
(2015) 06 MP CK 0028

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 5749 and 8758/2013, 401, 1310, 1920 and 3263/2014 and 934 of 2015

Mukund Singh Jadon and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 29-06-2015

Acts Referred:

Citation : (2015) 06 MP CK 0028

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Raja Sharma, for the Appellant; Amit Bansal, Dy. Govt. Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—These petitions involve common and identical issues. They are, therefore, heard analogously with consent and decided conjointly by this common order.

2. Contention of the petitioners is that they are holding various posts which should be treated as "teacher" and therefore, they should be permitted to continue till 65 years of age. The designations of petitioners writ petition wise in tabular form are as under :-

Facts are taken from WP. 5749/2013

3. It is contended by Shri Anil Sharma, learned counsel for the petitioner that the petitioner is working as Training Superintendent. While holding said post, the petitioner is required to impart education / training to the pupil. In these batch of petitions, it is contended that Government issued an executive instructions and treated the post of the petitioners as teacher. Reliance is placed on circular (Annexure P/2 and P/3 dated 19th October, 2010). The bone of contention of learned counsel for the petitioner is that after issuance of relevant recruitment rules, the Government issued executive instructions thereby treated their posts

in teaching cadre and therefore, for all purposes including date of retirement, they should be treated as teacher. By placing reliance on *Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others*, (1996) 6 AD 325 : AIR 1996 SC 2733 : (1997) 75 FLR 82 : (1996) 10 JT 175 : (1996) LabIC 2433 : (1996) 5 SCALE 678 : (1996) 9 SCC 677 : (1996) 4 SCR 190 Supp : (1996) 3 SLJ 119 , Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, (2007) 207 ELT 3 : (2006) 9 JT 125 : (2006) 10 SCALE 206 : (2006) 11 SCC 709 : (2007) 1 SCC(L&S) 529 : (2006) 7 SCR 58 Supp : (2007) 2 SLJ 8 : (2008) 11 STR 305 and *State of Punjab and Others Vs. Jagdish Kaur*, (2011) 131 FLR 4 : (2011) 9 SCALE 397 : (2011) 10 SCR 728 . It is contended that executive instructions can be issued to supplement the rules. After having issued such instructions whereby the petitioners designations were brought in the ambit of "teacher", it is no more open to the respondents to retire the petitioners at the age of 62 years.

4. Another limb of argument of Shri Sharma is that the earlier age of retirement of other employees than teachers was 60 years petitioners were permitted to continue up to 62 years. This itself shows that petitioners were treated as teacher. Thus, they have a valuable legal right to continue up to 65 years as per amendment in the *Madhya Pradesh Shaskiya Sevak (Ardhivarshiki Ayu) Sanshodhan Adhiniyam, 1967* (Amended by notification No. 20 / 2011 w.e.f. 6th May, 2011 (hereinafter called as *Sanshodhan Adhiniyam*). This notification is filed as Annexure P/3.

5. Shri Amit Bansal, Dy.G.A. for respondent- State, relied on various paragraphs of the return. By placing reliance on various definitions of teacher mentioned in *Sanshodhan Adhiniyam*, it is contended that cases of the petitioners are not covered under the definition of such teachers who have been permitted to be continued till 65 years of age. He prayed for dismissal of the petitions. No other points is pressed by learned counsel for the parties.

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

7. The petitioners have relied on recruitment rules and executive instructions. This is trite that executive instructions issued prior in time loses its significance on issuance of statutory rules on the subject. In the *Sanshodhan Adhiniyam*, the definitions of teacher are given. Thus, executive instructions issued prior to issuance of *Sanshodhan Adhiniyam* have lost their complete shine. Putting it differently, whether or not petitioners are teachers must be examined on the anvil of definition of teacher given in *Sanshodhan Adhiniyam*.

8. In the present case, the executive instructions were issued prior to issuance of *Sanshodhan Adhiniyam* and therefore, it cannot be said that by issuance of executive instructions the respondents intended to supplement the *Sanshodhan Adhiniyam*. For this reason, the judgments cited by Shri Sharma, aforesaid, cannot be accepted. I find support in my view from *K.P. Sudhakaran and Another Vs. State of Kerala and Others*, AIR 2006 SC 2138 : (2006) 110 FLR 20 : (2006) 11 JT 101 : (2006) 6 SCALE 92 : (2006) 5 SCC 386 : (2006) SCC(L&S) 1105 :

(2006) 3 SCR 291 Supp : (2007) 1 SLJ 38 : (2006) AIRSCW 2700 : (2006) 5 Supreme 31 .

9. I find that the questions involved in this case are no more res integra. In 2012 (1) MPLJ 386 (Sikandar Sabana Vs. State of M.P. and Ors.) this court dealt with this aspect in extenso. It is apt to quote the relevant paragraphs :-

"12. On a perusal of the provisions of the Sanshodhan Adhiniyam of 2011, it is clear that by way of the Sanshodhan Adhiniyam 2011, new sub-rules (1-a), (1-f), (1-g) and (1-h), (1-i) and (1-j) have been added to Rule 56 of the Fundamental Rules. It is further clear that under Rule 56(1) of the Fundamental Rules, the age of superannuation of every Government servant other than those specified in the succeeding sub-rules (1-a) to (1-j) continues to be 60 years. It is also apparent that sub rule 56(1-a) of the Fundamental Rules has now been renumbered as Rule 56 (1-A) and the age of every Government teacher other than those which have been 38 W.P No. 14386/2011(S) specified under sub-rules (1-g), (1-h) and (1-i) continues to remain 62 years. It is also clear that the Sanshodhan Adhiniyam of 2011 separately provides for three other categories of Government teachers under sub-rules (1- g), (1-h) and (1-i) and an enhanced age of superannuation of 65 years has been prescribed for those Government teachers specified in sub-rules (1-g), (1-h) and (1-i) excluding those who are covered and mentioned in Rule 56 (1- A) of the Fundamental Rules.

13. It is therefore, abundantly clear that while the Amendment Act no. 20 of 2011 has not brought about any change in the age of superannuation of teachers covered by the provisions of Rule 56 (1-A) of the Fundamental Rules which continues to be 62 years, the age of superannuation of 65 years has now been separately prescribed for those Government teachers to whom the new sub-rules (1-g), (i-h) and (1-i) apply and who have been specifically and clearly defined under each sub-rule. Rule 56 (1-g)(a) provides that every Government Teacher, other than a Teacher mentioned in sub-rules (1-a), (1-h) and (1-i) shall retire from service on attaining the age of 65 years. By an explanation appended thereto, it has been clearly specified that a 39 W.P No. 14386/2011(S) Government Teacher mentioned in Rule 56(i-g)(a) shall mean a Government Teacher appointed to a post mentioned under Schedule-I of the Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1990, other than a Librarian or a Sports Officer. It has further been provided by sub- rule 56(1-g)(b) that the increased age as provided in Rule 56(1-g)(a) shall be deemed to have come into force w.e.f. 16.4.2010.

14. The newly inserted sub-rule (1-h)(a) prescribes 65 years as the age of superannuation of a Government Teacher other than teacher mentioned in sub rules (1- a), (1-g) and (1-i) and specifies that the expression Government Teacher mentioned in sub rule 56(1-h) means a teacher by whatever designation called, appointed to a post mentioned in Schedule-II of the Madhya Pradesh Technical Education Engineering College (Teaching Cadre) Service (Recruitment) Rules, 2004, other than the post of a Librarian or a Physical Instructor or a

Programmer. Rule 56(1-h)(b) provides that the increased age of superannuation prescribed by Rule 56(1-h)(a) shall be deemed to have come into force w.e.f. 14.9.2010.

15. Sub-rule (1-i) provides that every Government Teacher, other than a Teacher mentioned in sub rule (1- a), (1-g) and (1-h) shall retire on attaining the age of 65 years and the explanation appended to Rule 56(1-i) provides that the expression Government Teacher mentioned therein shall mean a Government Teacher by whatever designation called, mentioned in Schedule-II of the Madhya Pradesh Technical Education Polytechnic College (Teaching Cadre) Service (Recruitment) Rules, 2004, other than the post of Librarian, Physical Training Instructor, Programmer, Assistant Workshop Superintendent, Videographer, System Analyst Grade-III, Cameraman, Artist and Assistant Surgeon. The provisions of Rule 56(1-i)(b) provides that the provisions of Rule 56 (1-i) (a) shall be deemed to have come into force w.e.f. 19.10.2010.

16. From a conjoint reading of the aforesaid Rules i.e. Rule 56(1-A), 56(1-g), 56(1-h) and 56(1-i), it is clear that the State by way of the Sanshodhan Adhiniyam of 2011, has placed teachers into four categories and while the enhanced age of superannuation of 65 years has been prescribed to teachers appointed under the Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1990, Madhya Pradesh Technical 41 W.P No. 14386/2011(S) Education Engineering College (Teaching Cadre) Service (Recruitment) Rules, 2004 and Madhya Pradesh Technical Education Polytechnic College (Teaching Cadre) Service (Recruitment) Rules, 2004, by Rule 56(1- g), 56(1-h) and 56(1-i) respectively, the age of superannuation for all the remaining teachers has not been enhanced and continues to be 62 years as provided under Rules 56 (1-A).

17. Admittedly, all the petitioners in the present petitions are school teachers and have not been appointed under the provisions of the Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1990, Madhya Pradesh Technical Education Engineering College (Teaching Cadre) Service (Recruitment) Rules, 2004 or the Madhya Pradesh Technical Education Polytechnic College (Teaching Cadre) Service (Recruitment) Rules, 2004 and, therefore, the enhanced age of superannuation as prescribed by Rule 56(1-g),(1-h) and (1-i) is not applicable to them as their cases fall under and are governed by the provisions of Rule 56(1-A). I am, therefore, of the considered opinion that the age superannuation of the petitioners, who are school teachers, continues to remain 62 years even under the amended provisions of Rule 56(1-A) of 42 W.P No. 14386/2011(S) the Adhiniyam. The contention of the petitioners to the contrary being legally untenable deserves to be rejected."

10. After in-depth analysis, this Court opined that under the Sanshodhan Adhiniyam the teachers are placed into four categories. The enhanced age of superannuation of 65 years has been prescribed to teachers appointed under the following rules :-

(i) Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1990,

(ii) Madhya Pradesh Technical Education Engineering College (Teaching Cadre) Service (Recruitment) Rules, 2004

(iii) Madhya Pradesh Technical Education Polytechnic College (Teaching Cadre) Service (Recruitment) Rules, 2004.

11. During the course of argument, a specific question was asked to learned counsel for the petitioners whether their appointments were made under one of these Rules? They fairly admitted that petitioners were not appointed under the aforesaid recruitment rules. They were appointed by different sets of Rules. In this view of the matter, in my view, the curtains are finally drawn by this Court on the aforesaid aspect in *Sikandar Sabana* (supra). In no uncertain terms, it was made clear that the age of superannuation for all the remaining teachers has not been enhanced and continued up to 62 years as provided under Rule 56(1-A). This is also trite that no estoppel operates against a statutory provision. Hence, even if petitioners continued beyond 60 years of age, no enforceable legal right accrued in their favour.

12. In the light of foregoing analysis, in my view, no case is made out by the petitioner for interference. No fault can be found in the action of the respondents in retiring the petitioners at the age of 62 years. However, in the interest of justice. It is directed that if any petitioner has worked pursuant to the interim order, the remuneration arising out of said work be paid to him (if not already paid). The age of retirement of the petitioners for all purposes shall be treated as 62 years.

13. With aforesaid observations, petitions fail and are hereby dismissed.

The Registry is directed to keep a true copy of this order in all the connected petitions.