

(1979) 10 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 121 of 1979

Dr. K.M. Sharma and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 25-10-1979

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (1980) JLJ 232

Hon'ble Judges : G.P. Singh, C.J;B.C. Verma, J

Bench : Division Bench

Advocate : R.D. Jain with Y.K. Munshi, for the Appellant; S.L. Saxena, Govt. Advocate for Respondent No. 1 and Gulab Gupta for Respondents Nos. 6 to 9, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Verma, J.—This order shall also govern the disposal of Miscellaneous Petition No. 887 of 1978 (M. P. Shaskiya Mahavidyalaya Shikshak Sangh and others v. State of M. P. and others).

2. By these petitions, the petitioners challenge the vires of Schedule III-A inserted by an amendment to M. P. Educational Service (Collegiate Branch) Recruitment Rules, 1967, mainly on the ground that it violates Article 14 of the Constitution of India inasmuch as it leads to discriminate the teaching staff on the Collegiate branch in Government service from those who are absorbed in Government service as a consequence of the taking-over of the Colleges maintained either by the private bodies or by non-government institutions.

3. The petitioners, in both the petitions, belong to that class of Government teachers who were initially recruited in the Collegiate branch of the State service. In the State of Madhya Pradesh, the Colleges are run by the State as also by private bodies. The State as a measure of policy decided to take-over Colleges run by private or local bodies for better management of those institutions. This

process of taking-over, necessarily, involved absorption of teachers employed in those Colleges in Government service. In exercise of the powers under Article 309 of the Constitution of India, Rules known as the M. P. Educational Service Recruitment Rules, 1967, were framed regulating the recruitment to the M. P. Educational Service (Collegiate Branch). Sub-rule (4) of Rule 13 of the said Rules, as it stood prior to its amendment by Notification No. F-16-2-76-2-XXV dated Bhopal, 30th June, 1976 and which relates to the absorption of the lecturers in private colleges taken-over by the Government, was as follows:

4. Lecturers of private colleges, if appointed temporary consequent on taking over of private Colleges by Government, shall not be continued and shall be liable for removal without notice, if they are not selected by the Commission in the general selection. They shall have to appear before Public Service Commission at the earliest time possible.

Rule 7 of these Rules provides that the recruitment to the service shall be either by direct recruitment by selection or by promotion of members of the M. P. Educational Collegiate Service from lower posts to the higher posts in the cadre or by transfer of persons who hold in a substantive capacity such posts in such service as may be specified in this behalf. Schedule III of these Rules prescribes the qualifications of candidates to be directly recruited, while Schedule IV prescribes qualifications for appointment by promotion. It will be seen from Rules 9, 11 and the Schedules III and IV that while the lecturers and Professors could be appointed by direct recruitment, the posts of Assistant Professors could be filled in only by promoting persons holding the posts of lecturers in the manner provided therefor. It appears that the Government felt that sub-rule (4) of Rule 13 of these Rules was not sufficient to cover cases of all the teaching staff employed in the private Colleges to be taken-over. The Government, therefore, thought fit to delete that sub-rule and by an amendment, vide Notification No. F-6-2-74-E-5-XX, dated Bhopal, 14th July, 1976, substituted in its place sub-rule (4), which reads as under:

(4) Teaching staff of the non-government colleges taken over by the Government shall be absorbed in the manner specified in Schedule III-A.

This amendment inserting Schedule III-A makes drastic changes in the matter of absorption and assignment of seniority to the teaching staff of the taken-over colleges. That Schedule provides for an appointment of a Screening Committee comprising of Chairman of the Public Service Commission or any member nominated by the Chairman, Education Secretary, Director of Collegiate Education and two Principals of Government Post-Graduate Colleges of whom one should be of a science subject. The Screening Committee is required to consider the case of staff in Colleges for absorption in Government service. The Schedule further provides criteria for such absorption under the Government service. Clauses 4 and 5 of the amended Schedule III-A around which centres the attack of the petitioners, are reproduced below:

4. Considerations for absorption in equivalent posts.--(1) Except in cases of absorption to posts of lecturers, no person shall be absorbed to a post in Government service which carries a higher pay scale than the pay scale of the post on which he was working prior to the take over of the College by Government.

(2) A person who has been rejected by the Madhya Pradesh Public Service Commission for appointment to a post higher than that of Lecturer will not be absorbed on the post higher than the post for which he was rejected.

(3) For being absorbed as Principal of a Degree College, a person working as Principal of a College taken-over by Government shall, in addition to the other conditions prescribed under this Schedule have a minimum of 14 years teaching experience out of which. 3 years teaching experience shall pertain to teaching of post-graduate classes and two years teaching experience as a Professor. For absorption to the post of Principal, Post-Graduate College, a further experience of two years of working as a Principal of a Degree College shall be necessary.

5. Issue of absorption orders. The Screening Committee, after taking into consideration the relevant provisions of this schedule shall make suitable recommendations to Government. After the recommendations of the Committee are approved by Government, the matter shall be referred to the Public Service Commission for concurrence. Absorption orders will be issued by Government after the concurrence of the Commission.

4. The Government took-over certain private Colleges. The Lecturers, Assistant Professors and Professors working in those Colleges have been absorbed in Government service, from the date of the taking-over of those Colleges. During this process of absorption, in some cases the existing staff in Government service has become junior to the staff absorbed in Government service from the private Colleges. In certain cases, those who were earlier rejected by the Public Service Commission, have now become senior to those who were selected by the Public Service Commission and appointed in Government service.

5. The petitioners' grievance is that they were all in Government service in the Collegiate branch and had chances of promotions. But as a result of process of absorption and assignment of seniority from the date of absorption to the teachers of the private Colleges so absorbed, their chances of promotions have been marred. They say that while the teachers of the taken-over Colleges were being absorbed on higher posts, they should have been permitted to compete with them for selection/appointment to those higher posts of Assistant Professors and Professors. The complaint is that in not doing so they have been deprived of the equal opportunity in the matter of their appointment and have been discriminated from those who have come in the Government service from the private Colleges as a result of absorption. This contention cannot be accepted. Teachers already in the Government service and those sought to be absorbed do not belong to the same category. Those who are required to be absorbed in the

Government service and consequentially have to be assigned a suitable post either in the cadre of lecturer, Assistant Professor, Professor or the Principal, form a class by themselves. It cannot, therefore, be said that while assigning place to them in the Government service in different cadres the petitioners or those already in the Government service have been discriminated. Reliance placed by the learned counsel on a decision in *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, is misconceived. This decision could have applied in case the persons drawn from a particular source, namely those coming from the taken-over Colleges in the present case were to be discriminated among themselves in the matter of their absorption and appointment in the Government service. It is true, as pointed out by the learned counsel for the petitioners, that there may be cases when a teacher drawn in the Government service from the taken-over Colleges was rejected for appointment to the post of a Lecturer or a Professor by the Public Service Commission while the one in Government service was selected, yet as a result of absorption in accordance with the Rules as amended by Schedule III-A, he may now become senior to the one then selected by the Public Service Commission. In our opinion, such a result will not invalidate the Rules. Such results in the matter of absorption are inevitable. All the same, the amended Schedule III-A provides due safeguards before the teacher from the taken-over Colleges is absorbed on an equivalent post. As provided in the Schedule as amended, all the cases of teachers from taken-over Colleges have to be screened by a Screening Committee comprising of the Chairman of the Public Service Commission or his nominee as one of its members. After taking into considerations the relevant provisions of the Schedule, the Screening Committee is required to make a suitable recommendation to the Government. On approval by the Government, the recommendation of the Screening Committee is required to be referred to the Public Service Commission for concurrence. It is only after this concurrence is received that the absorption orders are issued. It will thus be seen that the impugned amendment provides proper checks before a teacher from the taken-over Colleges is absorbed in the Government service. We are, therefore, of the opinion that challenge to the Rules on the ground of discrimination cannot be accepted.

6. It was then submitted that clause 4(2) of the amended Schedule III-A is bad and is liable to be struck down as it permits a preferential treatment to lecturer. Suggestion is that the lecturers if rejected by the Public Service Commission can be selected to the post higher than that of the lecturer but those rejected for appointment to the higher posts cannot be absorbed to the post higher than those for which they were rejected. The contention cannot be given effect to. Clause 4 of the amended Schedule III-A prescribes qualifications for absorption in equivalent posts. According to clause 3, a person shall not be absorbed to a post if he does not fulfil minimum requirement prescribed by Madhya Pradesh Education Service (Collegiate Branch) Recruitment Rules, 1967. The Rule's prescribe academic qualifications as also some experience for appointment to a

particular post. Amendment in Schedule III-A maintains those qualifications for those who are sought to be absorbed. It may be seen that direct appointment in terms of Rules 12 and 16 of the said Rules is only to the post of Lecturer and Professor. Posts of Assistant Professors are to be filled in only by promotion. Before absorption, the cases are to be examined by the Screening Committee practically on the lines as is done under the Rules by the Committee to consider the cases of promotions. A person who has been working in a taken-over College on a post higher than that of a lecturer can be absorbed in the Government service only after the Screening Committee considers his case in accordance with clause 3 of the amended Schedule III-A and recommends his absorption to that post. Thus, even if a person sought to be so absorbed has once been rejected by the Public Service Commission to the post of a Lecturer, can be found fit to work against a higher post by the Screening Committee which has the Chairman of the Public Service Commission or his nominee as one of its members. If, however, a person who was once rejected by the Public Service Commission for appointment to the post of a Professor was working as a Principal at the time when a private College is taken-over and is sought to be absorbed in the Government service, it is quite legitimate not to absorb him to a post higher than that of the Professor. In sub-clause (3) of clause 4 in Schedule III-A a different criteria has been laid down for absorption of a Professor working as Principal of the taken-over College for being absorbed as a Principal of a Degree College. To us there appears to be nothing unreasonable in prescribing these qualifications for absorption, particularly when the cases are to be considered by the Screening Committee as provided in the Schedule. At any rate, if at all, this clause may affect only the persons sought to be absorbed and will not affect those who are already in Government service. For this reason also we are of the opinion that the petitioners are not affected by that sub-clause and cannot be permitted to lay a challenge to it.

7. It was next urged that clause 3 (i) of the amended Schedule III-A is not workable. We do not agree. It was suggested that in terms of Schedule IV, a Lecturer could be promoted to the post of Assistant Professor only if he was selected by the Commission and had three years teaching experience in Degree classes of Government College. It was suggested that a person working as Assistant Professor in a taken-over College and sought to be absorbed as Assistant Professor in Government service will not have the teaching experience in a Government Degree College. When reasonably read in its context, the true requirements prescribed are academic qualifications and experience. According to sub-clause (v) of clause 1 of the amended Schedule III-A "teaching experience" in respect of a staff of the non-Government College means the total teaching experience in the subject in degree or Post-Graduate classes in the institutions recognised by the Central /State Governments but will not include teaching done on honorary or part-time basis. It is this teaching experience which will have to be considered in respect of teachers to be absorbed in the Government service. Again, the function of the Screening Committee is only to

recommend the names of candidates found suitable for absorption. After approval by the Government, the list of such candidates found suitable by the Screening Committee has to be further sent to the Public Service Commission for its concurrence. It is only on such concurrence being obtained, that the absorption is made. For all practical purposes, therefore, these Clauses in Schedule III-A also comply with the requirement of selection as prescribed under the Rules. In our opinion, clause 3(i) of the amended Schedule cannot be said to be unworkable.

8. It was then argued that clause 6 of Schedule III-A, which relates to determination of seniority of persons absorbed in Government service, assigns to them retrospective seniority. This according to the learned counsel for the petitioners, cannot be done and the persons already absorbed in Government service as a result of taking over of the Colleges before the amendment, came into force cannot be assigned seniority retrospectively. This clause 6 of the amended schedule is as follows:

6. Determination of Seniority.--A person absorbed to a particular post shall get his seniority from the date the College was taken over provided that he will be placed below the last existing Government servant promoted or recruited by the Public Service Commission to that post and above the Government servant promoted or appointed after that date.

A College is taken-over by issuance of an order by the Government in that behalf. The process of absorption of the staff of taken-over College starts thereafter. A Screening Committee is to be constituted, the cases are to be placed before it for consideration, the list of selected candidates is forwarded to the Government, and after approval is forwarded to the Public Service Commission for its concurrence. It is only after this that the absorption orders are issued. This process is likely to consume some time. The process of absorption can only be said to be finalised when the Government issues such orders. Till then although a private College is taken over the process of absorption continues. It is, therefore, quite reasonable to say that although the absorption order in individual case is passed subsequently on completion of the process of absorption, the person is in Government service right from the date when the College is taken-over. It is quite just to assign him seniority in Government service from the date of taking over of the College. That clause, however, safeguards the interests of such Government servants who actually held the post in that cadre on the date when the college was taken over. Those who have come in Government service or have been recruited by the Public Service Commission subsequent to the taking over of the College must, therefore, quite justly be placed below those in whose cases, although the absorption orders were passed subsequently but the colleges were taken over earlier. In our opinion, this clause is quite reasonable and no valid challenge can be laid to it even in the matter of its applicability.

9. Thus, in our opinion, no valid challenge can be laid to the various provisions of

the amended Schedule III-A of the Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1967.

10. The petitions are dismissed but without any order as to costs. The security amount shall be refunded to the petitioners.