

(2012) 09 MP CK 0079

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4090 of 2001

Smt. Snehlata Jain and Another

APPELLANT

Vs

Cantonment Board, Sagar and Others

RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Cantonments Act, 1924 — Section 280

Citation : (2012) 135 FLR 894

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Rajneesh Gupta, for the Appellant; Indira Nair, K. Rohan and J.P. Pandey, for the Respondent

Judgement

K.K. Trivedi, J.—The grievance of the petitioners in this writ petition is that they were appointed as Teachers in the Middle School, promoted on the post of Upper Division Teacher in the High School but the order of promotion was cancelled and the petitioners Were reverted without any rhyme or reason. It is contended that there was a separate writ petition filed by one Smt. Babita Otwani challenging the promotion of one Shri R.S. Dubey and since there was an appeal pending before the competent authority, a submission was made in the said writ petition that the appeal may be decided in accordance to law. Consequently, while deciding the appeal of the said person, certain facts were noted and after six years of promotion of the petitioners, an order was issued reverting them to the post on which initially they were appointed, therefore, they are required to approach this Court by way of filing this writ petition. Simply a show-cause notice was given and only on the basis of such a show-cause notice, the order impugned was not required to be issued. It is contended that the action taken by the respondents in this respect was per se illegal and, therefore, the order impugned is bad in law and is liable to be quashed. The petitioners are entitled to the relief of promotion as was granted to them. Refuting the allegations made by the petitioners, returns have been filed. It is contended that there is only one cadre post of Lower Division Teacher and in the said cadre, appointments are

made in the Primary School as well as the Middle School. The services in the Cantonment Board are governed by the rules known as The Cantonment Fund Servants Rules, 1937 (herein after referred to "Rules"). It is contended that said rules are made in exercise of powers u/s 280 of the Cantonment Act, 1924 and, thus, the rules are having the force of law. It is further contended that from the post of Lower Division Teacher, promotion is to be made on the post of Upper Division Teacher. The promotion is to be made strictly in order of seniority and since there were several senior teachers than the petitioners, who were not considered and were not granted promotion, the grievance was raised before the competent authority of the Cantonment Board and after taking note of such fact, specially when the matter was remitted back by this Court to consider the appeal of one of the aggrieved person, all such facts were examined and it was found that as many as 24 persons senior to the petitioners were left and, therefore, such a promotion of the petitioners was not to be upheld. It is contended that the petitioners were granted an opportunity of hearing and thereafter the order impugned was passed. The respondents No. 4 and 5 have also filed the identical return and have contended that since they were senior to the petitioners but were not considered and granted promotion, valuable right available to the said persons was denied. They represented before the competent authority and since their representation was considered, appropriate orders were passed, it cannot be said that the order impugned is bad in law. It is contended that the respondents No. 4 and 5 were appointed much before the initial appointment of the petitioners and, therefore, their valuable right of consideration for promotion should not have been denied in such illegal manner. It is, thus, contended that the order impugned is rightly passed and no wrong has been committed by the official respondents.

2. Heard learned Counsel for the parties at length, examined the record minutely and perused the rules.

3. It is not in dispute that the services of the petitioners are governed by the Rules. It is also not in dispute that the petitioners were also appointed as Lower Division Teacher but were posted in the Middle School. The entire claim made by the petitioners is that they were appointed directly as Middle School Teacher and, thus, entitled to be promoted on the post of Upper Division Teacher in the High School. The creation of the post in the services of the Board as per the Rules aforesaid is that each and every Cantonment Board is required to determine what servants are required for the proper and efficient execution of its duties and the Board is competent to fix the salaries to be paid to such servants out of the Cantonment fund. As far as recruitment is concerned, it is categorically provided that all appointments to the posts under a Board shall be either by direct recruitment or by promotion or as provided under Rule 5-C of the Rules. Rule 5-C of the Rules relates to transfer of service of an employee from one Board to another Board. Schedule appended to the Rules categorically prescribes the qualification of post under different Cantonment Boards. Annexure-C is the schedule annexed with the Rules. Under the heading Cantonment Board, Sagar,

the only post of Lower Division Teacher is mentioned at Column No. 1, which is required to be filled in by direct recruitment. The post of Upper Division Teacher is mentioned at S. No. 11 in Column No. 2, which post is to be filled in by promotion only. The feeder posts for promotion on the said post of Upper Division Teacher are "Lower Division Teacher of Middle School/Primary School/Physical Training Instructor, holding requisite qualification". A bare reading of this Rule as also the annexure makes it clear that there is only one classified post of Lower Division Teacher in the Primary School as well as in the Middle School. The qualifications prescribed for appointment on the post of Lower Division Teacher are separately given. The said post is to be filled in only by direct recruitment. A Lower Division Teacher appointed, is to be posted either in the Primary School or in the Middle School.

4. From this, it is clear that since there was only one post of Lower Division Teacher in the entire setup, the said post is required to be filled in by direct recruitment. Even if a person is appointed in the Middle School as Lower Division Teacher, only a common gradation list is required to be made. This particular aspect was carefully looked into because now after many years the setup is changed, the pattern is changed and classification of posts is also changed in the other services but this has not been changed in the Cantonment Board services. Resultantly, even if the petitioners were directly recruited as Lower Division Teacher and were posted in the Middle School, they were to be put in same gradation list in which the teachers working in the Primary Schools were enlisted. There was no requirement of preparing separate gradation list for the Lower Division Teachers appointed in the Middle School. As has been referred herein above, a Lower Division Teacher working either in the Primary School or in the Middle School was to be promoted on the post of Upper Division Teacher. This action was to be done strictly in order of seniority. It is right that there were senior Lower Division Teachers available but were not considered when the petitioners were promoted and, therefore, cancellation of their order of promotion only on this count, after giving them a show-cause notice cannot be said to be bad in law. The relief in this respect cannot be granted to the petitioners.

5. Now during the pendency of this writ petition, several persons who were employed as Lower Division Teacher, have attained the age of superannuation and have retired. It has been informed by learned Counsel for the petitioners that as against 11 posts of Upper Division Teacher, only one teacher is working and 10 posts are lying vacant. Looking to the aforesaid, it would be appropriate to direct the respondents to consider the cases of the persons like petitioners for promotion on the vacant post of Upper Division Teacher and to issue the orders of promotion expeditiously. However, in any case, the order of reversion of the petitioners or cancellation of their promotions as Upper Division Teacher, as has been ordered, is not to be interfered.

6. Consequently, to the extent the petitioners challenge the order of cancellation

of their promotion, the writ petition fails and is hereby dismissed. However, respondents No. 1 to 3 are directed to calculate the vacancies on the post of Upper Division Teacher and taking into account the availability of the said posts, to consider the cases of persons like petitioners expeditiously and to issue the orders of promotion in their respect in case they are found fit for such promotion. This exercise be completed within a period of three months from the date of receipt of certified copy of the order passed today. With the aforesaid, the writ petition is accordingly disposed of. There shall be no order as to cost.