
(2014) 09 MP CK 0147

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 33/2012 (S) and 14106/2013 (PIL)

Manohar Lal Soni

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Citation : (2014) 09 MP CK 0147

Hon'ble Judges : A.M. Khanwilkar, C.J;Alok Aradhe, J

Bench : Division Bench

Advocate : Shashank Verma, learned counsel, Advocate for the Appellant;
Samdarshi Tiwari, learned Government Advocate, Advocate for the Respondent

Judgement

Alok Aradhe, J.—In these writ petitions the petitioners who are Head Masters have assailed the validity of the notifications dated 21.3.2007 as well as 22.8.2013 by which the M.P. Education Service (School 1 Branch) Recruitment and Promotion Rules, 1982 (hereinafter referred to as "the 1982 Rules") have been amended. In order to appreciate the petitioners' challenge to the impugned amendment, few facts need mention, which are stated infra.

2. Under the 1982 Rules Upper Division Teacher was the feeder post for promotion to the post of Head Master, Middle School as well as Lecturer, Higher Secondary School. The further channel of promotion prescribed in 1982 Rules for the post of Head Master Middle School/Lecturer, Higher Secondary School was the post of Principal, Higher Secondary School, which carried the pay scale of Rs.8,000-13,500/-. The posts of Principals, Higher Secondary Schools were to be filled up to the extent of 75% by promotion and remaining 25% by direct recruitment. The aforesaid 75% posts, which were to be filled up by promotion, were to be filled up from amongst Head Masters and Lecturers in the ratio of 40% & 60% respectively. It is note worthy that under the 1982 Rules, in the set up of posts, the post of Head Master Middle School was not provided which was an ex cadre post, on which senior most Upper Division Teacher was nominated to work as Head Master with some financial benefits. The 1982 Rules were

amended by notification of 2nd December, 1991 by which Rule 11(a) was inserted in the Rules which provided for direct recruitment on the post of Lecturer of Higher Secondary School which was to be made 2 by the Commissioner, Public Instructions in consultation with the government from time to time. Thereafter, by notification dated 21.3.2007 the 1982 Rules were further amended and a new post of Block Education Officer was created. The channel of promotion as was initially in the 1982 Rules and after amendment in the year 2007 in the 1982 Rules is reproduced for the facility of reference:-

Thus, from perusal of the aforesaid chart, it is evident that after the 1982 Rules were amended on 21.3.2007 the Headmasters, Middle Schools could only be promoted as Block Education Officer whereas the lecturers were entitled for promotion to the post of Principal, High School as well as Principal, Higher Secondary School.

3. Mr. Shashank Verma, learned counsel for the petitioners has submitted that the petitioners in the aforesaid writ petitions hold the substantive posts of Head Master Middle School and were entitled to be promoted to the post of Principal, Higher Secondary School. However, by way of notification dated 21.3.2007, 1982 Rules were amended and new post of Block Education Officer was created and no further channel of promotion was provided for the aforesaid post. Thus, the petitioners have been left with no promotional avenues as the feeder cadre for promotion to the post of Principal, Higher Secondary School is the post of Principal, High School. It is also submitted that ratio of 40% and 60% provided for promotion to the post of Principal, Higher Secondary School has also been diluted and 7079 Head Masters of Middle School are required to compete for promotion against 224 posts of Block Education Officer which has substantially reduced their chances of promotion. Therefore, the notification dated 21.3.2007 is liable to be struck down.

4. On the other hand, Mr. Samdarshi Tiwari, learned Government Advocate at the outset submitted that at the instance of the petitioner challenge to the validity of the notification dated 21.3.2007 by which the 1982 Rules were amended, need not be examined as the same has been rendered academic. Learned Government Advocate has pointed out that the petitioners were appointed as Upper Division Teachers in the years 1986 and 1987. The meeting of the Departmental Promotion Committee was convened on 29.3.2005 in which cases for promotion of the Upper Division Teachers appointed on 24.12.1968 were considered to the post of Principal, Higher Secondary School. Thereafter for a period from 2005 till 2007 no meeting of the Departmental Promotion Committee was held. It is also pointed out that meeting of the Departmental Promotion Committee was held on 13.8.2009 in which again the cases of Upper Division Teachers appointed in the year 1968 were considered. Therefore, the petitioners even after amendment in the Rules in the year 2007 were not even in the zone of consideration. In support of his submissions, learned Government Advocate has produced the order dated 9.5.2005 passed by the School Education Department, Government of M.P.

5. We have considered the respective submissions made by learned counsel for the parties. It is well settled in law that an employee does not have any right to claim promotion. He can only claim consideration of his case for promotion as per rules subject to availability of posts [See: A. Manoharan and Others Vs. Union of India (UOI) and Others, and Deepak Agarwal and Another Vs. State of Uttar Pradesh and Others, . In the instant case, the petitioners were appointed on the post of Upper Division Teacher in the year 1986-87. Thereafter they were promoted to the post of Headmaster, middle school vide orders dated 12.8.1998 and 22.8.1998. The meeting of the Departmental Promotion Committee was held on 29.3.2005 under the 1982 Rules for consideration of cases of Upper Division Teachers for promotion to the post of Principal, Higher Secondary School. In the aforesaid meeting of the Departmental Promotion Committee, the cases of Upper Division Teachers who were appointed on 24.12.1968 were considered whereas the petitioners were appointed as Upper Division Teachers much later in point of time in the year 1986-87. In other words, in the meeting of the Departmental Promotional Committee held on 29.3.2005, the petitioners were not even in the zone of consideration for promotion to the post of Principal, Higher Secondary School. Thereafter, vide notification dated 21.3.2007 the 1982 Rules were amended.

6. Again the meeting of the Departmental Promotion Committee was convened on 13.8.2009 in which the cases of Upper Division Teachers who were appointed in the year 1968 were considered for promotion. Thus, again on 13.8.2009 also the petitioners were not within the zone of consideration. Since, the petitioner did not fall within the zone of consideration for promotion to the post of Principal, Higher Secondary School prior to the amendment in the Rules i.e. on 21.3.2007 therefore, challenge to the notification dated 21.3.2007 at the instance of the petitioner is academic and more so because none of the candidates in the zone of consideration who may have been affected by the amendment have come forward to challenge the said amendment. Hence, the challenge to the amendment made in the Rules by notification dated 21.3.2007 cannot be examined at the instance these petitioners who were not in the zone of consideration. It is well settled in law that if an issue is academic in that its decision one way or the other would have no impact on the position of the parties, the courts need not to decide the same. [See: Loknath Padhan Vs. Birendra Kumar Sahu,].

7. Today, this Court by a detailed order passed in a bunch of writ petitions headed by Writ Petition No.14833/2013 (Gazetted Headmasters Pradeshik Sangh, MP v. State of M.P. and 7 Others) has upheld the validity of the notification dated 22.8.2013 by which the 1982 Rules were amended. For the reasons stated by us in the order passed in Writ Petition No.14833/2013 (Gazetted Headmasters Pradeshik Sangh, MP v. State of M.P. and Others), the challenge to the notification dated 22.8.2013 is hereby repelled.

8. In the result, the writ petitions fail and are hereby dismissed.