

(2018) 07 MP CK 0285

In the Madhya Pradesh High Court

Case No : Writ Appeal No.917, 961 of 2018

Pratibha Shukla And Another

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 30-07-2018

Acts Referred:

Constitution of India, 1950 — Section 14, 16, 226

Citation : (2018) 07 MP CK 0285

Hon'ble Judges : Hemant Gupta, CJ;Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : Rajesh Prasad Dubey, Amit Seth

Final Decision : Dismissed

Judgement

V.K.Shukla, J

In both the intra court appeals, a common issue is involved therefore, they are being disposed of by a common order.

2. The appellants are working as Adhyapak/Sahayak Adhyapak and were given additional charge of the post of Warden. They filed writ petitions

challenging the condition No.8 incorporated in the advertisement for selection on the post of warden, wherein it has been provided that the

existing hostel wardens who have completed 3 years of period on the said post shall not be given the charge of the said post for next 3 years.

3. The facts are noted from W.A.No.917/2018 (Smt.Pratibha Shukla Vs. Union of India and others). The appellant was working as a

teacher/Adhyapak. She was assigned the charge of warden on the recommendation of the Collector under the scheme known as ""Kastoorba Gandhi

Balika Vidya Yojna"". The said scheme was introduced by the State Government as it was found that in various places only primary schools are

situated and there is no facility of middle school as well as High School. The parents are unable to provide higher education in middle school or high

school to the girls. Therefore, the Government framed the aforesaid scheme for residential school for girls. These schools are run by the Rajya

Shiksha Kendra. According to Clause-2 of the scheme, the same is applicable in 47 districts in the State of Madhya Pradesh except in districts

Raisen, Datia, Narsinghpur and Shahdol. In 207 blocks, which are backward in regard to the education, the scheme "Kasturba Gandhi Balika

Vidyalaya" was implemented and the procedure was prescribed for establishment of Kasturba Gandhi Balika Vidyalaya by method of selection.

Rajya Shiksha Kendra issued directions for running of Kasturba Gandhi Balika Vidyalaya and also issued instructions for appointment of warden and

Shiksha Sah Sahayak Warden(women). The appellant was holding substantive post of Adhyapak and she was given only additional charge

of the post of warden and now after completion of the term, an advertisement has been issued for fresh selection of the post of warden. Being

aggrieved with Condition No.8 of the advertisement which has prescribed that the existing hostel wardens who have completed the period of 3

years would not be given the charge of the post of warden for next 3 years, the petitions were filed which have been dismissed by the impugned

orders.

4. Being aggrieved by the aforesaid order, the present intra court appeal is filed contending that the aforesaid condition debarring the appellant from

holding the additional charge of the post of Warden is violative of Articles 14 and 16 of the Constitution of India.

5. Learned counsel for the appellants relied on an order dated 03-11-2017 passed in W.A.No.702/2017 contending that in the case of Jan

Shikshak or Block Academic Coordinator, the similar condition was considered and the court held that the existing Jan Shikshak or Block Academic

Coordinator(BAC) cannot be debarred from appearing in the selection to the post of Jan Shikshak.

6. Per contra, learned counsel for the State supported the order passed by the learned Single Judge contending that the appellants were given additional

charge and therefore, they have no right to claim the post of warden.

7. The pivotal question before this court is whether the respondents are justified

in inserting the condition that the existing wardens who have earlier worked on the post of warden shall not be given the charge of the said post for next 3 years. Admittedly the appellant is holding the substantive post of Adhyapak and was given additional charge of the post of Warden. Another issue is that whether the appellants have any enforceable right on the post of warden on which she is working on officiating basis.

8. Learned counsel for the appellants relied on an order dated 03-11-2017 passed by a Coordinate Bench of this court in W.A.No.702/2017 and submitted that the similar condition was incorporated debarring the Jan Shikshak or Block Academic Coordinator for appearing in the selection to the post of Jan Shikshak, this court held that such condition cannot be incorporated. The order passed in the said case would not render any assistance to the arguments of the counsel for the appellants. In the said case the appointment to the post of Jan Shikshak was governed by the statutory provisions of M.P. Jan Shiksha Adhiniyam, 2002 (hereinafter referred to as Adhiniyam, 2002) and the rules framed therein called Jan Shiksha Niyam, 2003 (in short Rules, 2003). In the said case the learned Single Judge has taken note of Rule 13 of Rules 2003 and held that Jan Shikshak or Block Academic Coordinator cannot be debarred from the selection by way of executive instructions. In the said case regular appointment on the post of Jan Shikshak in terms of Jan Shikshak Rules, 2003 was being made and therefore, the condition debarring existing Jan Shikshak or Block Academic Coordinator who had worked earlier was held to be illegal and unjustified in view of the statutory provisions. In the present case, there is no statutory rules regarding the appointment on the post of Warden. The substantive post of the appellant is Adhyapak and additional charge of the post of warden was given to him and therefore, the appellant has no enforceable right on the post of warden on which he is working on officiating basis. In the case of State of Haryana Vs. S.M.Sharma and others, AIR 1993 SC 2273, the Apex Court held as under :

We are constrained to say that the High Court extended its extra-ordinary jurisdiction under Article 226 of the Constitution of India to a frivolity. No one has a right to ask for or stick to a current duty charge. The impugned order did not cause any financial loss or prejudice of any kind to Sharma. He had no cause of action whatsoever to invoke the writ jurisdiction

of the High Court. It was a patent misuse of the process of the Court." The object behind the aforesaid condition is luminescent and lucidly clear that a person should not be allowed to continue on additional charge for a long time otherwise he develops vested interest on the said post.

9. In view of the fact that the substantive post of the appellant is Adhyapak and he was given only additional charge of the post of Warden on officiating basis, he cannot claim any right and therefore, we do not find any illegality in the condition impugned.

10. In view of the above, there is no error in the order passed by the learned Single Judge dismissing the writ petition warranting any interference in the present intra court appeals.

11. Ex-consequenti both the appeals stand dismissed.