

**(2013) 09 MP CK 0276**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 2321 of 2011**

Kunj Bihari Sharma

APPELLANT

Vs

State of M.P. and others

RESPONDENT

**Date of Decision : 02-09-2013**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2013) 09 MP CK 0276**

**Hon'ble Judges : Sujoy Paul, J**

**Bench : Single Bench**

**Advocate : Pawan Dwivedi, for the Appellant; Praveen Newaskar, Dy. Government Advocate, for the Respondent**

**Final Decision : Dismissed**

## Judgement

Sujoy Paul, J.—This petition under Article 226 of Constitution challenges the action of respondents in passing the order Annexure P/1 dated 07-01-2011 whereby the petitioner was retired on attaining the age of 60 years. Shri Dwivedi, learned counsel for the petitioner submits that the petitioner was holding the post of Assistant Lab Technician and as per his nature of duty, he must be treated as teacher as per explanation appended to Section 2 of The Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu Dwitiya Sanshodhan), Adhiniyam, 1998.

2. At the threshold, Government counsel drew the attention of this Court on the judgment passed by Writ Court in Writ Petition No. 559/2006 (Om Prakash Bhadkaria Vs. State of M.P. and others) dated 23-11-2007 (Annexure R/1) and it is contended that this Court in a similar matter has already opined that the Lab Assistant cannot be treated as teacher. It is further contended that the Division Bench has also opined in Writ Appeal No. 202/2008 (Asha Ram Kushwah Vs. State of M.P. and others) that the Lab Assistant cannot be treated as teacher.

3. Faced with this situation, Shri Dwivedi submits that Annexure R/1, judgment

in Om Prakash Bhadkaria shows that the petitioner has not pleaded all the facts and therefore, on the basis of available facts, the Court dismissed the petition whereas in the present case there is ample material and pleading to show that petitioner was performing the work which amounts to imparting instruction/ education. Reliance is placed on Annexure P/10 and P/11 in this regard.

4. I have heard learned counsel for the parties and perused the record.

5. The Division Bench in Asha Ram Kushwah opined that as per the recruitment rules applicable to the employees of respondents Department and as per the service condition so laid down, the age of retirement is 60 years, hence the appeal is dismissed. I am bound by the said judgment of Division Bench and cannot take a different view. Court should not pass the judgment which leads to a situation where similarly situated employees are governed by different principles. For these reasons, I am unable to agree with the contention of petitioner. Petition is accordingly dismissed. No costs.