

(2002) 10 MP CK 0051
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3412/95

Mamta Rani Mishra

APPELLANT

Vs

Municipal Corporation and Others

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1990 — Rule 6

Citation : (2003) 1 MPHT 466

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

Bench : Single Bench

Advocate : Rohit Arya, for the Appellant; Sanjay K. Agrawal, for Respondent Nos. 1, 2 and 3, A.S. Raizada, Government Advocate for Respondent No. 4/State and U.N. Awasthy, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.—This is a writ petition under Articles 226 and 227 of the Constitution of India challenging the notice dated 13-10-1995 of the respondent No. 1 calling for applications to fill up the post of Principal and for a direction to promote the petitioner on that post.

2. It is not in dispute that a College known as "Pandit Loknath Shastri Sanskrit Mahavidhyalaya" (hereinafter to be referred to as the "College") is being run by respondent No. 1 Municipal Corporation, Jabalpur which is affiliated to respondent No. 6 Avadhesh Pratap Singh Vishwavidhyalaya, Rewa. The pattern of education in the College is known as "Prachya Vidhya Pranali". Sanskrit and other subjects are being taught to the students under this system. The political science is one of them. Hindi is also being taught. Petitioner Mamta Rani Mishra is "Acharya" in Sanskrit and M.A. in Political Science. She is working as a Lecturer in the College from 19-2-1983. In Writ Petition No. 2602 of 1994 by order dated 30-8-1995, the respondent No. 1 was, inter alia, directed to consider the case of the petitioner being the senior most Lecturer for promotion as

Principal. A copy of the said order is Annexure A-14. Respondent No. 5 Mathura Prasad Garg is working as Lecturer in this College from 24-8-1995. He is in current charge of the post of Principal also. This is officiating arrangement. The respondent No. 1 is intending to fill up the post of Principal by "direct recruitment" and not by promotion. In the impugned notice dated 13-10-1995 it has been specified that the incumbent must possess the Degree of Acharya or M.A. in Sanskrit and must have the "experience of teaching in Sanskrit" in an institution imparting education on the pattern of Prachya Vidhya Pranali. The applications have been invited only from amongst the persons teaching in schools being run by the Municipal Corporation, Jabalpur. It is also not disputed that except this College no other school or college run by the Municipal Corporation imparts education on Prachya Vidhya pattern. No one else except the respondent No. 5 satisfies the condition of teaching Sanskrit on Prachya Vidhya pattern. The terms and conditions of affiliation issued by respondent No. 6 University prescribe only "Acharya" degree or "M.A. in Sanskrit" as qualification for filling up the post of Principal of the College. The requirement of the experience of teaching Sanskrit under Prachya Vidhya Pattern has not been provided as a qualification for preference in the matter of appointment to the post of Principal. The petitioner has been in fact teaching Hindi in the College.

3. The petitioner's case is that she is much senior to the respondent No. 5 on the post of Lecturer. The post of the Principal can be filled up only by promotion and not by direct recruitment as per M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1990 (hereafter to be referred to as the "Collegiate Branch Rules"). As per Rule 6 of Schedule II the post of Principal of a College can be filled up "100% by way of promotion". The petitioner is Acharya in Sanskrit which is equivalent to Degree of M.A. in Sanskrit and therefore she is possessed of the basic qualification for the post of Principal. In the past also the post of the Principal has been filled up by promotion only. The conditions provided in the impugned notice are "tailor-made" with an eye upon the respondent No. 5 only.

4. The case of the respondent Nos. 1 and 2 in their return is that the Standing Committee of the Municipal Corporation has fixed the norms on the basis of which the notice calling the applications for the post of the Principal has been issued. According to these respondents the Collegiate Branch Rules are not applicable in the present case as the pay scale of the Principal of this College is much lower than provided in these rules. The plea of these respondents is that the rules which are applicable in the present case are M.P. Education Service (Sanskrit College Higher Education) (non-gazetted Class III) Recruitment Rules, 1990. The respondent No. 5 has pleaded that he is M.A. in Sanskrit and has teaching experience of about 20 years in that subject and therefore he has a right to be appointed as the Principal in preference to the claim of the petitioner who has never taught Sanskrit.

5. In the return of the respondent No. 4 the State of Madhya Pradesh it is stated that "Collegiate Branch Rules" are applicable for filling up the post of the Principal

and according to those rules it can be filled up by promotion only and not by direct recruitment. Thus, the claim of the petitioner is supported by the State Government.

6. The points for determination in this petition are--(a) which are the Rules applicable for appointment to the post of Principal in the College, (b) whether the post of Principal can be filled in by promotion or by direct recruitment, and (c) whether the petitioner is entitled to appointment to the post of Principal on the basis of her seniority.

7. The arguments of the learned Counsel for the parties have been heard on the points referred above.

8. Point (a) :

It is conceded by the learned Counsel for respondent No. 1 Municipal Corporation that the M.P. Education Service (Sanskrit College Higher Education Service) (non-gazetted Class III) Recruitment Rules, 1990 are not applicable to fill up the post of the Principal as these rules are applicable to Class III employees and the post of the Principal of the College is a higher post. It is also not disputed that the resolution of the Standing Committee must be in conformity with the statutory rules. Now it is common ground that the Jabalpur Municipal Corporation Bye-laws, 1967 are applicable. These Bye-laws have been approved by the State Government u/s 430 of the Municipal Corporations Act, 1956. As per bye-law No. 3, subject to the provisions of this Act and the rules or bye-laws made thereunder, the Fundamental Rules, the General Book Circulars and Civil Service Regulations made from time to time shall apply mutatis mutandis to the officers and servants of the Corporation, as they apply to the Government servants of the State other than the members of the Indian Administrative Service. The rules comprising "Fundamental Rules, the General Book circulars and Civil Service Regulations", that is, the entire body of rules applicable to the Government servants by "reference" have been made applicable to the servants of the Municipal Corporation. This is referential rule making. The phrase "mutatis mutandis" means with necessary changes. In such a case "the reference" is construed to mean that the law as it reads thereafter including amendments subsequent to the time of adoption. [See : Principles of Statutory Interpretation by Justice G.P. Singh, 7th Edition (1999) page 238]. Therefore, the rules applicable to the Government servants as amended from time to time by virtue of the Bye-laws would apply to the servants of the Municipal Corporation. In other words the recruitment rules of the Government would also be applicable to fill up the post of the Principal in the College run by the Municipal Corporation. That is exactly the stand of the petitioner and the State Government in the present case.

9. Point (b) :

As the Collegiate Branch Rules, in view of the above discussion, are applicable for appointment to the post of the Principal it can be filled by "promotion" only and

not by "direct recruitment". The pay-scale of the post is not material. The mode of appointment to the post of the Principal given in these rules must be followed.

10. Point (c) :

The petitioner is admittedly senior to the respondent No. 5 on the post of Lecturer which is a feeder post for promotion to the post of the Principal. Therefore, the respondent No. 5 cannot be appointed as Principal in preference to the petitioner. The petitioner is "Acharya" in Sanskrit and therefore she is possessed of the requisite basic qualification.

11. Normally in such cases the direction which is issued by the Court is to direct the appointing authority to consider the case of the petitioner for promotion. But here that alone would not be enough. As stated above in W.P. No. 2602 of 1994 by order dated 30-8-1995 (Annexure P-14) as per para 10 the respondent Municipal Corporation was directed to "fill up the post according to the rules within a period of two months. It was further directed that the claim of the respondent No. 4 (petitioner herein) shall be duly considered for the appointment of the post of Principal in accordance with law as she claims to be the senior. However, if any interim arrangement is made the respondent No. 4 who is also fighting since long for her claim shall be considered by the Corporation for that interim arrangement". The respondent Municipal Corporation did not take this direction seriously and has allowed the respondent No. 5 to work as the Principal of the College by adopting an ingenious device and by resorting to rules, as mentioned in its return, which are applicable to Class III employees. The direction of this Court has been flouted by the Municipal Corporation. As the petitioner is admittedly senior most on the post of Lecturer and she is "Acharya" in Sanskrit which is the basic qualification, the respondent Municipal Corporation is directed to appoint her as principal within one month of the date of this order. Such a course is permissible in exceptional cases especially when the respondent No. 1 has not followed the directions in the earlier writ petition. [The State of Bihar Vs. Dr. Braj Kumar Mishra and Others,]. The notice dated 13-10-1995 calling the applications for direct recruitment to the post of Principal and the selection on that basis are quashed. The respondent No. 5 shall not act as Principal of the College after one month from the date of this order. The respondent Nos. 1 and 2 shall bear their own costs and pay that of the petitioner which are fixed at Rs. 2000/-.