
(2020) 05 MP CK 0067

In the Madhya Pradesh High Court

Case No : Writ Petition No. 19750, 22816 Of 2019

Dr. Rukmini Raman Shukla And Another

APPELLANT

Vs

State Of M.P. And Others

RESPONDENT

Date of Decision : 13-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 05 MP CK 0067

Hon'ble Judges : Nandita Dubey, J

Bench : Single Bench

Advocate : Swapnil Ganguly, Manish Verma, V.S. Mishra

Final Decision : Dismissed

Judgement

1. Regard being had to the similitude of the question involved, on the joint request of the parties, the matters are analogously heard and decided by this

common order. W.P. No. 19750/2019 is filed by Rukmini Raman Shukla, Incharge Principal and Sudarshan Das Gupta, Chairman of the Managing

Committee, whereas W.P. No. 22816/2019 is filed by Seth Raghunath Prasad Mahavidyalaya, Hanumana, through Chairman of the Managing

Committee. The facts are taken from W.P. No.19750/2019.

2. This petition under Article 226 of the Constitution of India is directed against the order dated 04.09.2019 (Annexure P-5) and 12.09.2019 (Annexure

P-9), whereby the Additional Director, Higher Education, Rewa Division, Rewa has directed reinstatement of respondent No.4 as Incharge Principal

of Seth Raghunath Prasad Mahavidyalaya, Hanumana.

3. Seth Raghunath Prasad Mahavidyalaya, Hanumana is a private aided educational institution, receiving 100% grant in aid from the State

Government. As respondent No.4, earlier working as Incharge Principal of the said College retired at the age of 62 years with effect from 30.11.2016,

the petitioner was appointed as Incharge Principal of the aforesaid College on 30.11.2016 by petitioner No.2, Chairman of the Managing Committee of

the said college.

4. Respondent No.4 had challenged his order of retirement by way of W.P. No.19264/2016. The said writ petition was dismissed vide order dated

19.07.2018. It is stated that the aforesaid order was not challenged any further, hence attained finality. However, in the meantime, the age of

superannuation of Teachers of the Private Educational Institutions was enhanced from 62 years to 65 years. Pursuant to which, on a representation by

respondent No.4, the Commissioner, Higher Education appointed him as Incharge Principal of the aforesaid college vide order dated 04.09.2019. The

Managing Committee of the College, on the other hand, in a meeting held on 05.09.2019 took a decision to appoint petitioner No.1, as Incharge

Principal. The petitioner No.2, thereafter informed the Additional Director, Higher Education on 06.09.2019 that respondent No.4 cannot be handed

over the charge on account of financial irregularities committed by him. However, vide letter dated 12.09.2019, Additional Director, Higher Education

confirmed the appointment of respondent No.4.

5. The arguments raised by the petitioner are three fold; (i) appointment of respondent No.4 as Incharge Principal is without authority and jurisdiction

and against the college code statute 28 (Annexure P-10) that governs the service conditions of the teaching staff; (ii) respondent No.4, though junior to

the petitioner has been given the charge of Incharge Principal, ignoring the seniority of petitioner, (iii) respondent No.4 has earlier challenged his

retirement order by way of W.P. No.19264/2016, which was dismissed on 19.07.2018. This order has attained finality, as the respondent No.4 has not

challenged it any further. Hence, he is not entitled to be reinstated in service pursuant to the decision of the Supreme Court in SLP (Civil)

No.18214/2018.

6. Shri Manish Verma, learned Govt. Advocate appearing for respondents No.1 to 3, on the other hand, has raised objection about the genuinity of the

documents filed by the petitioner regarding the financial irregularities committed by respondent No.4. It is stated that the same has been created to

overcome the decision given by the Supreme Court, as prior to filing of the petition, answering respondent/State was never informed regarding any enquiry or decision taken against respondent No.4. It is further stated that respondent No.4 is the senior most Assistant Professor on the role of the College, however, he has not been permitted to join, incomplete disregard of the Supreme Court order, wherein it has been directed to reinstate the Teachers who had not yet completed 65 years of age. It is further pointed out that the petitioner has not come with clean hands and has filed the unamended and incomplete statute 28 to mislead the Court.

7. Shri V.S. Mishra, learned counsel appearing for respondent No.4 has supported the impugned order. It is stated that the order is passed in compliance of the direction of the Supreme Court dated 01.11.2018, passed in SLP (Civil) No.18214/2018, wherein it was directed that the Teachers, who had not completed 65 years of age, as an interim measure, shall be entitled to rejoin their duties, till the completion of the said date of superannuation. It is further contended that the provisions of statute 28 only give powers to the management to administer the aided institution and does not authorize the governing body to appoint Principal.

8. No other point has been raised by the parties.

9. As regards the contention of Shri Swapnil Ganguly that the statute 28 empowers the governing body to appoint Principal and teaching staff, it is observed that the petitioner has relied on the unamended provisions of the statute. The statute No.28 was amended as per the decision of the coordination Committee in its meeting dated 24.07.2004. Relevant part of the amended statute 28 is extracted herein below :-

â??8.(1) The Governing Body shall be responsible for the general administration of the college including :-

(a) Management and regulations of the finances, accounts, investments, property and other assets of the college.

Provided that no property of the college shall be disposed of without the approval of the Foundation Society and the Foundation Society on its part shall not withdraw or dispose of any property or asset used by the college or managed by the Governing Body without the consent of the Government Body.

Â (b) Absorption with or without modification of the budget submitted by the Principal of the college after considering the observations, if any, of the

Foundation

Society.

(c) The institution and obligation of new department of Studies or new teaching and non-teaching posts in the college.

Provided that if the institution of a new department or a new teaching post involves additional financial obligation on the Foundation Society, exercise of this power shall be subject to the provisions of paragraph 4 of the code.

Provided also that no Teaching Department or teaching post shall be abolished without the prior approval of the Executive Council.

(d) appointment, promotion, suspension and punishment of the teachers of the College and any other action affecting their services.

Provided that the Governing Body of 'Grantee College' shall take these actions in accordance with the provisions of the M.P. Ashasakiya Shikshan Sanstha

(Adhyapakon tatha Anya Karmachriyon ke Vetan ka Sandaya) Adhiniyam, 1978 and the rules framed thereunder.

Provided also that the services of a teacher of non-grantee college other than the one appointed in a leave vacancy, temporarily for a specified period shall not be terminated for any reason whatsoever without the prior approval of the Executive Council.

Provided further that the power of appointment shall be subject to the provisions of Section 4(1)(a) of this statute.

Â (e) Maintenance of the College upto the academic standard required by the University and compliance by the college of the M.P. Vishwavidyalay Adhiniyam, Statutes, Ordinances, Regulations and directions issued by the University from time to time.

(2) In the matter of the management of the college, the Governing Body shall be the final authority bound by the Statutes, Ordinances, Regulations and directions of the University and such rules as are framed by the Governing Body and which are not inconsistent with the Adhiniyam, the Statutes, Ordinances and Regulations of the University.Â??

10. A bare perusal of the aforesaid shows that the governing body is responsible for general administration of the college, however, in case of appointment, promotion, suspension and punishment of the Teachers of the College, the decision of the governing body is not independent and is

subjected to and governed by the Adhiniyam 1978 and the Rules and the Regulations framed thereunder.

11. In a bunch of petitions, main being SLP (Civil) No.18214/2018, R.S. Sohane Vs. The State of Madhya Pradesh and others, the Supreme Court

vide interim order dated 01.11.2018 has directed that in case of teachers, who had approached the High Court initially and had obtained interim orders

to continue from the learned Single Judge are not in service as of now and in case they have not attained the age of 65 years, they shall be forthwith

permitted to rejoin duty and continue till they complete 65 years of age, making it subject to the result of the special leave petitions.

12. Pursuant to the aforesaid direction by the Supreme Court, the State Government by order dated 24.11.2018 (Annexure R-2), directed the

Managing Committee (s) of all the Government aided Colleges to reinstate those Teachers/Officers, who have been retired on attaining the age of 62

years and to pay the salary etc. as per the rules by 30.11.2018. The aforesaid bunch of Civil Appeals arising out of said SLPs came to be decided on

07.05.2019. The Supreme Court considered that the Government of Madhya Pradesh has accepted the recommendation contained in the 2008

Scheme for enhancement of age of superannuation for Principals. Teachers, Librarians and Sports Officers serving in Government Colleges and

Universities to 65 years and that the Government of Madhya Pradesh has amended the provisions of Madhya Pradesh Shaskiya Sevak (Adhivarshiki

Ayu) Adhiniyam, 1967 on 02.05.2011, providing the benefit of enhanced age of superannuation to the Teachers working in the Government Colleges

from 62 years to 65 years, has allowed the appeals.

13. It is to be further noted that W.P. No.19264/2016, filed by respondent No.4 was dismissed relying on the judgment rendered by the Full Bench in

W.A. N. 950/2015. The judgment of the Full Bench of the High Court and the consequential judgment of the Division Bench was set aside in the

aforesaid SLP (Civil) No. 18214/2018. The State of Madhya Pradesh was further directed to pay salaries to the Teachers of the aided private

colleges who are working and also those who worked till they attained the age of superannuation of 65 years. The judgment passed by the Supreme

Court is judgment in rem and applicable to all irrespective of the fact that whether the petition before the Supreme Court was filed or not.

14. As regards the contention that respondent No.4, despite being junior has been appointed Incharge Principal ignoring the seniority of the petitioner,

it is settled position of law that no one has an inherent legal or vested right to ask for a particular duty or occupy the post of Incharge Principal and the

State Government is the best Judge to decide the question regarding posting of an officer. However, the impugned order has not caused any financial

loss or prejudice to the petitioner.

15. In the case of State of Haryana Vs. S.M. Sharma and others AIR 1993 SC 2273, the Apex Court has held :-

11. We are constrained to say that the High Court extended its extraordinary jurisdiction under Article 226 of the Constitution to a frivolity. No one has a right

to ask for or stick to a current duty charge. The impugned order did not cause any financial loss or prejudice of any kind to Sharma. He had no cause of action

whatsoever to invoke the writ jurisdiction of the High Court. It was a patent misuse of the process of the Court.

16. In the case of Dr. V.B. Baghel Vs. State of M.P. and others 2016(3) MPLJ 152 and Smt. Usha Awasthi Vs. State of M.P., W.P. No. 1103/2017,

the co-ordinate Benches have declined to interfere in the matter where a junior was given charge on a particular post, ignoring/overlooking the senior.

17. In the case of Dr. V. B. Baghel (supra) the cor-ordinate Bench of this Court has held :-

Â â??9. The question is whether this executive instructions can be enforced in a writ petition. This aspect is no more res-integra. A five judge bench judgment of

Supreme Court in AIR 1965 SC 1196 (State of Assam & Another vs. Ajit Kumar Sarma & Others) held that executive instructions confer no right of any kind and

the same cannot be a reason for the High Court to issue mandamus against the State Government. It is relevant to note here that the petitioner has not alleged

and argued that the impugned order is malicious in nature. The Government is the best judge to decide the question of posting of an officer at a particular place.

Unless such posting runs contrary to any statutory provision or infringes any fundamental or statutory right of an employee, no mandamus can be issued. A

Division Bench of this Court in 2007 (4) MPLJ 548 (Bhartiya Kishan Sangh District Bhind vs. Union of India & Others) held that existence of legal right and

public duty to be performed by either side coupled with statutory duties are the necessary ingredients for issuance of writ of mandamus or for the purpose of

administrative functions. In AIR 1975 SC 2135 (Isha Beevi & Others vs. Tax Recovery Officer & Others), the Apex Court held that 'No occasion for the issue of writ

of mandamus can arise unless the applicants show non-compliance with some mandatory provision and seek to get that provision enforced because some

obligations towards them is not carried out by the authority alleged to be flouting the law. In AIR 1993 SC 2273 (State of Haryana vs. S.M. Sharma & Others), the

Apex Court held that the High Court extended its extraordinary jurisdiction under Article 226 of the Constitution to a frivolity. It was held that no one has a right

to ask for or stick to a current duty charge. The impugned order did not cause any financial loss or prejudice of any kind to the employee. He had no cause of

action whatsoever to invoke the writ of jurisdiction of the High Court. The Apex Court observed that it was a patent misuse of process of the Court by the High

Court.

10. In the said case also, the petitioner was claiming the charge on officiating/current charge basis. In view of aforesaid, in my view, no legal vested, statutory or

constitutional right of the petitioner is infringed by the respondents. The respondents cannot be compelled to implement the circular (Annexure P/3) by issuing a

writ of mandamus. The decision taken by the government is in public interest and for public good need not be interfered in discretionary jurisdiction of this Court

under Article 226 of the Constitution unless it is proved that the said order is malicious in nature or infringes any fundamental/statutory or vested right of the

employee. For these reasons, no interference can be made in this petition.â??

18. In view of the aforesaid, respondent No.4 is entitled to continue upto the age of 65 years. Resultantly, the writ petitions being devoid of merit

are hereby dismissed.