
(1987) 12 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 163 of 1987

Rajendra Singh Thakur

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 17-12-1987

Acts Referred:

Citation : (1988) MPLJ 229

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

Bench : Division Bench

Advocate : Arum Mishra, for the Appellant; J.S.L. Sinha, Government Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

Dr. T.N. Singh, J.

We have heard this matter extensively but we would say at the very outset itself that the main contentions pressed by the State Counsel, Shri J.S.L. Sinha, to support State's action in these cases, heard analogously, has not appealed to us in the least.

We do not read anything in the common order (Annexure P-5) to take the view that the action of the State can be deemed as an "Act of State" or that such an action could be taken in the derogation of the statutory provisions occupying the field. Shri Sinha has laid strong emphasis on the right of the State to pre-empt any action that could be taken by the statutory "Screening Committee" constituted under the relevant provisions of the relevant Rules but also principles of natural justice. Indeed, petitioners' unholy dismissal from service cannot even stand the constitutional cavil of Articles 14, 16 and 21 because of arbitrary selection (for retaining in service) only few preferred members of the teaching staff, by excluding the petitioners, and doing so without disclosing reasons for such selection. We need refer only to the relevant holdings, in this connection, of the Apex Court, in such cases as, Managing Director, Uttar Pradesh Warehousing

Corporation and Another Vs. Vijay Narayan Vajpayee, , E.P. Royappa Vs. State of Tamil Nadu and Another, , D.S. Nakara and Others Vs. Union of India (UOI), and Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, .

We have taken consistently the view in these matters, approving Manoj Shrivastava (1986 MPLJ 404 : 1986 JLJ 176), that when a person is duly qualified to hold a post and is already serving in the College on a post, on the date when the college is taken over by the State, then he has a statutory right for consideration for absorption by the Screening Committee in accordance with the statutory provisions of the relevant Rules aforesaid. That being the position, it is difficult to deny the petitioners the benefit of our consistent holding in several cases.

Accordingly, we have no hesitation to hold that the several petitioners are entitled to be taken back in service so that their cases may be placed for consideration of the Screening Committee and to be dealt with by Screening Committee in accordance with the relevant Rules. We direct accordingly that the several petitioners be taken back in service and they be allowed to continue in service till such time until the Screening Committee takes adverse decision, against them, so as not to absorb them. Until that decision is taken by the Screening Committee their services still not be terminated and they shall be allowed to serve in the respective posts which they had been holding prior to being asked to go home as a result of the order Annexure P-5.

In the result, all the four petitions succeed to the extent herein above indicated. We do not propose to saddle costs on the petitioners against respondent No. 2, whom Shri S.K. Dubey, Advocate, represents, though he submits the said respondent has been wrongly impleaded because the petitioners are out of employment. Indeed, we have not made any order as to costs even against the State by which the petitioners could be benefited.

This order shall also govern Misc. Petitions Nos. 165, 170 and 171 of 1987. Outstanding amount of security, if any, shall be refunded to the petitioners in each case.