory requirements and was manifestly illegal, be cancelled excepting those candidates brought on that list who had two to three years' teaching experience.

In the aforesaid order, it was also indicated that the revised select-list was to be acted upon subject to the orders of this Court. However, it was directed that the fresh select-list be published at the district head-quarter, office of the Chief Executive officer, District Panchayat, office of the Collectorate and the office of the Up-Sanchalak, Shiksha, as well as the Head Office of the Janpad Panchayat. As indicated in the order, the affected Panchayats were Kolaras, Badarwas, Narvar and Karera.

Janpad Panchayat, the Respondent, No. 3, has filed a return/counter - affidavit in opposition to the writ petition. It has been asserted that the writ petition is not maintainable as the Petitioners have not availed the alternative remedy of appeal pointing out that their grievance against the fresh select-list, if at all, could have been raised and agitated before the appellate authority by means of a separate appeal, which remedy they have not availed of. It has been admitted that the names of the Petitioners had been included in the first select-list but since the said select-list had been prepared in an incorrect manner without adhering to the statutory provisions, a revised select-list was prepared rectifying the errors and the Petitioners on account of their low merit could not find place in the revised select-list. It was indicated that under Rule 12 of the Rules, the Petitioners could file an appeal for getting their grievance redressed but they had failed to do so.

It was further asserted that the placement of the Petitioners name in the select-

list did not vest them with any right to get an appointment under the law and the writ petition was not maintainable in this view of the matter also It was further asserted that for the cancellation of the select-list wherein the Petitioners name had been included the duly constituted selection committee had reconsidered the matter and strictly adhered to the procedure prescribed and taken into consideration the criterion for selection laid down under the statutory rules had prepared the revised select-list in accordance with law. In this select-list the candidates whose names have been placed in the revised select-list were more meritorious and suitable as compared to the Petitioners

Another objection has been raised pointing out that the revised select-list could not be interfered with without affording an opportunity to the candidates whose names stand placed therein as they have not been impleaded in the writ petition and interest of third party has accrued. The entertainability of the writ petition as a public litigation was also objected to asserting that no case for interference by this Court was made out justifying entertainment of this writ petition as a public interest litigation.

In paragraph 20 of the counter-affidavit a specific pica had been raised asserting that Petitioners had not availed of the remedy envisaged under Rule 12 of the Rules and in this view of the matter also no case for intervention of equity has been made out.

The learned Counsel for the Petitioners strenuously urged that the order passed by the Collector was manifestly illegal and had been passed in an arbitrary manner without giving any opportunity of hearing to them or the other candidates who had secured appointments and even joined the posts with which the first select-list stood implemented, though in part.

It has also been urged that the prescribed authority could not in exercise of his executing powers interfere in or set aside the order passed by a shiksha samiti and the Panchayat. winch action is ex facie against the democratic governance of the Panchayat Raj

It has further been urged that the Collector had no revisory jurisdiction, which he purported to exercise while passing the impugned orders, as no case was pending or disposed of by an authority as contemplated under Rule 5 of the M.P. Panchayat (Appeal and Revision) Rules, 1995, the order passed wherein could give rise to any occasion for initiating sua motu action exercising the revisory jurisdiction.

Learned Counsel for the Respondents has "however" urged that in the facts and circumstances noticed hereinabove, no case for intervention of equity has been made out and the writ petition deserved to be dismissed not only as not entertainable and maintainable, asserting the impugned order passed by the Collector was well within jurisdiction.

22-A. We have given our anxious consideration to the rival submissions:

The provisions contained in Section 51 of the M.P. Panchayat Raj Adhiniyam 1993 contemplates entrustment of certain functions of State Government to Janpad Panchayat in relation to any matter to which the executive authority of the State Government extends or in respect of functions which have been entrusted to the State Government by the Central Government and the Janpad Panchayat is bound to perform such functions and have to be taken to be vested with the necessary powers to perform such functions after the entrustment. These functions have to be discharged acting as an agent of the State Government. Section 52 of the Madhya Pradesh Panchayat Raj Adhiniyam 1993 enumerates various functions of the Zila Panchayat providing that subject to the provisions of the Act and the Rules made thereunder and subject to the policy the directions, instructions, general or special orders, as may be issued by the State Government from time to time, it will be duty of the Zila Panchayat to perform those functions. Section 52 (1)(xiv) of the Act is a residuary clause providing that the Zila Panchayat shall exercise and perform such other powers and functions as the State Government may confer or entrust upon it. This indicates that the list of functions enumerated in Section 52 of the Act is not exhaustive. The provisions contained in Section 53(1)(b) of the Act provides that the State Government may by notification endow the Panchayat: at the appropriate level with powers and responsibilities for the selection, recruitment, arrangement and management of any cadre or cadre of employees required for the efficient implementation of schemes subject to the staffing pattern approved by the State Government and as such other conditions as it may deem fit.

Section 94 of the Madhya Pradesh panchayat Raj Adhiniyam 1993 is to the following effect:

94 General Power of Control --. In all matters connected with this Act or the rules made thereunder all officers empowered to act by or under this Act shall be subject to the same control by the same authority under whose administrative control they normally perform the functions of their office.

The provisions contained in Section 70 of the Act provide that subject to the provisions of Section 69 every panchayat may with previous approval of prescribed authority appoint such other officers and servants as it considers necessary for the efficient discharge of its duties providing further that the qualifications, method of recruitment, salaries, leave, allowance and other conditions of service including disciplinary" matters of such officers and servants shall be such as may be prescribed.

In exercise of the powers conferred by Clause (b) of Sub-section (1) of Section 53, Sub-section (1) of Section 70 read with Sub-section (1) of Section 95 of the M.P. Panchayat Raj Adhiniyam, 1993 the State Government made the Rules known as M.P. Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997.

Under the aforesaid Rules, the appointing authority for the Shiksha Karmis was

defined to be the authority mentioned in column 5 of Schedule-1 of the Rules. Janpad Panchayat was made the appointing authority so far as the Shiksha Karmis Grade III were concerned. The Committee referred to under the Rules was also defined indicating it to be the Selection Committee or promotion committee constituted to appoint or promote Shiksha Karmis as given in Schedules II & IV respectively. The Selection Committee so far as the Shiksha Karmis Grade III were concerned was to consist of Chairperson standing committee of Education of Janpad Panchayat, Chief Executive Officer, Janpad Panchayat, Block Education Officer (Member Secretary), two Specialists in the subject to be nominated by the standing committee for Education of whom one shall be woman and all the members of the standing committee of Education of which at least one was to belong to SC/ST/OBC. In case, there was no SC/ST/OBC member in the standing committee, then the same had to be nominated from the general body. The education committee, it may be noticed, is the education committee contemplated u/s 47 of the Act which consists of the elected members from amongst the elected members of the Janpad Panchayat.

The provision contained in Rule 12 of the Shiksha Karmis (Recruitment and Conditions of Service) Rules 1997 provides a remedy of appeal against the order passed under the said Rules as per provisions of the Adhiniyam. Section 91 of the Adhiniyam i.e. M.P. Panchayat Raj Adhiniyam, 1993 provides that an appeal or revision against the orders or proceedings of a panchayat and other authorities under the said Act shall lie to such authority and in such manner as may be prescribed. The remedy of appeal or revision stands prescribed under the provisions contained in the M.P. Panchayats (Appeal and Revision) Rules, 1995. Rule 3 of the aforesaid rules provides that save where it has been otherwise provided in the Act or bye-laws made thereunder, an appeal shall lie in the case of an order passed by the Sub Divisional Officer under any provision of the Act or rules or by laws made thereunder to the Collector. In the case of an order passed by the Collector under any provision of the Act or rules or bye laws made thereunder, the appeal shall lie to the Commissioner. In the case of an order passed by the Commissioner or Director of Panchayats, the appeal shall lie to the State Govt. and in case of an order passed by the Panchayat specified in column (1) of Rule 3 Clause (d), the appeal shall lie to the authorities specified in the corresponding entry in column (2) thereto. Under this provision, the order passed by the Gram Panchayat is appealable before the Sub Divisional Officer and the order passed by the Janpad Panchayat is appealable to the Collector and the order passed by the Zila Panchayat is appealable to the Commissioner.

Rule 5 of the aforesaid rules "however" provides as follows:

5. Revision.(1)(a) The State Government, the Commissioner, the Director of Panchayat, the Collector may on its/his own motion or on the application by any party; at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it/him call for and examine the record of any case

pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit.

Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard:

Provided further that no application for revision shall be entertained against an order appealable under the Act.

(b) An application for revision by any party shall only be entertained if it is on the point of law and not on facts.

(2) Notwithstanding anything contained in Sub-rule (1),-

(i) Where proceedings in respect of any case have been commenced by the State Govt. under Sub-rule (1), no action shall be taken by other officer mentioned in the said sub-rule in respect thereof, and

(ii) Where proceedings in respect of any such case have been commenced by the officer mentioned in Sub-rule (1), the State Government may either refrain from taking any action under this rule in respect of such case until the final disposal of such proceeding by such officer or may withdraw such proceeding and pass such order as it may deem fit.

A perusal of Rule 5(1)(a) indicates that the Collector on his own motion or on the application by any party at any time for the purpose of satisfying himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to him may call for and examine the record of any case pending before or disposed of by such authority and may pass such order in reference thereto as he may think fit. But the Collector while exercising the revisory jurisdiction is not authorised to vary or reverse the said order unless notice has been served on the parties interested and opportunity given to them for being heard and further the revisory jurisdiction cannot be exercised against an order which is appealable under the Act As contemplated under Rule 5(1)(b) of the rules, the interference while exercising the revisory jurisdiction is permissible only on the point of law and not on facts

It may be noticed that under the scheme of the M.P. Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997, an elaborate procedure stands provided regulating the selection proceedings to be conducted by the Selection Committees constituted thereunder. Rule 5(9) of the Rules provides for the method to be adopted for the assessment of the candidates and the award of marks. This rule is to the following effect:

5(9) (i) The committee will assess the candidates called for interview and award marks in the following manner:

(a) 60% marks for marks obtained in the qualifying examination specified in Schedule II.

(b) 25% marks for the teaching experience in the schools of concerning Janpad Panchayat or Zila Panchayat. Similar benefits will be given for teaching experience of (hundred percent State Government aided and recognised rural school) The decision of the Committee on the validity and valuation of the certificate of teaching experience of rural schools will be final.

(c) 15% marks for oral test which may include the test for:

(i) Communication skills in local dialect

(ii) Knowledge of local environment.

(iii) General Knowledge.

(iv) Training and teaching aptitude.

(v) Any other test which the Selection Committee may deem fit.

(d) Other things remaining the same, preference will be given to candidates who possess certificate in B.Ed., B.T.I. or D.Ed.

(e) All other things remaining the same, in the final selection, those who have teaching experience of schools of Janpad Panchayat or Zila Panchayat will be given preference.

(ii) Select list of each category shall be prepared on the basis of the above assessment in order of merit and shall include 5 names or 20% names, whichever is more in waiting list which shall be valid for nine months.

Rule 5(9)(c) provides for 15% marks for oral test, which may include for communication skills in local dialect, knowledge of local environment, general knowledge, training and teaching aptitude and for any other test which the Selection Committee may deem fit.

In holding a selection for appointment against a civil post, the oral test has its own importance. Written examination assesses a man's intellect and the interview test the man himself and this "twain shall meet" for a proper selection. The marks have to be assigned in each head as indicated in Rule 5(9) (c) of the Rules to reflect the fitness suitability of the candidate. It must be emphasised that proper record must be maintained by the Selection Committee to avoid any suspicion. Further, the select list of each category of Shiksha Karmis has to be prepared on the basis of the assessment done in the manner prescribed under Rule 5(9) of the Rules.

Rule 5(10) of the Rules mandates that the appointment from the select list shall be made in accordance with the roster prescribed by the State Government under the M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhada Vargon Ke Liya Arakshan) Adhiniyam, 1994 and maintained by the Zila Panchayat and Janpad Panchayat as the case may be

The question which arises for consideration is as to whether the select list

prepared under the provisions of the M.P. Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 is revisable under Rule 5 of the M.P. Panchayat (Appeal and Revision) Rules, 1995.

As has already been noticed hereinabove, the Collector on his own motion could at any time for the purpose of satisfying himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of the authority subordinate to him call for and examine the record of any case pending before or disposed of by such authority, could pass such order in reference thereto as he may thought fit but only on the point of law and not on facts.

In the present case, it has been urged that the proceedings before the Selection Committee could not be taken to be a case pending or disposed of and further that the Selection Committee could not be taken to be an "authority" as contemplated under Rule 5 and therefore the Collector could not be deemed to have been vested with any revisory jurisdiction.

In the aforesaid connection, it is further urged that Rule 3 of the Rules provides for an appeal to the Collector against the order passed by the Janpad Panchayat and not against any decision of the Selection Committee. This itself it is contended is a clear indication that the select list is neither appealable nor revisable.

Under the scheme of the Act and the Rules, the expression "authority" has not been defined. We are of the considered opinion that there can be no manner of doubt that the person or bodies, who have legal authority to determine questions affecting the common law or statutory rights or obligations of other persons as individuals, it clearly falls within the ambit of the expression "authority". Further, the persons or bodies who are entrusted by the legislature with functions, powers and duties which involve the making of decision of a public nature also fall within the ambit of the expression "authority". These categories are not exhaustive. Any person or body of a public nature exercising public duties which it is desirable to control by the remedy of judicial review has to be brought within the purview of the expression "authority".

We are further of the considered opinion that such an authority should not act out-side its powers and is duty bound to act fairly and impartially and take a decision in accordance with the law exercising a discretion reasonably. It should never be so unreasonable that no reasonable man could come to it.

The remedy of appeal provided under Rule 12 of the M.P. Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 cannot be rendered illusory. But such an appeal lies only against the order passed by any authority specified in Rule 3 of the said rules. The decision of the Selection Committee rejecting a particular candidate by not including his name in the select list required to be prepared adhering to the procedure and the manner regulating the assessment as contemplated under Rule 5(9) of the Rules does amount to an order as contemplated under Rule 5 of the M.P. Panchayats (Appeal and Revision)

Rules, 1995 and the selection committee, in view of the nature of the statutory obligations cast upon it, has to be taken to fall within the ambit of "authority" as contemplated therein. In the circumstances, even the appointing authority standing authorised to challenge the select list if it finds that the select list has not been prepared in accordance with the statutory provisions or is otherwise vitiated in law.

Any person aggrieved by the rejection of his candidature by the selection committee and on inclusion of his name with select list can also invoke the revisory jurisdiction contemplated under Rule 5 of the Rules on any point of law but not on facts. The revisory jurisdiction "however" cannot be exercised in a case where the order sought to be impugned is appealable under the Act, and if the aggrieved person has a right of appeal, he can not be permitted to by pass the remedy of appeal.

In the present case, the select list prepared and published by the Selection Committee" has not been made appealable, although it necessarily amounts to an order rejecting the claim of the applicants other than those whose names are brought on the list. In the circumstances, the Collector was competent to exercise his revisory jurisdiction contemplated under Rule 5(1) of the M.P. Panchayats (Appeal and Revision) Rules, 1995 and submissions to the contrary are not at all acceptable. But the question which still remains to be considered is as to whether the Collector could pass the impugned order without affording any opportunity of hearing to the persons, whose names had earlier been brought on the select list but later on while preparing the revised select list on a reassessment their names were omitted from the said select list with the consequence that their right to get an appointment on the strength of the earlier select list stood negated by operation of law.

The further question which also arises for consideration is as to whether the Collector could pass the impugned order without affording an opportunity of being heard to the persons whose names had been brought on the select list prepared earlier and implementing the same they had been granted an appointment on the post of Shiksha Karmi Grade-III and had actually joined the post.

In our considered opinion the scheme underlying the provisions of the Madhya Pradesh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 in question provide for two remedies against the select list contemplated under the said Rules. A person aggrieved by the "Select List" could approach the competent revising authority envisaged under Rule 5 of the Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995 and such select list could also be challenged by an aggrieved person in an appeal against the final order passed by the appointing authority implementing the said Act as provided under Rule 3 of the aforesaid Rules of 1995. While challenging the final order passed by the appointing authority based on the selection list the legality or propriety of the select list itself could also be challenged. However, no appeal against the select

list is maintainable as by confining the appeals to the orders passed by the Panchayats only. The appealability of the other orders passed by an "authority" in exercise of its original jurisdiction other than the Sub-Divisional Officer or Collector or the Commissioner or the Director of Panchayats has been ruled out. It is the order passed by the Panchayats or the Sub-Divisional Officer or the Collector or the Commissioner or the Director of Panchayats which have been passed in exercise of their original jurisdiction which have been made appealable under Rule 3 of the Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995 and the orders passed in either revisory or appellate jurisdiction by these authorities have not been made appealable. Further, as contemplated under Sub-rule 2 (i) of Rule 5 of the Rules of 1995 where proceedings in respect of any case have been commenced by the state Government under Sub-rule (1) of Rule 5 no action is permissible by any officer mentioned in the said sub-rule in respect thereof. Further, as provided under the non-obstante clause contemplated under Sub-rule 2 (ii) of Rule 5 where proceedings in respect of any such case have been commenced by the officer mentioned in Sub-rule (1), the State Government may either refrain from taking any action under this rule in respect of such case until the final disposal of such proceeding by such officer or may withdraw such proceeding and pass such order as it may deem fit.

In its decision in the case of Union Territory of Chandigarh Vs. Dilbagh Singh and others, , the Apex Court had clearly indicated that affording of an opportunity of hearing by an Administration to the members of a Selection Board constituted by it, before cancelling a dubious select list of candidates for appointment to civil posts prepared by such Selection Board is not and cannot be a requirement of either law or any principle of natural justice. It is so, it was pointed out, for the reason that no member of a Selection Board acquired any vested right or interest in sustaining a select list prepared by the Selection Board. Besides, there is no personal right or interest of any member of a Selection Board which could be adversely affected, by the Administration cancelling a select list of candidates prepared by Selection Board when it is found to have been prepared by the Selection Board in unfair and injudicious manner. Therefore, there does not arise any need to any Administration to afford an opportunity of hearing to the members of the Selection Board before cancelling a dubious select list of candidates for appointment to civil posts, prepared by it.

The question as to whether the selectees in the select list should have been heard by the Administration before cancelling the list as a dubious one was also considered by the Apex Court in its aforesaid decision. Referring to its earlier decision in the case of Shankarsan Dash Vs. Union of India, rendered by a Constitution Bench, the Apex Court reiterated that it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied pointing out that ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post.

and unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted (Emphasis supplied)

The Apex Court in its aforesaid decision in the case of Union Territory of Chandigarh (supra) clearly indicated that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons and it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily

In the present case, what we find is that Sub-rule (9) of Rule 5 of the Madhya Pradesh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 specifically prescribed the criterion casting a statutory obligation on the Selection Committee to assess the candidates called for interview and award marks in the manner indicated thereunder. Clause (ii) of Sub-rule (9) of rule 5 requires the Selection Committee to prepare the select list of each category on the basis of the assessment so indicated and that too in the order of merit including 5 names or 20% of the names whichever is more in the waiting list which shall be valid for nine months. Sub-rule (10) of Rule 5 mandates that appointment from the select list shall be made in accordance with the roster prescribed by the State Government under the Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhada Vargon Ke Live Arakshan) Adhiniyam, 1994 (No. 21 of 1994) and maintained by the Zila Panchayat and Janpad Panchayat. In such a situation, it is apparent that the relevant recruitment rules themselves clearly secure an indefeasible right to be appointed in favour of a selected on the post in question in case the statutory requirements envisaged under Rule 5 of the 1997 Rules stood satisfied.

As has already been noticed hereinabove, the selection committee consisted of elected persons from amongst the elected members of the Panchayat also. They are not experts that is why while enacting the Rules, it seems to us, elaborate provisions have been made laying down various criterion which had to be taken into account while awarding the marks and preparing the select list.

It must not be lost sight of that the foundation of democracy is faith in the capacities of human nature and faith in human intelligence and further in the power of pooled and co-operative experience. An onerous duty stood cast under

the statutory rules upon these members to prepare a select list strictly adhering to the criterion which stood prescribed under the rules referred to hereinabove.

In case the select list had been prepared in accordance with law a valuable right stood secured in favour of the selectees to get an appointment on the post in question. In fact, the record indicates that the Collector vide his order dated 22.9.1998 directed for the publication of the revised merit list in the District headquarters in the office of Karyalaya Mukhya Karyapanana Adhikan. Zila Panchayat. Karyalaya Collector, Karyalaya Upsanchalak Shiksha as well as Janpad Panchayat, Kolaras Mukhyalaya.

The record of the proceedings before the Collector giving rise to the preparation of the revised select list dated 22.8.1998 indicates that the concerned Mukhya Karyapalana Adhikaris, Vikas Khand Shiksha Adhikan and the members of the selection Committee as well as the Education Committee were present and it was in their presence that the whole matter had been heard and the earlier select list was examined in order to find out whether it had been prepared adhering to the statutory criterion laid down under the rules. The Collector in his order has indicated that in the presence of the aforesaid persons it was found that the select list required correction as it could not be said to have been prepared showing the respective merits of the candidates as contemplated under the rules having statutory force and the mistakes were glaring and apparent. This decision, however, in our considered opinion, in the peculiar facts and circumstances of the present case ought to have been taken after affording an opportunity to those candidates whose names were sought to be deleted from the select list avoiding violation of the principles of natural justice. The revisory jurisdiction contemplated under the rules did not authorise the Collector or vested him with the jurisdiction to enter into the facts and he could only interfere on the point of law as clearly mandated in Rule 5(1)(b) of the Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995. Before taking the decision on the question of law which was the foundation for revising the select list, the candidates whose names were sought to be deleted from the same ought to have been afforded an opportunity of being heard in order to point out that the merit position as assessed by the Selection Committee did not require any alteration as the criterion and the norms provided had been duly adhered to.

It must not be lost sight of that in all State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of India of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is "fair-play" in action. Rule of law does not completely eliminate the discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

The Apex Court in its decision in the case of Basudeo Tiwary Vs. Sido Kanhu University and Others, , after noticing its earlier decisions in the cases of Delhi

Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, ; Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and S.L. Kapoor Vs. Jagmohan and Others, had indicated that the law is settled that non-arbitrariness is an essential facet of Article 14 of the Constitution of India pervading the entire realm of State action governed by Article 14 of the Constitution of India It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is also a requirement of Article 14 for. natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are components of fair treatment. In order to impose the procedural safeguards, requirements of natural justice has to be read in many situations when the statute is silent on this point It may be implied from the nature of the power particularly when the right of the party is affected adversely.

In its decision in the case of Shrawan Kumar Jha and others Vs. State of Bihar and others, , the Apex Court had held that cancellation of the appointment was liable to be quashed on the ground that the Appellants therein had not been given an opportunity of hearing before cancelling their appointments observing that it was well settled that no order to the detriment of the Appellants could be passed without complying with the rules of natural justice. The order of cancellation of the appointment was set aside on this short ground leaving it open to the competent authority to give an opportunity of hearing to the Appellant therein and thereafter, give a finding as to whether the Appellants were validly appointed.

However, the principles of natural justice, will vary from case to case, from circumstance to circumstance and from situation to situation and they cannot be subjected to straight jacket formula. There is nothing rigid or mechanical about it The principles and procedures are to be applied which in any particular set of circumstances arc right, just and fair.

In the aforesaid view of the matter, the candidates seeking appointment to Shiksha Karmi, Grade-III, whose names had been brought on the select list prepared for appointment in Janpad Panchayat of Kolaras, Badarwas, Narvar and Karera should have been afforded an opportunity of hearing on the limited question of law on the basis whereof the Collector, the revising authority had decided taking sua motu action to cancel the select list resulting in the removal of the names of such candidates therefrom.

This Court in its decision in the case of Ramkaran Singh Tomar v. Janpad Panchayat, Porsa and Ors. M.C.C. No. 72/99 decided on 4.5.1999 rendered by a Division Bench had indicated that the second proviso of Rule 5 of the Rules of 1995 referred to hereinabove contemplated that no revision was to be entertained in case the remedy of appeal was available which had not been exhausted. The legislative intent it was pointed out behind the aforesaid proviso appeared to be that an applicant could not by-pass the statutory remedy of

appeal provided under the Rules and without availing the remedy of appeal, the applicant could not approach the revising authority

There may, however, be a situation where a person may be aggrieved by an order or the revising authority may itself come to the conclusion invoking its revisory jurisdiction that an order is vitiated on account of any illegality or impropriety and in that situation if such an order is not appealable, the question of by-passing any remedy of appeal cannot arise. Appeal is a creature of statute. The Rules contemplate providing the remedy of appeal only against the orders passed by the Gram Panchayat, Janpad Panchayat and Zila Panchayat. The order passed by any other authority excepting Sub-Divisional Officer, Collector, Commissioner or Director of Panchayat passed in exercise of original jurisdiction has not been made appealable. But the State Govt., Commissioner. Director of Panchayats and the Collector have been vested with the revisory jurisdiction to examine at any time the legality or propriety of any order passed by or regularity of the proceedings of the subordinate authority after calling for and examining the record of any case pending before or disposed of by such authority and pass appropriate orders after affording an opportunity of hearing to the party likely to be affected This revisory jurisdiction, however, cannot be exercised in respect of an order against which the aggrieved party has been provided a statutory remedy of appeal Any appellate or revisory order is "however" subject to the controlling jurisdiction of the authority next above as indicated in Section 94 of the M.P. Panchayat Raj Adhiniyam, 1993.

In the aforesaid connection, it may be noticed that Section 94 of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 to which a reference has already been made hereinabove, clearly stipulates that in all matters connected with the Act or the rules made thereunder all officers empowered to act by or under the said Act shall be subject to the same control by the same authority under whose administrative control they normally perform the functions of their office. The provisions contained in Rule 5 of the Rules of 1995 have to be read along with the provision contained in Section 94 of the aforesaid Act

It may further be noticed that the jurisdiction conferred on the authorities u/s 94 of the aforesaid Act of 1993 is not greater or larger in its extent than the revisory jurisdiction envisaged under Rule 5 of the Rules of 1995 The controlling jurisdiction envisaged u/s 94 of the Act of 1993 is akin to the jurisdiction relating to the superintendence enabling the controlling authority to interfere if it finds any jurisdictional error going to the root of the matter or detects any fatal procedural irregularity vitiating the entire proceedings or any violation of any statutory provision resulting in manifestly erroneous conclusions.

The power envisaged under Article 226 of the Constitution of India is discretionary. It has to be exercised only in furtherance of interests of justice and not merely on the making out of a legal point and there are many ways of affording appropriate relief and redressing a wrong. Further, as pointed out by the Apex Court in its decision in the case of M.C. Mehta Vs. Union of India (UOI)

and Others, , it is not always necessary for the Court to strike down an order merely because the order has been passed against the Petitioner in breach of natural justice. If on the undisputed and admitted factual position only one conclusion is possible and permissible the Court need not issue a writ merely because there is violation of principles of natural justice This position in law stands amply established by now

Taking into consideration the facts and circumstances of the present case, we are of the considered opinion that it will not be appropriate to remit this matter back to the Collector who has already expressed his opinion on the vital aspects involved in this case and the interest of justice would be met if the Petitioners are provided an opportunity to represent their case before the controlling authority envisaged u/s 94 of the Act of 1993 which also stands vested with the superintending jurisdiction akin to the jurisdiction with which a revising authority stands vested under Rule 5 of the Rules of 1995.

We are "however" further of the view that a breach of procedure whether called a failure of natural justice or an essential administrative fault cannot come to the rescue of an alleged aggrieved person unless behind it there is something of substance which has been lost by the failure as the Court does not act invasion.

The Collector. Respondent No. 2, as well as Janpad Panchayat concerned, shall, therefore, send the entire record pertaining to Shiksha Karmis. Grade-III in question relating to the impugned select lists of Janpad Panchayat. Kolaras, Badarwas. Narvar and Karem of district Shivpuri to the Commissioner of the Division concerned who shall take the appropriate decision in the matter acting within the limits of jurisdiction as contemplated u/s 94 of the M.P. Panchayats Raj Adhiniyam, 1993 read with Rule 5 of the M.P. Panchayats (Appeal and Revision) Rules, 1995 in the light of the observations made hereinabove in accordance with law providing an opportunity of hearing to the affected candidates unless on the admitted, unrebutted and irrecutable factual position established on record only one irresistible unescapable conclusion is permissible justifying the omission of the name of such candidate from the earlier select list obviating the observance of the principles of natural justice requiring the affording of opportunity of hearing to such a candidate which will be a futile exercise and reasons are recorded for adopting such a course of action.

The Commissioner shall pass the final orders within a period not later than two months from the date of production of a certified copy of this order before him.

In the meanwhile, during this interregnum, the interim order dated 11.9.1998 passed in the connected writ petition No. 1477/98 (Man Singh and Ors. v. State of M.P. and Ors.) shall continue to remain operative and the status-quo as on today shall not be disturbed.

This writ petition shall stand disposed of in terms of the directions indicated hereinabove.

There shall "however" be no order as to costs.