
(1984) 10 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.P. No. 124 of 1984

Gayatri Radhesham Pancholi

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 17-10-1984

Acts Referred:

Constitution of India, 1950 — Article 16(2), 16(3), 226

Citation : (1985) JLJ 18 : (1985) MPLJ 220

Hon'ble Judges : R.K. Varma, J

Bench : Single Bench

Advocate : S.N. Saxena, for the Appellant; Surjeet Singh Govt. Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

R.K. Varma, J.

This petition shall also govern the disposal of M.P. No. 139/84 (Ku. Urmila Barode v. The Directorate of Public Instruction and others.)

By this petition under Article 226 of the Constitution of India the petitioner seeks issuance of a writ to quash the order dated 8-2-1984 terminating her services (Annexure "G" to the petition) and a direction to the respondents to reinstate the petitioner in service with retrospective effect.

The petitioner was appointed as sub-teacher (Up-Shikshak) in Primary School, Badoli Hauz in Tahsil Depalpur District Indore by order dated 4-1-1984 of the District Education Officer District Indore { Annexure"B") pursuant to her selection at an interview held at Depalpur by a selection Committee at the Sub-Divisional level comprising of the Sub-Divisional Officer as its Chairman, Local Block Development Officer, Principal, Higher Secondary School, Distt. Organiser, Tribal Welfare as its members and District Education Officer as its Member Secretary. An enclosure stating the conditions of service was also attached to the appointment order (Annexure "B"), Condition (8) thereof required a certificate

from competent authority (Tahsildar) to be submitted by the petitioner certifying that the petitioner was "Mool Niwasi" (original resident) of the subdivision of which she was resident. No definition of "Mool Niwasi" has been shown to me. However, the Government of M.P. appears to have taken a decision prescribing a definition of "Sthaniya Niwasi" (local resident) of M.P. by G.A. D. Memo No. 381 /2417 /one (3) /74 dated 11-6-1975, as amended by G.A. D. Memo No. 501/1386/one (3)/75 dated 25-7-1975. In accordance with the definition so prescribed for a bona fide resident of M.P., the Government of M.P. have prescribed a pro-forma vide G.A. D. Memo No. 489 /2250 /one (3)/77 dated 24-11-1977 for certificate of local residence in M.P. to be issued by a competent authority.

The petitioner submitted a certificate from the competent authority Indore (Annexure "C") on the prescribed pro-forma, certifying that the petitioner was resident of Indore, M.P. The petitioner even at the time of applying for the post initially had submitted such a certificate along with her application as per the requirement notified in the advertisement dated 12-10-1983 inviting applications for the posts of Up-Shikshaks (Annexure "A"). The petitioner joined her duties as Up-Shikshak in the primary School at Badoli Hauz on 14-1-1984 in compliance with the order of appointment aforesaid. The Assistant District Inspector of Schools, however, required the petitioner to submit a certificate from Tahsildar Depalpur instead of the certificate issued by the competent authority Indore which the petitioner had submitted certifying her residence of Indore, Madhya Pradesh and informed the petitioner that on such compliance only her service would be recognized. Then on 4-2-1984 she was asked not to sign the attendance register as per verbal order of the Assistant Inspector of Schools. Finally, by the impugned order (Annexure "G") dated 8-2-1984 the petitioner's services were terminated for not submitting the certificate from Tahsildar, Depalpur about her original residence.

Learned counsel for the petitioner contends that the order terminating the petitioner's services on the ground that she had not submitted the certificate as to her original residence from Tahsildar Depalpur, even though she had submitted a proper certificate of her residence of Indore, Madhya Pradesh from the competent authority Indore, is most arbitrary and unreasonable. He has referred to me the prescribed application form which was published in Hindi in the advertisement dated 12-10-1983 inviting applications for the post of Sub-teachers (Up-Shikshaks) (Annexure "A"). Column 11 of the application form deals with requirement regarding residence of the candidate. Clause (a) of column 11 requires submission of a certificate from the competent authority certifying that the candidate is "Mool Niwasi" (original resident) of Madhya Pradesh. Clause (b) of this column requires entries regarding original residence to be filled in by the candidate in the following order:

(b) place of "Mool Niwas" (Original residence).

(i) Village

(ii) Development Block

(iii) District

x x x x

The petitioner, in her application form which has been annexed to the return of the respondents as Annexure R-I, has filled in the entries as under:--

(b) Place of "Mool Niwas" (Original residence) -Indore.

(i) Village --Depalpur

(ii) Development Block --Depalpur

(iii) District --Indore

x x x x

The petitioner has in column 12 of her application indicated two addresses for the purpose of correspondence viz. c/o J.M. Saraswat, 52, Tilak Marg, Depalpur District Indore as well as 13, Nandlalpura Lane, Indore.

In compliance with column 11 (a) of the application form the petitioner enclosed with her application a certificate from competent authority Indore on a prescribed pro-forma certifying that she was resident of Indore, Madhya Pradesh.

The petitioner explained in the rejoinder submitted by her in reply to the return of the respondents that she had often stayed at Depalpur with her paternal uncle (Phupha) Shri G.M. Saraswat who was posted at Depalpur for the last about 18 years and that is how she filled in the entries of village and development block as Depalpur. All the same she had filled in Indore as the place of her original residence where she resided with her father who is in Government service. She, therefore, submitted the certificate of her residence of Indore, Madhya Pradesh, obtained from the competent authority Indore.

In view of the entries filled in by the petitioner in her application form, it cannot be ruled out that some confusion would arise in determining the place of original residence of the petitioner but that confusion apparently stood resolved by the fact that she had submitted the certificate of competent authority of Indore, certifying that she was resident of Indore, Madhya Pradesh. In case the authorities responsible for entertaining the application and issuing interview calls had any doubt on the question of place of original residence of the petitioner they ought to have obtained clarification from the petitioner but they, however, did not do so. On the contrary the application was entertained and after scrutiny of the application an interview call was issued to the petitioner to appear before the selection committee constituted as mentioned hereinabove. From the documents filed by the respondents alongwith the return, it appears that various tables of abstracts are prepared on the basis of the entries in the application forms of every candidate after due scrutiny by the authorities prior to issuance of interview calls and the same inter alia include a column of "Sthayee

Niwas" (permanent residence) vide forms 2 and 3 as "Parishi-shtha" (appendix) attached to Annexure R-2.

It is, thus, noticed that the eligibility requirement of residence for service is expressed by the term "Mool Niwas" (original residence) in the application form, by the term "Sthayee Niwas" (permanent residence) in the appendix forms 2 and 3 aforesaid which are prepared on the basis of entries of the application form received from the candidate. The prescribed pro-forma approved by the State Government (G.A. D.) for certificate of residence of Madhya Pradesh is, as stated above, based on the definition of "Sthaniya Niwas" (local residence) prescribed by the State Government as aforesaid. No objection has been made to the use of the prescribed pro-forma by the competent authority, Indore for issuing the certificate of residence of Indore, Madhya Pradesh to the petitioner in this case. It, therefore, appears in the above circumstances that the term "Mool Niwas" in Madhya Pradesh used in the application form is intended to convey "Sthaniya Niwas" (local residence) only i.e. local residence in Madhya Pradesh which in popular sense can be termed as "domicile" in the State of Madhya Pradesh. The prescribed pro-forma of certificate of residence (Annexure "C") contemplates that for being local resident of Madhya Pradesh the candidate should be either born in Madhya Pradesh or the candidate or his guardian parents or legal guardians should have continuously lived for 15 years in Madhya Pradesh or any one of his guardians parents should be an employee of the State Government serving or retired or should be an employee of the Central Government serving in Madhya Pradesh or the candidate or his guardian/parents should be possessing immoveable property or carrying on Industry or business for the last five years. In addition, the candidate should have received education from an educational institution located in Madhya Pradesh for at least three years or he should have passed from one of the educational institutions located in Madhya Pradesh at least one of the three examinations viz., Higher Secondary Examination, 8th Class Examination or 4th Class Examination. The requirement of the pro-forma indicates that the resident in order to be bona fide local resident of Madhya Pradesh should have an intention to reside permanently in Madhya Pradesh. From the certificate (Annexure "C") submitted by the petitioner, it appears that she or her guardian has been living in the State of Madhya Pradesh continuously for at least 15 years and that the candidate has passed Higher Secondary Examination from an Educational Institution located in Madhya Pradesh. It is also stated in the petition that petitioner's father is in service of the Madhya Pradesh Government since 1956, being employed in the Education Department of the Government of Madhya Pradesh prior to which he was in the Madhya Bharat Government service from 1954.

The concerned authorities apparently accepted the application form of the petitioner to be in order and issued an interview call to her. It necessarily follows that they had accepted the certificate of residence issued by the competent authority, Indore which the petitioner had enclosed with her application form. Learned counsel for the petitioner, in the circumstances, contends that the

insistence of the authorities requiring the petitioner to obtain a certificate of "Mool Niwasi" (original resident) from Tahsildar Depalpur instead of competent authority Indore after selection and appointment of the petitioner to the post of sub-teacher (Up Shikshaka) is unreasonable and arbitrary and the action terminating the services of the petitioner for non compliance of this unreasonable demand is wholly arbitrary, unfair and invalid.

Learned Government Advocate appearing for the respondents in reply has submitted that the Director of Public Instruction, M.P., Bhopal, issued a circular dated 4-10-1983 (Annexure R-2 to the Return) addressed to all the Divisional Superintendents of Education and all District Education Officers of the State informing inter alia that the vacancies in the posts of sub teachers are mainly available in the schools of rural areas and new posts would be created in the rural areas only and, therefore, it was necessary that efforts be made to make maximum appointments from amongst the local candidates coming from the rural areas. For fulfilment of this object arrangements were made for organising the interview of the candidates for selection at the sub divisional level.

It is, however, also stated in the circular that on the basis of selections made in the sub divisions a consolidated or unified merit list at the District Level be prepared according to the marks obtained by the candidates at the interview. Further at the time of making an appointment it should be borne in mind that a candidate selected in a particular development block should be given appointment in that particular block. If the number of candidates selected in a particular block are less than the number of vacancies available in that block then as far as possible candidates selected from the neighbouring block should be appointed.

Learned Government Advocate further submitted that the petitioner has deliberately given a false information in column No. 11 of her application by showing her residence at village and Tahsil Depalpur and has thereby obtained an advantage in getting appointment in Depalpur Block. It is submitted by the learned counsel for the respondents that the policy contained in the circular (Annexure R-2) was known to the petitioner before the petitioner submitted her application form in response to the advertisement inviting the applications for the post of sub teacher which was published on 12-10-1983.

It is an admitted position that the circular dated 4-10-1983 (Annexure R-2) which appears to have been issued by the Director of Public Instruction of Madhya Pradesh, Bhopal to all the Divisional Superintendents of Education and District Education Officers of Madhya Pradesh, was not published for general information of the candidates applying for the post of sub teachers. The advertisement also did not make any mention about the said policy. Therefore, it is not correct to say that the policy contained in the circular (Annexure R-2) was generally made known to the candidates seeking appointment to the post of sub-teacher.

In the Return of the respondents it has been explained that in view of the reluctance on the part of teachers from the urban areas to join duties in school in the rural areas, the respondents have framed the policy contained in the circular aforesaid (Annexure R-2). Learned counsel for the petitioner submits that the petitioner has shown no reluctance to join duties in rural area and her appointment, therefore, does not frustrate the purpose behind the policy. He further submits that the requirement of residence of rural area is arbitrary and irrational and, therefore, constitutionally invalid. He has cited in support of his submission *Suneel Jatley and Others Vs. State of Haryana and Others*, . In that case reservation of seats for rural candidates for admission to M.B.B S. Course has been held to be arbitrary and irrational and, therefore, constitutionally invalid as the object sought to be achieved namely, that candidates coming from rural areas would after obtaining M.B B.S. degree return to serve in the rural areas, is not likely to be achieved for there is no guarantee that a student coming from rural area after getting qualified as medical doctor would return to rural area for practice or service. It has been held by their Lordships of the Supreme Court that the classification between the candidates coming from common rural school and from the urban school was not founded on intelligible differentia and at any rate it has no rational nexus to the object sought to be achieved.

It is further pointed out by the learned counsel for the petitioner that the policy for selection and appointment at the block level as stated in the circular (Annexure R-2) is the policy made by the Director of Public Instruction and the same does not appear to have been made by the State Government in fulfilment of any directive principle of state Policy. Moreover, the said policy provides for selection on the basis of merit only and directs preparation of a unified merit list for each district. The appointments are required to be made from the merit list of the district even though for the purpose of posting in a particular development block of the district a selected candidate who is resident of that block may be preferred.

Learned counsel for the petitioner has urged that the entitlement of the petitioner for appointment to the post of sub teacher was because of her selection on the basis of merit. The details of entries as filled in by the petitioner in column 11 of her application form (Annexure A) are not relevant to the question of her selection or appointment which is purely on the basis of merit. It cannot be disputed that the entries relating to original residence as filled in by the petitioner in her application form do show that the petitioner belonged to district Indore. The certificate of original residence submitted by the petitioner as issued by the competent authority Indore shows her to be a resident of Indore, Madhya Pradesh. In the circumstances, the inclusion of the petitioner's name in the merit list of Indore District for the purpose of appointment to the post of sub teacher in the district of Indore is proper and justified and the petitioner is entitled to get a posting in any of the development blocks of Indore District.

Learned counsel for the petitioner further laid emphasis on the fact that as

against column 11-B relating to the place of original residence, the petitioner had filled in "Indore". For the entries against the items of village and Development Block which were shown to be Depalpur by the petitioner on account of her understanding that she could legitimately fill in Depalpur also as she had at times lived there with her paternal uncle as aforesaid. Learned counsel has urged that at best it was a superfluity and can be said to be a case of bona fide mistake which cannot and does not affect her selection or appointment. If the entries of column 11 and the certificate of original residence of Indore, as submitted by the petitioner, gave rise to any confusion in the mind of the authorities who entertained the petitioner's application, the same could have been clarified, if the petitioner had been asked about it before her application was accepted and interview call was issued.

In my opinion the petitioner appears to have committed a bona fide error in precisely understanding and in filling the entries in column 11(b) of the application form, but that error is of little significance because the material fact for her selection that she was a bona fide resident of Madhya Pradesh and belonged to Indore District was ascertainable from her application form and the authority obviously acted on the same for determining her eligibility and issued the interview call to her for appearing before the Selection Committee. The selection was to be made on the basis of merit i. e. according to the marks awarded by the Selection Committee. The merit list was to be prepared of the candidates interviewed for the entire District of Indore. The appointments were to be made according to the merit. The petitioner was appointed on the basis of merit. It is not disputed that the petitioner is a resident of Indore District and is a bona fide resident of Indore District and is a bona fide resident of Madhya Pradesh. In the circumstances, the termination of her services for the failure to submit in compliance with a subsequent demand, a certificate of the Tahsildar of Depalpur that she was original resident of Depalpur, cannot be justified.

The learned counsel for the petitioner challenged the constitutional validity of residential requirement, contending that the eligibility for selection and appointment based on local residence, is violative of Article 16(2) of the Constitution. In support of his contention, he has cited Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , wherein the meaning of the word "domicile" has been analysed and it is observed that it would not be right to say that a citizen of India is domiciled in one State or another forming part of the Union of India. The domicile which he has is only one domicile, namely, domicile in the territory of India. It is further observed that it would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases, would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. The learned counsel relying on this authority argues that the requirement of residence of the State for the purpose of employment is by itself violative of Article 16(2) of the

Constitution and further argues that the requirement of residence of a particular District or Block for the purpose of employment is still more discriminatory and violative of Article 16(2) of the Constitution.

Their Lordships of the Supreme Court referring to Article 16(3) of the Constitution in paragraph 5 of the judgment aforesaid, observed that the Parliament alone is given the right to enact an exception to the ban on discrimination based on residence and that too only with respect to positions within the employment of a State Government. But even so, without any parliamentary enactment permitting them to do so, many of the State Governments have been pursuing policies of localism since long and these policies are now quite widespread. Parliament has in fact exercised little control over these policies formulated by the States. Their Lordships further observed in the said paragraph as under:--

It, in the face of the Article 16(2), some of the states are adopting "sons of the soil" policies prescribing reservation or preference based on domicile or residence requirement for employment or appointment to an office under the Government of a State or any local or other authority or public sector corporation or any other corporation which is an instrumentality or agency of the state. Prima facie this would seem to be constitutionally impermissible though we do not wish to express any definite opinion upon it, since it does not directly arise for consideration in these writ petitions and civil appeal.

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In the instant case, however, it is not denied that the petitioner is a resident of Madhya Pradesh being a resident of Indore as per the certificate issued by the competent authority, Indore on a prescribed pro-forma. But the objection is that she is not a local resident of Block Depalpur in which she has been appointed as a sub teacher.

The respondents in paragraph 2 of their additional return have stated that the respondents could fix up reasonable criteria for preference of candidates for selection on the basis of their being acquainted with the local language, customs and traditions etc., which would facilitate understanding and communication between the teacher and the student. No preference on such criteria, however, appears expressed in the policy contained in the circular of the D.P. I. (Annexure R-2). The appendix No. 1 attached to the said circular gives the break up of the maximum hundred marks reserved for interview for guidance of the Selection Committee while awarding marks on various counts for assessing the merit of the candidates. Only five marks out of hundred marks, are allotted on the count of candidate's knowledge about socio-economic conditions of the locality and the development need of that area. Obviously, therefore, the selection was to be made only on the basis of merit and there was no scope for giving any preference on the basis of candidate's residence in the locality. The appointments were to be made according to the unified merit list, prepared at

the District level on the basis of marks obtained in the interview conducted at the Block level by the selection Committee as aforesaid.

The petitioner had fulfilled the eligibility requirement of local residence of Madhya Pradesh as per the certificate issued by the competent authority, Indore which she had enclosed with her application form. Other details of residence of particular village or Block could not affect her eligibility as to residence, since the advertisement (Annexure "A") did not require any certificate as to original residence of any particular village or Block. Even if, it had been required, it would not be relevant, when the advertisement invited the application from candidates all over the State for selection of sub-teacher in the primary and secondary schools of the rural areas of the entire state. Moreover, it appears that the selection for appointment was to be made on the basis of unified merit list at the District level and the petitioner was entitled to be selected for appointment on the basis of such list for Indore District in which she was admittedly a resident. It is not necessary for the purpose of deciding this petition to go into the question whether pursuant to the advertisement (Annexure "A") inviting applications from candidates all over the State, the Districtwise selections and appointments of the candidates belonging to respective Districts is violative of Article 14 or 16(2) of the Constitution, because even on such selections the petitioner undoubtedly has been selected and appointed on the basis of merit list for the District Indore. It is not the case of respondents that the selection for appointment was to be made on the basis of merit list at the Block level only. That could not possibly be the contention also, because a policy of localism to such an extent would logically lead one to think that a candidate once appointed in the Block on the basis of eligibility requirement of original residence of that Block, will be required to serve in that Block only and will not be posted outside the Block. But that is not so. The petitioner's appointment after selection based on merit, cannot be set at naught for her failure to produce a certificate of original residence from the Tahsildar of Sub Division Depalpur in Indore District, in response to the unreasonable demand made by the authorities. No circumstances have been shown to justify any departure from the principle of selection based on merit.

In view of the discussion aforesaid, I am of the opinion that the order terminating the service of the petitioner (Annexure "G") is unreasonable, arbitrary and is violative of Articles 14 and 16(2) of the Constitution of India and as such is invalid. The petition is, therefore, allowed and the order (Annexure "G") is hereby quashed. The respondents are directed to reinstate the petitioner in service with retrospective effect from the date of her termination.

In Misc. Petition No. 139 of 1984 (Ku. Urmila Borade v. The Directorate of Public Instruction and Others) which in facts is similar to the petition above mentioned except that, in that case there is no error whatsoever in the entries filled in by the petitioner in her application relating to residence wherein she has shown herself to be a resident of Indore. Yet the authorities have been insisting that she ought to produce a certificate of original residence of Depalpur Sub Division. The

order (Annexure"C") dated 8-2-1984 requiring the petitioner to submit a certificate of original residence of Depalpur Sub Division and for failure of such submission not to recognise her services as sub teacher, deserves to be quashed being unfair, arbitrary and invalid. The petition is, therefore, allowed and the order (Annexure"C" to that petition) is hereby quashed. The respondents are directed to treat her as continuing in service from the date of her joining the service as sub teacher i. e. 16-1-1984.

Counsel's fee is fixed as Rs. 200 in each of these two petitions.

The outstanding security amount be refunded to the petitioners after verification in each petition.