
(2000) 02 MP CK 0011

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1447 of 1998

Harish Chandra Bansal and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 17-02-2000

Acts Referred:

Citation : (2001) 3 MPLJ 71

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : R.D. Jain, with M.P.S. Raghuvanshi, for the Appellant; H.D. Gupta, Addl Advocate General For Respondents Nos. 1 and 2/State, M.K. Jeurkar For Respondent No. 3 and R.K. Soni For interveners, for the Respondent

Judgement

S.P. Srivastava, J.

Heard the learned counsel for the parties.

Perused the record.

By means of the present writ petition, the petitioners have challenged the order passed by the Collector, Shivpuri dated 22-8-1998 and the consequential order passed by the respondent No. 3. They have also prayed for the quashing of the order issued by State Government dated 4-5-1998.

Learned counsel for the respondents have pointed out that a similar controversy as raised in this writ petition had been raised in *Arti Bhatnagar (Smt.) and Others Vs. State of M.P. and Others*, , disposed of by a Division Bench of this Court vide the judgment and order dated 22-12-1999. The order of the Collector, which is sought to be challenged in the present writ petition, was also under challenge in the aforesaid writ petition.

A perusal of the order disposing of the writ petition in the case of *Smt. Arti Bhatnagar (supra)* indicates that the directions issued under that order cover the case of the petitioners also.

Learned counsel for the petitioners has however urged that in the aforesaid writ petition of Smt. Arti Bhatnagar (*supra*), the question in regard to the validity of the order issued by the State Government dated 4-5-1998 had not been challenged and they may be prejudiced and may be deprived of the benefit envisaged under Rule 5(9)(i)(b) of the M.P. Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997.

The learned counsel for the petitioners has contended that it was not open to the State Government to vary the statutory provision on the strength of administrative order or circular. What has been urged is that once the rule having statutory force entitled a candidate to have 25% marks for the teaching experience the State Government could not by issuing an executive instruction or administrative order limit or vary the same.

The learned counsel for the petitioners has urged that the State Government had no jurisdiction to vary or alter the statutory provision contained in Rule 5(9)(i)(b) of the Rules by issuing an administrative order carving out different categories of candidates for the purpose of the award of marks less than 25% of marks for their teaching experience. The contention is that when the statute itself ensured the award of 25% marks to a candidate having teaching experience, it was not open to the State Government to reduce the number of marks or percentage secured in favour of candidates having teaching experience and thus depriving the candidate of a benefit secured in favour of the eligible candidates by virtue of having to their credit a teaching experience also.

The learned Additional Advocate General representing the respondents Nos. 1 and 2 has however urged that the apprehension of the petitioners is totally misconceived. It has been pointed out that the provision contained in Rule 5(9)(i)(b) of the Rules stipulates award of 25% marks for the teaching experience in the schools of concerning Janpad Panchayat or Zila Panchayat and extending of the similar benefits for teaching experience of equivalent rural school, further providing that the decision of the Committee on the validity and valuation of the certificate of teaching experience of rural schools will be final. The contention is that the evaluation of the teaching experience has to be done by the Committee and the entitlement of marks for teaching experience may vary within the upper limit of 25% and in this view of the matter to avoid arbitrariness a guide-line has been provided vide the circular issued by the State Government whereunder the candidate having teaching experience for a session having a duration of eight or more months was entitled to the credit of marks upto 9%, a candidate having teaching Experience for two sessions was entitled to the credit of marks upto 17% and candidate having to his credit the teaching experience of three sessions or more was entitled to the credit of marks to the extent of 25%. It is stated that the Committee is still left with the discretion to award marks within the outer limits as provided in the guide-lines while evaluating the teaching experience.

In the aforesaid connection, it may be noticed that the provision contained in Rule 5(9)(i)(b) of the Rules does not contemplate an award of 25% marks

straightway for the teaching experience. The Committee has to evaluate the teaching experience and the 25% marks contemplated under the aforesaid provision only denotes the outer limit of the marks which can be awarded for the teaching experience. There may be a candidate having teaching experience of an academic session of only eight months, there may however be a candidate having teaching experience of a session of more than eight months but less than one year and there may yet be a candidate having teaching experience of more than three academic sessions having a duration of more than eight months. It all varies from case to case. It is for this purpose that the committee had been vested with the jurisdiction to evaluate the certificate of teaching experience and then award the marks within the outer limit of 25%. The order of the State Government does not vary this outer limit but only provides a guide-line as the statutory rule is silent on the point.

While it is true that no administrative act or fiat could either expand or limit or vary or discard or destroy or annul a statutory provision, yet there can be no manner of doubt that acting within the limits of the statutory provision it is permissible to supplement by requisite directions not having the effect of supplanting the statute. The guide-lines only supplement, so that the statutory provision may be effectively carried out avoiding arbitrariness. Such an action could not be held to be in excess of the jurisdiction vesting in a competent executive authority.

The direction issued by the State Government only supplements but does not supplant the statute. Further, it does not have the effect of altering or varying or modifying the statutory provision.

It may further be noticed that in the writ petition no factual foundation has been laid for the ground of challenge to the aforesaid circular. In the grounds, however, the only thing which has been asserted is that the circular was without jurisdiction as it was contrary to Rule 9(1)(5D) of the rules of 1997.

It may also be noticed that there is no such provision in the rules. It was further sought to be challenged asserting that the State Government had no power to relax or distribute the marks of 25% in three different categories and each petitioner had got the right to get 25% marks on the basis of the Rules of 1997 and for this reason the circular deserved to be quashed.

In view of the conclusions indicated hereinabove the aforesaid submission is totally misconceived and devoid of merit and is not at all acceptable.

As has already been indicated hereinabove, the Rule 5(9)(i)(b) only provides the outer limit of 25% marks which may be awarded for teaching experience which has to be evaluated by the Committee in its discretion. In order to avoid arbitrariness, the State Government has only provided the required guide-lines. These guide-lines do not have the effect of varying the statutory provision in any manner. In this connection, it must not be lost sight of that in determining either the general object of the legislature or the meaning of its language in any

particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles, in all cases of doubtful significance has to be presumed to be the true one. It is to effectuate the legislative intent that the required guide-lines have been provided in the circular in question without offending the statutory provision which cannot be taken to have been supplanted in any manner.

The contention of the learned counsel for the petitioners that they will be prejudiced in any manner is totally devoid of merit and is not at all acceptable.

Learned Additional Advocate General has pointed out that since the copy of the order disposing of the writ petition of Smt. Arti Bhatnagar (supra) had been furnished to the commissioner on 10-2-2000, hence the two months" period stipulated in the order of this Court in the aforesaid decision has to be corrupted from the said date and the hearing will take place later within the time provided.

Considering the facts and circumstances as brought on record, in view of the final order passed by the Division Bench disposing of the writ petition in the case of Smt. Arti Bhatnagar (supra), no further orders are required.

This writ petition accordingly deserves to be and is hereby disposed of finally providing that the petitioners will be entitled to the same benefits as provided under the final order disposing of the aforesaid writ petition.