

(2014) 03 MP CK 0054

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 1160 of 2013

Secretary State of M.P. and Others

APPELLANT

Vs

Smt. Premlata Gupta

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Citation : (2014) 03 MP CK 0054

Hon'ble Judges : Shantanu Kemkar, J;Mool Chand Garg, J

Bench : Division Bench

**Advocate : Mini Ravindran, Deputy Governments/State, for the Appellant;
Prasanna Bhatnagar, Learned counsel, for the Respondent**

Final Decision : Allowed

Judgement

1. By filing this intra-court appeal, the appellants/State have challenged the order dated 23.08.2013 passed by the learned single Judge of this Court in Writ Petition No. 9033/2011. As the appeal is barred by 17 days, IA No. 6835/2013 an application seeking condonation of delay has been filed. On due consideration of the application, we are satisfied that the delay in filing the appeal has been satisfactorily explained. Accordingly, we condone the delay in filing the appeal.

2. With consent heard finally.

3. According to the learned Deputy Government Advocate for the appellants/State the learned Single Judge has allowed the writ petition placing reliance on a judgment passed by this Court in the case of Yugul Kishore Sharma Vs. State of M.P. and Others, whereas the Division Bench of this Court at Jabalpur in Writ Appeal No. 682/2013 has set-aside the order passed in the case of Yugul Kishore (Supra) and restored the writ petition to the file to decide it afresh by the learned Single Judge on its own merits. Following is the order passed by the Division Bench in the case of Yugal Kishore (Supra):-

This appeal takes exception to the decision of the learned Single Judge dated 02.01.2013 passed in writ Petition No. 4030/2009.

Respondent had filed writ petition praying for quashing of the order bearing No. 483 dated 06.03.2009 retiring the respondent from service with effect from 30.06.2011 on completion of 60 years of age. Further relief of mandamus is sought against the appellant to permit the respondent to continue till completion of 62 years of age with all consequential benefits.

Learned Single Judge, essentially relying on the observation, made in the decision of the M.P. Administrative Tribunal, Jabalpur, in transfer application No. 747/1988 decided on 14.11.1991 held that Instructors are treated as teachers. Perhaps while recording that finding, learned Single Judge in the back of his mind had the decision of this Court in the case of Mahendra Pal Singh Vs. State of M. P. and others, . However, the learned Single Judge ought to have also examined the other factors specified by the amended provision of the Fundamental Rule 56 as incorporated vide M.P. Shaskiya Sevak (Ardhavarshiki-ayu) Dwitiya Sanshodhan Adhiniyam, 1998 (No. 27 of 1998) (hereinafter referred to as the "Adhiniyam" for short). The same postulates that Teacher must be a "Government Servant" by whatever designation called and appointed for the purpose of "teaching in the Government Educational Institute". Learned Single Judge no doubt noticed that the decision in the case of Chandra Kakker (Supra) does not specifically deal with this additional requirements to fulfill the criteria for application of the Adhiniyam. Nevertheless, the learned Single Judge has not pointy discussed in the judgment under appeal as to whether the appointment of the respondent was in fact as a "Government Servant" and more so for the purpose of "teaching in Government Educational Institution". In absence of finding on these factual aspects, it will not be appropriate to conclude that the Adhiniyam has application to the case of the respondent herein.

That being the quintessence of the provision as amended by the above referred Adhiniyam, the only appropriate recourse is to relegate the parties before the learned Single Judge for reconsideration of these aspects. Consequent to the finding to be recorded on these factual matrix, the learned Single Judge may proceed to answer the relief claimed by the respondent in the main writ petition.

We accordingly set aside the impugned judgment and restore the writ petition to the file to decide afresh by the learned Single Judge on its own merits.

Appeal disposed of accordingly.

4. Having regard to the aforesaid the learned Deputy Government for the appellants/State submits that this writ appeal be also allowed by setting aside the order impugned in this writ appeal which is essentially passed on the basis of the order passed in the case of Yugul Kishore Sharma (Supra) by the learned Single Judge which stood set-aside.

5. Having considered the submissions made by the learned counsel for the parties and having gone through the aforesaid order passed by the Division Bench at Jabalpur, we are of the view that this writ appeal also deserves to be allowed in terms of the order dated 27.11.2013 passed in writ appeal No.

682/2013. We accordingly set-aside the impugned order passed by the learned Single Judge of this Court and restore the writ petition to its original number for being decided by the learned single Judge on its own merits. The appellants/ State may file a reply to the rejoinder if in the rejoinder the petitioner has stated any new facts or grounds. With the aforesaid, the writ appeal stands allowed.