
(1987) 12 MP CK 0009
In the Madhya Pradesh High Court
Case No : M.P. No 217 of 1987

Maina Swamy

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 10-12-1987

Acts Referred:

Madhya Pradesh Shasakiya Sevak (Adhivarshiki-Ayu) Sanshodhan Adhiniyam, 1967 — Rule 56

Citation : (1988) JLJ 450 : (1988) MPLJ 196

Hon'ble Judges : T.N. Singh, J; R.M. Rustogi, J

Bench : Division Bench

Advocate : H.N. Upadhyay, for the Appellant; J.S.L. Sinha, Government Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

Dr. T.N. Singh, J.

During the pendency of the petition in this Court, by an order passed on 30-10-1987, the petitioner has been relieved of her duties of the post in which she was working on that date. What is not denied is that she was holding the post of the Principal, Lady Health Visitors Promotee School (formerly known as Public Health Orientation Training School, in short, PHOTC), Gwalior, and the fact also which is not denied is that in the School, training is given to the Lady Health Visitors and Auxiliary Nurse-Midwives. Indeed, the only difference in the contention on two sides is that the persons receiving training in the Institution in question, according to the State, are only those persons who had been already in employment of the State for a period of five years and indeed, mainly on this basis, the case of the petitioner is sought to be taken out of the provision enacted by the State Legislature in Act No. 35 of 1984 of which relevant provision, we shall quote in due course. At this stage, suffice it to note the preliminary objection of the State that the petition has become infructuous because the petitioner has been duly retired from service with effect from

31-10-1987 and she cannot claim the benefit of the provisions of the said enactment To dismiss summarily the unholy preliminary objection, we do not have to labour hard as the established position in law need not be stressed repeatedly on all occasions. There cannot be any doubt that no action to the prejudice of any citizen can be taken by the State during the pendency of a lis in a Court of law and that such action would always be subject to the decision that would be rendered in the pending lis.

We come, however, to the merits of the petitioner's case. As per Section 2 of Act No. 35 of 1984, Sub-rule (1-a) was inserted in Rule 56 of the Madhya Pradesh Shasakia Sevak (Adhivarshiki-Ayu) Sanshodhan Adhiniyam, 1967, for short, Act No. 29 of 1967. The relevant and crucial provision, we quote:

(1-a) Subject to the provisions of sub-rule (3), every Government teacher shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that a Government teacher whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.

Explanation. -- For the purpose of this sub-rule "Teacher" means a Government servant by whatever designation called, engaged in teaching in an educational institution including technical or medical institutions, run by Government.

However, the Explanation aforequoted was amended by Act No. 23 of 1987 and it reads as follows:

Explanation. -- For the purpose of this sub-rule "Teacher" means a Government servant, by whatever designation called, appointed for the purpose of teaching in an educational institution run by the Government including technical or medical education institution in accordance with the recruitment rules applicable to such appointment and shall also include the teacher who is appointed to an administrative post by promotion or otherwise and who has been engaged in teaching for not less than twenty years provided he holds a lien on a posting the concerned School/Collegiate/Technical/Medical education service."

The bone of contention in this matter is whether the petitioner can be regarded as a "teacher" within the meaning of provisions aforequoted and whether the "Institution" in which she was serving prior to her retirement was such an "Institution" as is covered by the aforequoted provisions. In this connection, we first note, certain admissions of the respondents/State to be read in the records available to us in several applications, returns and annexures filed therewith. On 10-10-1987, an "Additional " Return" was filed on behalf of the State of which at Annexure R/III, items No. 11 we quote:

11. Principal, P.H.O.T.C, Gwalior (teaching Post) -- June 79 to Oct. 87 PHOTC, Gwalior. (Whether to consider teaching institution under consideration of Govt.)

Indeed, in the same additional return, what is stated in para 3 is also to be noted. The last sentence of para 3 reads -- "It will be seen that she has worked in Educational Institutions only from 7-1-1959 to 19-12-1961 and from June 79 to October, 1987" (emphasis added). petitioner's counsel, Shri Upadhyaya has leaned heavily on these admissions to submit that the dual issues which are surfaced for decision in this case are clinched by the admission of the respondents themselves as they admitted that the petitioner was holding "a teaching post" and that she was working in "Educational Institutions". However, this position is seriously contested by Shri Sinha, Government Advocate, who rivets our attention on item No. 11 aforequoted to submit that what is stated in para 3 has to be read with the averment made in Annexure R/III, namely, that it was "under the consideration of the Government" whether to consider the Institution as "teaching institution".

At this stage, we may also refer to the decision of the Apex Court on which Shri Sinha has placed implicit reliance. It is the case of State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others, , of which counsel has stressed certain observations made in para 19. However, in our view, the facts of the case are entirely different and the observations cannot be torn out of context of the entirety of the facts and circumstances of that case. What was in issue in that case was the fact as to whether the "Registrar", petitioner in that case, could be said to have teaching experience was required to be determined with reference to the service he had rendered in a foreign institution. That enterprise was avoided saying that it was for the State Government in this country to determine that question.

We look at once now at the Indian Nursing Council Act, 1947, for short, 1947 Act, to read first the objects thereof and then the relevant provisions inter alia of Section 12 of the said Act The long title of the Act reads that the Indian Nursing Council was constituted for the purpose of ensuring "a uniform standard of trainings. for nurses, midwives and health visitors". A conspectus of Sections 11 to 16 makes it clear that though institutions are established in States to carry out the project, the Indian Nursing Council is invested the power to grant as also withdraw recognition granted to such institutions and prescribe the standard curricula for the training given at such institutions. What appears in Section 12 is noteworthy in that any trainee at such an institution is required to undergo a course of studies and take examinations in order to obtain the necessary qualification which is "conferred" under the relevant provisions applicable to the Institution. Let it be also noted at this stage that "State Councils" are also contemplated u/s 2(e) of the said Act "to regulate the registration of nurses, midwives or health visitors in the State". Annexure P/11 filed with the Rejoinder contain "Syllabi and Regulations" for Health Supervisor's (Female) Course, which have been approved by Indian Nursing Council on 27-3-1985. What has also come with the Rejoinder is Annexure P/12 which shows that a candidate who had completed the course of Health Visitors at P.H.O.T. Centre, Gwalior, had been awarded a Diploma by the Mahakoshal Nurses Registration Council, Indore.

What is the ambit of the "Institution" in which the petitioner was serving before her retirement has to be read indeed in the annexures and other documents furnished by the parties and accordingly, we have read the Rejoinder wherein detailed averments are made of the activities of the said Institution. It is stated that there are two Health Visitors Promotee Schools in Madhya Pradesh, one at Gwalior and the other at Jabalpur. The Regulations and the syllabi for the subjects taught in the Institutions are those which appear in Annexure P/11 and that Certificates in those Institutions given are those which appear in Annexure P/12. This Rejoinder was filed on 4-9-1987 and by way of "Additional Return" filed on 10-10-1987, State has made an endeavour to furnish replies to the averments made in the Rejoinder. The detailed averments made in the Rejoinder are not denied and instead, only assertion is made to the effect that Act No. 29 of 1967 was amended and that had been published in the Gazette Extraordinary dated 21-5-1987.

6A. What is also to be noted in this connection is the fact that in the original Return that was filed on behalf of the respondents, the stand taken is that Government has yet to consider and decide whether the concerned Institution could be regarded as an "Educational Institution" and no other facts are averred to make out the case that the said-Institution was not a "Medical Educational Institution" or an Institution covered by the statutory provision aforequoted. Perusing the curricula, syllabi and Regulations, aforesaid, Annexure P/11, we entertain no doubt at all that the concerned Institution has all the trappings of an "Educational Institution" to which the statutory provisions are applicable. This we say for several reasons. There is a regular course of studies for a duration of six months which is to be undertaken by the trainees. The Institution is provided with the "teaching staff and the ratio of tutor and students is also fixed at 1:10 besides provision being made for external lecturers. Provision is also made specifically for examinations to be taken with the help of three written papers in three subjects besides practical examination in two subjects. Oral examinations are to be held after the practical examinations. The standard of marks is also clearly and categorically laid down. In Annexure P/11, we also read the subjects covered in the General Policies which are followed in the Institution. Only one batch of trainees is received in a year and students are granted only a week's vacation during the six months' course of training. External examination is conducted in the Institution "preferably by the Nursing Council" and it is categorically contemplated that certificates are to be issued by the Council. This provision very much accords with the certificate filed in this case which is Annexure P/12. About the different subjects, suffice it to say that such as Anatomy and Physiology, Gynaecology besides other subjects are taught in the Institution as per the said syllabi.

6B. However, we are also shown a printed Syllabus and Regulations of the Indian Nursing Council for the Integrated Course for Health Visitors and it is submitted that these are supplementary rules and are binding on the Institution in question because of the provisions laid down in Section 12 of the Act. There is no doubt

that in this printed "Syllabus and Regulations", it is contemplated that only such candidates shall be eligible for admission at an examination who have attended "at least 75% of the lectures and demonstrations given and completed all the hours of practical work prescribed by the school". If anything more has to be said to complete the picture, we may refer to the entrance requirement laid down in Annexure P/11. It is contemplated that a Matriculate having five years' field experience would be necessary for entry into the Institution.

Shri Sinha, Government Advocate, has submitted that a distinction has to be made between "training" and "education" and that a "trainee" cannot be regarded as a "student" as a trainee is deputed by the State to receive instructions at the Institution and he is already in Government service. However, we do not read in the relevant statutory provision itself such a distinction and we do not think if any distinction can be made etymologically also in respect of the two words "training" and "education" in so far as this case is concerned. The purport of the statutory provision in issue in this case is subserved by both to the desired extent matching such field as "medical" or "technical". Whether one is "trained" or "educated", the process of teaching is involved in both and it is the "teacher" who is sought to be benefitted by the Act by increasing his retiring age.

7A. By "education" as also by "training", latent faculties of a man are developed, whether or not, he is following an avocation. When a person who is educated is further "trained" in the same field his knowledge is thereby increased of the same subject which is also the purpose of "Education". According to Shorter Oxford English Dictionary, the word "Education" means, inter alia, the process of bringing up, the systematic instructions, school in or training given. We have no doubt that the means, methods and men employed in an Institution determine its character and not how persons come and who are the persons who are taken in the Institution to be "educated" or "trained". According to us, it cannot be said that some persons are receiving only "training" in an Institution merely because they have been deputed by the Government or they are in the employment of the Government; they would not cease to be students who are given education in the respective subjects in accordance with the syllabi and curricula. We have, therefore, no hesitation to hold that the Institution in which the petitioner was serving on the date of her retirement, namely, Lady Health Visitors Promotee School, which was formerly known as Public Health Orientation Training School, is a "Medical Education Institution" within the meaning of the term used in Enactments concerned, namely, Act No. 35 of 1984 and 23 of 1987.

In so far as the scope of the "Explanation", as amended in Act No. 23 of 1987 is concerned, we are satisfied that the case of the petitioner is covered by the first part of the Explanation which envisages that the person concerned must have been appointed for the purpose of teaching in the particular institution on the date when the Act had come into force. What appears on record before us is the fact that although the petitioner had been appointed as a "Principal", she had been actually teaching the subjects of Midwifery and Health Education, as

averred in para 5 of the petition. In the return, this fact is not denied and what is stated only is that how a person serves at the fag-end of his service would not be determinative of his status as claimed by the petitioner. We also read again Annexure R/III above-referred which shows that the petitioner has been holding teaching posts even earner on the admission of respondents themselves and on the relevant date, material for the application of the statutory provision, it is the admission of the respondents in Annexure R/III itself that she was holding a teaching post and that too for eight years, from June, 1979 to October, 1987.

For all the foregoing reasons, we have no hesitation to hold that petitioner's services have been illegally superannuated by the order dated 30-10-1987 and which is accordingly quashed and indeed, we must hold so also about the notice Annexure P-4 by which she was informed that she had to vacate the post on attaining the age of 58 years on 2-10-1987; that order must also go because we hold that the statutory provisions were applicable in her case and accordingly she was entitled to continue the post till she attained age of 60 years.

In the result, the petition succeeds to the extent indicated. However, there shall be no order as to costs. Outstanding amount of security be refunded to the petitioner.

State Counsel, Shri Sinha, applies for leave to appeal to the Hon'ble Supreme Court. However, we are of the view that no substantial question of law of public importance is involved as may require the decision of their Lordships and as such, no ground for leave is made out. The prayer is accordingly rejected.