
(1961) 10 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.P. No. 203 of 1961

Gokal Prasad

APPELLANT

Vs

M.M. Sohni

RESPONDENT

Date of Decision : 06-10-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1961) JLJ 1464

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; V.S. Pandit and H.L. Khaskalam Addl. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.—In this case the petitioners seek a writ of mandamus directing the respondents to admit them in the Basic Training School, Betul.

2. According to the petitioners they had applied for admission to the School for the session commencing on 1st June 1961 and ending on 30th April 1962, that they possessed the requisite qualifications and that the respondent No. 1, the District Inspector of Schools, Betul by his order parsed in May-June 1961 admitted them into the School and thereafter they had actually joined it and attended classes for about a month. They further say that on 1st July 1961 a notice was displayed on the notice-board of the School by the respondent No. 3, the Superintendent of the School, saying that according to the orders of the respondent No. 2, the Divisional Superintendent of Education, Nabada Division, the admission of the petitioners and other sixty four students had been cancelled. The petitioners contend that this cancellation order is wholly illegal and arbitrary, and pray that it be quashed and their admission into the School be restored.

3. In his reply to the petition, the respondent No. 1 has not disputed these facts.

He has stated that on or about 3rd May 1961 he received a memorandum from the office of the Director of Public Instruction asking him to make the admissions to the Normal School according to two office memoranda issued in 1959 and 1960 that again on 26th May 1961 he was asked to take immediate section in the matter of admissions to the School, that accordingly on the principles laid down in the memorandum regulating the admission of students into the School, the petitioners and other candidates were selected for admission into the Basic Training School, Betul, and the Superintendent of the School was informed accordingly, and that on or about 19th June 1961 he received an intimation from the respondent No. 2 asking him to cancel the selection of the candidates made by him. The answer of the respondents Nos. 2 and 3 is that the selection of candidates made by the respondent No. 1 was invalid as under the relevant memorandum issued regulating the admissions he was not the competent authority for making admissions, that the prescribed authority" for admission was the Superintendent of the School and the first respondent was only required to prepare a seniority list of untrained teachers of schools in the district attached to the Training School and of the candidates applying for admission and to transmit it to the Superintendent of the School; and that consequently the admissions of the petitioners and other candidates were cancelled. The return of the respondents Nos. 2 and 3 also contain the statement-

The very fact that these candidates offered hush money which they themselves accept for getting themselves admitted in Normal School is deplorable and their continuance would have established a precedence for others to follow. As a matter of fact, these petitioners deserve punishment for giving bribes to gain their ends.

4. Having heard learned counsel appearing for the parties, we are constrained to reach the conclusion of rejecting this petition. The reason is that though the cancellation of the admission of the petitioners and other candidates into the School was wholly unjustified on the ground that the respondent No. 1 had no authority to admit them, yet we cannot anything in the matter as the principles laid down for regulating the admissions into the School are merely executive instructions. It is not disputed that they are so. The instruction are contained in Rule 1 to the return of the respondents Nos. 2 and 3. The respondent No. 1 was asked by the Office of the Director of Public Instruction to make admissions according to these instructions. In regard to the admissions to the Basic Training School, Betul, the following principles were laid down:-

There shall be no elimination test. Districts are attached to each Normal School as in the Appendix 60% seats in each of these Normal Schools should be filled by untrained teachers of each district attached to the school, strictly on the basis of seniority. The District Inspectors of Schools concerned will send the list of the senior most untrained teachers to the Superintendent of the School. If two districts are attached to a school the seats will be divided equally between the two districts. In drawing up the seniority list, the District Inspector of Schools,

shall take into account teaches of non-Government Primary Schools Middle Schools also. The remaining 40% seats are distributed in each school as follows:-

The recruitment to these 40% seats should be made from direct candidates. If the required number of direct candidates of a particular category is not available, the deficit should be made up first by admitting more untrained teachers from the attached district and then by direct candidates-

First preference being given to Particulates and next to Middle passed candidates strictly in order of percentage of marks obtained by them at the Middle School Examination. In making the selection of the direct candidates, all the applications of the above three categories received by the District Inspectors of Schools of the attached districts will be taken into consideration. Here also if two districts are attached to a school, the direct vacancies, if any, should be divided equally between them. It should be borne in mind that the selection of the direct candidates is made strictly on the basis of merits.

It was further stated in the instructions-

If a senior teacher is to be superseded for admission to training, for one reason or the other this would be stated against his name by the District Inspector of Schools and his opinion will be final

5. These directions leave no doubt that the authority competent to select candidates for admission was the District Inspector of Schools and the seniority list of untrained teachers" and other candidates which he was required to send to the Superintendent of the School was one of the teacher-candidates and other candidates selected for admission and not one from which the Superintendent of the Schools was required to make the selection himself. The list transmitted to the Superintendent was just by way of intimation that the teachers and the candidates mentioned in that list had been chosen for admission. This conclusion is reinforced by the fact that the memorandum of instruction was sent to the District Inspector of Schools of the region concerned and he was asked by a letter dated 1st May 1961 of the office of the Director of Public Instruction to make admissions into the Schools according to the memorandums issued in 1959 and 1960, and by the fact that the instructions themselves made the decision of the District Inspector of Schools with regard to supersession of any teacher for admission final. The language of the instructions and of the various communications addressed by the office of the Director of Public Instruction to the respondent No. 1 leave no manner of doubt that the competent authority for admission was the respondent No. 1, the District Inspector of Schools.

6. The cancellation of the admission of the petitioners on the ground that the District Inspector of Schools was not empowered to admit them was therefore, unjustified. But to the instructions regulating the admissions into the Schools are merely administrative or executive their breach even if patent would not justify the issue of a writ of certiorar for quashing the cancellation of the petitioner's admissions or for the issue of a writ of mandamus for their readmission into the

School. In this respect the present case is no different from the case of Ramchandra Vishnu Vs. State of Madhya Pradesh and Others, . Where it has been held by us that the rules governing admission of students into medical colleges are only executive instructions which have no statutory force and that the non-observance of those instructions however regrettable cannot affect the validity of any decision admitting or refusing to admit a student into a college.

7. It must, however, be added that we are unable to appreciate the conflicting return of the respondent No. 1 and of the respondents Nos. 2 and 3. The endeavour of the respondents Nos. 2 and 3 to justify the cancellation of the admission of as many as sixty-eight candidates within one month of their admission into the School appears to us as one bordering on ludicrousness. Their statement in the return that the petitioners gave "hush money" for securing admissions and that they are themselves accustomed to acceptance of such illegal amounts is wholly unwarranted. The return which is required of a respondent in proceedings under article 226 is as to the facts relied on as constituting a valid and sufficient ground for refusing the prayer of the petitioner and not of insinuation against the petitioner in the proceedings. It would have been understandable if the said respondents had said that the admissions made into the School were vitiated because they had been procured by offers and acceptance of illegal gratification and the persons concerned had been proceeded against or were about to be proceeded against for offering or receiving bribes. But the statement actually made by the respondents does not carry the matter any further. It only casts aspersions against the petitioners and the respondent No. 1, the District Inspector of Schools. It appears to us to be an undignified and irresponsible statement made by the said respondents to cover up their own mistakes. It is no doubt true that admissions into public institutions such as the Basic Training School are in the discretion of the authorities. But that discretion is regulated by the principles which the authorities have themselves laid down. If admissions are made and cancelled soon after for no apparent reason, the public may be pardoned for bewilderment over the kaleidoscopic change. They may justifiably think that such institutions are treated as private properties by the department and the officers responsible for regulating admissions, and that admission in these institutions is not wholly a matter of following any principle but a matter of tactics or of opportunism.

8. For all these reasons, this petition is dismissed. In the circumstances of the case we make no order as to costs. The outstanding amount of security deposit shall be refunded to the petitioners.