

(2020) 06 MP CK 0192
In the Madhya Pradesh High Court
Case No : Writ Appeal No. No.557 Of 2020

Dr. Rajendra Singh

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 11-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2020) 06 MP CK 0192

Hon'ble Judges : Sheel Nagu, J; Anand Pathak, J

Bench : Division Bench

Advocate : Prashant Sharma, M.P.S. Raghuvanshi

Judgement

1. The instant intra-court appeal preferred u/S.2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005

questions the legality and validity of the interlocutory order dated 30.01.2020 by which learned Single Judge while taking cognizance of W.P.

No.1944/2020 declined grant of interim relief sought by the petitioner "which was to continue him in service beyond the age of 62 years on the

ground that petitioner being Director of Physical Education in the respondent/ University falls within the category of Teacher as defined in M.P.

Vishwavidyalaya Adhiniyam, 1973 (for brevity "1973 Adhiniyam") and therefore, is entitled to continue in service till the age of 65 years.

2. Learned counsel for the rival parties are heard at length on the question of admission and as well as final disposal.

3. Learned counsel for petitioner/appellant by relying upon the decision of Apex Court in P .S. Ramamohana Rao vs A.P.Agricultural

University and another, reported in AIR 1997 SC 3433 submits that the said decision and the material available on record are evidence of

unimpeachable character requiring no adjudication to establish that the petitioner in his capacity as Director of Physical Education discharges duties

and functions similar to that of a Teacher. Learned counsel for the petitioner has taken us to the definition of expression "Teacher" found in Sec.4

(XX) of 1973 Adhiniyam. In this background it is submitted by learned counsel for the appellant/petitioner that rejection of interim relief by the learned

Single Judge by impugned order adversely affects the vested right of petitioner to continue in service till the age of 65 years and thus, it seriously

prejudices the petitioner thereby rendering the impugned order akin to a final order thus making it immune of the statutory bar contained u/S.2(1) of

Adhiniyam, 2005.

4. Per contra, learned senior counsel raises preliminary objection of this WA being not maintainable for having been filed against interlocutory order.

4.1 Taking up the issue of this WA being not maintainable, this Court straightaway relies upon the larger Bench decision in case of Arvind Kumar Jain

and Ors. Vs. State of M.P. and Ors., (2007) 3 MPHT 376 where the larger Bench was called upon to decide controversy created by cleavage of

opinion between the two Division Benches as regards the true interpretation of the bar contained u/S.2(1) of Adhiniyam, 2005. The larger Bench after

adjudication concluded thus:-

"31. In view of the aforesaid premised reasons we proceed to record our conclusions in seriatim:

(a) The decision rendered in the case of Arvind Kumar Jain (supra), does not lay down the law correctly and is hereby overruled.

(b) Any decision treading on the same path has to be deemed to have been overruled.

(c) The decisions rendered in Nav Nirman (Milan) Deria (supra) and Tejpal Singh (supra), enunciate the law correctly.

(d) The proviso to Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 does not create an absolute bar to prefer an appeal to the Division Bench.

(e) An appeal can be preferred against an order regard being had to the nature, tenor, effect and impact of the order passed by the learned Single Judge.

(f) The guidelines given in the cases of Shah Babulal Khimji (supra), Central Mine Planning and Design Institute Ltd. (supra), Deoraj (supra), Liverpool &

London S.P. & I. Association Ltd. (supra), Subal Paul (supra) and Midnapore Peoples' Cooperative Bank Ltd. (supra) are to be kept in view while deciding the maintainability of an appeal.

(g) It should be borne in mind that instances given in the aforesaid decisions are not exhaustive but illustrative in nature, because various kinds/categories of orders may be passed in exercise of jurisdiction under Article 226 of the Constitution of India.

Â (h) The facts in each case, the nature and the character of the order are to be scrutinised to appreciate the trappings of the same.â??

4.2 Guided by the law laid down by the larger Bench, this Court is of the considered view that aspect of rejection of interim relief in the given facts

and circumstances causes adverse impact to the claim ofÂ petitioner to continue in service till the age of 65 years and thus assumes characteristics

akin to a final order. Thus, the impugned order has the trappings of finality, rendering it immune from being sacrificed at the alter of bar contained

u/S.2(1) of Adhinyam, 2005.

5. Accordingly, preliminary objection of maintainability of this WA stands rejected.

6. This Court now has to deal with the important aspect of justifiability of interim relief to the petitioner.

7. The decision of Apex Court in P.S. Ramamohana Rao (supra) which is heavily relied upon by the petitioner deserves a closer scrutiny, especially

paragraphs 8, 9 and 10 of the said judgment which is reproduced below for ready reference and convenience:-

â??8. From the above Regulation, it is clear that the age of retirement for 'teachers' is 60 years and for other employees it is 58 years while the age of Class IV

employees is 60 years. It is, therefore, clear that if the appellant is a teacher, he will come under subclause (a) of Regulation 33 and is entitled to be continued till

he completes 60 years. If on the other hand he does not come within the definition of teacher. He has to retire at the age of 58 years under clause b (i) of the

above-said Regulation.

9. Neither the Act nor the rules & regulations specify the duties and functions of

a Physical Director. We have, therefore, to go by the material available in the affidavits filed by the parties to decide that question. In the additional affidavit filed on behalf of the University in the High Court, it is stated in paragraph

7 as follows :

I further submit that the duties of the Physical Directors in this University, in brief, are as follows:

- a) to arrange Games and Sports daily in the evenings for the students.
- b) to look after the procurement of sports material and the maintenance of the sports grounds.
- c) to arrange Inter-class and Inter-Collegiate tournaments.
- d) to accompany the student Teams for the Inter-University tournaments.
- e) to guide the students about the rules of the various games and sports.

10. From the aforesaid affidavit, it is clear that a Physical Director has multifarious duties. He not only arranges game and sports for the students every evening

and looks after the procurement of sports material and the maintenance of the grounds out also arranges inter-class and inter-college tournaments and

accompany the students team when they go for the inter-University tournaments. For that purpose it is one of his important duties to guide them about the rules of

the various games and sports. It is well known that different games and sports have different rules and practices and unless the students are guided about the said

rules and practices they will not be able to play the games and participate in the sports in a proper manner, further, in our view, it is inherent in the duties of a

Physical Director that he imparts games and sports. There are large number of indoor and outdoor games in which the students have to be trained. Therefore, he has to teach them several skills and the techniques of these games apart from the rules applicable to these games.â??

7.1 A bare perusal of the extracted verdict and also the remaining judgment, it is evident as daylight that the Apex Court before holding the post of

Director of Physical Education to be akin to that of a Teacher took note of the pleadings of rival parties which were already on record. Thus, it is

clear that unless and until the parties to the dispute preset their respective pleadings by way of affidavit, it would not be safe to jump to the conclusion

that post of Director of Physical Education can be categorized as a teaching post.

8. In the instant case, the writ petition is at preliminary stage where only notices have been issued but the parties are yet to file their rival pleadings on

record. The writ Court at the time of passing of impugned order was in the knowledge of only one side of the story (petitioner's case). The return of

the employer are yet to be brought on record.

9. Learned counsel for the employer has raised number of contentions on merit which this court would not like to deal with, lest it may adversely

affect the cause of petitioner before the learned Single Judge.

10. Consequently, this Court has no hesitation to hold that the facts available with the learned Single Judge at the time of passing of impugned order

were insufficient to conclusively hold that petitioner discharged functions of teacher. As such grant of interim relief as sought by petitioner would have

amounted to grant of final relief (Please see: Shivnarayan Bhargav Vs. State of M.P. passed in W.A. No.2056/2019 on 07.01.2020). Therefore,

writ Court was well within its jurisdictional purview in denying prayer for interim relief.

11. Before parting it would be appropriate to direct the employer and all other respondents to file their return to the petition within four weeks with

request to the learned Single Judge to decide the matter as expeditiously as possible.

12. Petitioner/appellant herein is at liberty that in case delay takes place in final decision of the matter, the petitioner can renew his prayer for interim

relief which this Court has no manner of doubt shall be considered by the learned Single Judge without being prejudiced by the impugned order.