

(2012) 10 MP CK 0163

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3718 of 2006 (S)

Dr. Omkanta Sharma

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Citation : (2012) 10 MP CK 0163

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : K.B. Chaturvedi, with Mr. G.P. Chaurasiya, for the Appellant; Ajay Singh Rathore, Panel Lawyer for the State and its Authorities and Shri Mahesh Goyal, Advocate for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

Hon. Shri Justice Sujoy Paul

The facts giving arise to this petition are as under:-

1. The petitioner was working as an Assistant Professor (Sanskrit) in Rishishwar Degree College, Phoop, District Bhind. By communication dated 19.05.1995 (Annexure P-2), the Chairman, Governing Body directed the petitioner to take over the charge of Principal of the said College being senior most and most meritorious. After summer vacations, petitioner submitted her joining. However, petitioner was not permitted to sign the attendance register by one Shri S.N. Chaudhary. The petitioner promptly brought this fact to the notice of the Governing Body by communication dated 01.07.1995 (Annexure P-3). By order dated 01.07.1995, the Governing Body, in turn, informed the petitioner that if said Shri Chaudhary is not permitting her to sign on the attendance register, the petitioner should prepare a separate attendance register and sign on it and should get it countersigned by the Chairman. The petitioner, in obedience of the said order prepared a separate register and started signing on it. The copies of the said register is also filed by the petitioner with the writ petition. The

petitioner continued the said practice and signing the attendance register. Petitioner again sought same direction as to whether she should continue with the said practice of signing in a separate register. Petitioner's this representation dated 16.05.1996 (Annexure P-8) was replied by Governing Body on same day Annexure P-9 dated 16.05.1996 permitting her to continue with the aforesaid practice. The authority intimated that the attendance register prepared by her would be countersigned by the Chairman, Governing Body. A surprise check was also conducted on the college and it was found that the petitioner was working on the said date i.e. 14.05.1996 (Annexure P-14). Petitioner has filed timetables of the said college (Annexure P-15) (Page 99) to show that the petitioner was assigned work and she was working with the College. The Governing Body put a note against the remark given by said Shri Chaudhari that the petitioner had actually worked from 01.07.1995 to 30.06.1997, she was given the charge of Principal and she even used the seal of the said post. He certified on 05.09.2002 that the petitioner was working and, therefore, her services be treated as continues with yearly increments.

2. By communication dated 25.08.2000 (Annexure P-21), the Administrator, who was appointed by the State Government in the said College, considered the question of grant of unpaid salary of the petitioner for 54 months. This is clear from the subject to this document Annexure P-21. After considering various aspects, the said Administrator recommended for payment of the salary to the petitioner for 54 months. The Commissioner, Higher Education also wrote a letter Annexure P-22 dated 05.12.2000 to the Principal of Rishishwar College to take action on the recommendation of the Administrator and sent the matter pertaining to payment to the Commissioner. The same direction was repeated on 06.12.2000 (Annexure P-23). The college, in turn, by communication Annexure P-24 dated 08.06.2000 sent the same to the District Education Officer (DEO) for necessary action.

3. The Jiwaji University by communication (Annexure P-28) opined that the petitioner is senior to said Shri Chaudhari. The Commissioner, Higher Education by communication dated 11.06.2003 (Annexure P-31) again informed the Principal of the College that as per the present system of "Zila Sarkar" the salary etc. will be paid by the D.E.O. and accordingly the payment papers of the petitioner be submitted before the said authority. Along with this petition, the petitioner has filed the copies of the attendance register, which contains countersigned signature of President Governing Body certifying that petitioner had actually worked.

4. The Higher Education Department by order dated 28.05.2004 appointed the petitioner as Principal Rishishwar Degree College, as a Drawing and Disbursing Authority. Different authorities conducted survey of the college and opined by issuing certificates Annexure P-36 and P-37 that the petitioner was found in the College and she is imparting education to the pupil. The petitioner has filed certain letterheads of the college like Annexure P-41 to show that she made

correspondence with different authorities in the capacity of Principal. By communication dated 03.04.1997, the Commissioner, Higher Education directed the college on the basis of the enquiry report of the Collector that she be appointed as Incharge Principal being senior to Shri S.N. Chaudhari. The college was directed to provide charge to the petitioner.

5. On the basis of Collector's report, it was further opined that other orders of the Commissioner/University are ignored by the College and, therefore, matter is taken seriously and it is directed that the orders be implemented, failing which the grant-in-aid may be partially or completely stopped. On more than one occasion, it is mentioned in the said order that order is required to be complied with seriously. By Annexure P-47, it is stated that the petitioner's period of absence because of State Level Strike was regularized along with other employees.

6. On the strength of aforesaid facts and documents, it is prayed that unpaid salary for 54 months be paid to the petitioner by the respondents.

7. The State Government by impugned communication Annexure P-1, considered some enquiry report of Regional Additional Director, Gwalior and held that petitioner was absent for 54 months and the said period is treated as unauthorised absence. No payment was to be made to the petitioner as per the said order. The nonpayment of salary despite working and the impugned order is the cause of the grievance for the petitioner.

8. Shri Chaturvedi, learned senior counsel submits that petitioner implemented the orders of the Governing Body and worked for the entire period. There is no justification in not paying the said salary.

9. Per Contra, Shri Rathore, learned Panel Lawyer for the State, supported the impugned order and drew attention of this Court on certain paragraphs of the return. By placing reliance on College Code, it is stated that the President Governing Body had no authority to permit the petitioner to prepare a separate attendance register. Heavy reliance is placed on Annexure R-4 dated 20.10.1997 issued by Sub Divisional Officer (Revenue). The said Officer in said letter addressed to the Collector held that he perused the register prepared by Shri S.N. Chaudhari and it did not contain petitioner's signature and, therefore, it was opined that petitioner was absent. By Annexure R-6, it was held that the period from July, 1995 to June, 1998 is treated as "dies-non". This order is issued by the Administrator. No other fact is relied upon nor any other point is pressed by the parties.

10. Shri Mahesh Goyal, Advocate appearing for respondent No. 4, supported the claim of the petitioner and submits that petitioner is entitled for payment of unpaid salary of 54 months.

11. I have heard the learned counsel for the parties and perused the record.

12. The Government stand is based on two documents:- (i) The College Code (ii)

The opinion of Sub Divisional Officer (SDO) and the Administrator, whereby they opined that the petitioner had not worked for the period in question. A perusal of the SDO's Order (Annexure R-4) shows that he visited the College and examined the attendance register prepared by Shri S.N. Chaudhari and found that the petitioner's signature are not there.

13. The facts narrated aforesaid makes it crystal clear that when petitioner joined at the College, the said person was found sitting in the chair of the Principal and he did not permit her to sign the attendance register. Therefore, the petitioner sought direction from the Governing Body and the Chairman repeatedly informed her in writing to prepare a separate attendance register and sign on it. Petitioner having left with no option, followed the said order and prepared a register and signed on it. The Chairman, Governing Body certified her attendance by countersigned on it. The SDO did not apply his mind on this aspect nor perused the said register in which petitioner put her signature. Thus, the said report is of no avail to the respondents. Even otherwise, the SDO (Revenue) has no role to play in an educational institution for the purpose of determining the attendance etc. This is unfortunate that after having written a letter dated 03.04.1997 (Annexure P-42), a U-turn was taken by the respondents that petitioner has not worked. In Annexure P-42, the Commissioner, Higher Education after considering the enquiry report of the Collector opined that the petitioner has a preferential right to occupy the post of Incharge Principal qua Shri S.N. Chaudhari and directed the College to ensure that the said charge is given to her. In note 3 of letter Annexure P-42, the District Education Officer was directed to recognize the letter written by petitioner in the capacity of Incharge Principal. I have no doubt in my mind that this decision is taken by the Commissioner after perusing the Collector's report, which must be in favour of the petitioner. However, the said report of Collector is not filed in the present petition.

14. The next reliance is made on the Administrator letter Annexure R-6 dated 11.04.2009. The Administrator by communication dated 25.08.2000 (Annexure P-21) opined that petitioner's entire period of unpaid salary of 54 months be regularized and she be given salary for the said purpose. The respondents have relied on an earlier order dated 11.07.2009 (Annexure R-6), whereas the Administrator on 25.08.2000 opined in favour of the petitioner. The enquiry report as mentioned in Annexure P/1 dated 30.12.2004, which is allegedly written by the Regional Additional Director, Gwalior is not filed by the respondents. The aforesaid factual backdrop shows that a sorry state of affair was prevailing. The petitioner was directed by the Governing Body to resume charge in the said College. She carried out the said order but was not permitted to sign by one Shri Chaudhari, who was repeatedly held to be less meritorious and junior to the petitioner. This opinion was given by the University, by the Chairman Governing Body and by the Commissioner, Higher Education. The Commissioner although directed that his order for giving charge to the petitioner be treated seriously otherwise grant-in-aid may be stopped, infact did not ensure

that the order is implemented and becomes a reality. The helplessness of the Governing Body is shameful. They should have ensured that the petitioner is permitted to carry out their own order Annexure P-2 dated 19.05.1995 and further permitted to discharge the duties of Incharge Principal and is permitted to sign on the attendance register. If the Governing Body is so helpless and is not in a position to carry out its own orders, employees are bound to suffer. This shows lack of administrative control and authority on the part of the Governing Body. As per College Code, the Governing Body is required to ensure the proper management of the institution. In the present case it was not management but was "mismanagement" by the Governing Body which has given rise to this avoidable litigation. Governing Body could not "govern" in the matter. Even Principal's action is always subject to the general control of Governing Body, it is clear from Clause 15 (2) of the College Code. In this view of the matter, in the considered opinion of this Court, the situation faced by the petitioner not only shows the amount of pain and suffering on her part, it shows total inaction in reality by the Governing Body and by the State authorities. Except shooting paper horse from one office to another office and from one authority to another, neither the Commissioner nor the Administrator had actually ensured the implementation of their recommendations and orders. The Governing Body showed same lack of interest and action which could have been translated into reality. The result was obvious, a lady Incharge Principal despite orders in her favour was kept at bay. This is an arbitrary, unreasonable, unjustified inaction on the part of the authorities. I am not impressed with the argument of learned Panel Lawyer that the College Code does not provide preparation of any separate attendance register. In the peculiar facts and circumstances of this case, the petitioner had to prepare attendance register and sign on it. It was countersigned by the Chairman Governing Body certifying her attendance. The register was directed to be prepared by the Governing Body. Thus, no fault can be found in the action of petitioner. The respondents including Governing Body and the State authorities are jointly and severally responsible for nonpayment of the salary. The amount of inconvenience hardship and deprivation for nonpayment of salary for 54 months is difficult to quantify. Thus, I note with pains that this kind of inaction is totally unknown to a society which is governed by rule of law. Thus, completely disapproving the action of the respondents, this Court deems it proper to allow this petition by commanding the respondents to pay unpaid salary of 54 months to the petitioner positively within two months. The impugned order Annexure P-1 being arbitrary, unreasonable and unjustified, is set aside. The petitioner is also entitled to get the costs. The respondents No. 1 to 3 shall pay Rs. 15,000/- as costs to the petitioner within the same time. The respondent No. 4 shall pay same amount of costs to the petitioner separately within same time. If the aforesaid amount is not paid within three months from the date production of this order, it will carry 6% interest till the date of realization. Petition is allowed.