
(2018) 06 MP CK 0046

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 488, 498 Of 2018

State Of Madhya Pradesh & Others

APPELLANT

Vs

Sitaram Vishwakarma

RESPONDENT

Date of Decision : 18-06-2018

Acts Referred:

Citation : (2018) 06 MP CK 0046

Hon'ble Judges : PANKAJ KUMAR JAISWAL, J;SUNIL KUMAR AWASTHI, J

Bench : Division Bench

Advocate : Piyush Shrivastava, L.C.Patne

Final Decision : Dismissed

Judgement

This order shall also govern disposal of WA No.498/18 as both these appeals arise out of a common impugned order. Heard on IA No.1727/18, an

application for condonation of delay in W.A.No.488/18 and IA No.1752/18, an application for condonation of delay in WA No.498/18. The writ

appeals are barred by 46 days and 48 days respectively.

For the reasons stated in the applications, we are of the opinion that sufficient cause is made out to condone the delay, therefore, IA No.1727/18 and

IA No.1752/18 are allowed the delay in filing the writ appeals is hereby condoned.

Heard on the question of admission.

By impugned order dated 27.11.2017 learned writ Court considering the fact that the controversy involved in the writ petition has been concluded by

the judgment delivered in W.P.No.13560/13 dated 08.09.2016 and a similar view has been taken by the Division Bench in W.A.No.112/17 (State of

M.P and another vs. Balkrishna Burde) decided on 22.4.17 allowed the writ petition by passing the following order:-

WP Nos.8690/2013 & 2892/2014

INDORE dt. 27-11-2017

Parties through their counsel.

In Writ Petition No. 8690/2013 the petitioner before this court was appointed as Trained Teacher in the regular pay scale of Rs. 195-330 by an order

dated 07- 10-1981 by the Deputy Director of Panchayat and Social Services, Indore Division Indore. A new nominature was given to the Panchayat

and Social Services known as Department of Social Welfare and the petitioners' services were placed at the disposal of a Directorate of Panchayat

and Social Welfare. The petitioner names find in the gradation list dated 01-04-2003 for the post of Instructor/Professional Instructor/Anudeshak. The

persons placed at Sr. Nos. 1 to 6 in the aforesaid gradation list were permitted to continue upto the age of 62 years. However, the respondents passed

an order on 12-02-2013 retiring the petitioner on completion of age of sixty years only and in those circumstances, the present writ petition was filed

and the interim order passed by this court on 15-07-2013 and the petitioner has completed sixty two years of service during pendency of the present

writ petition. Meaning thereby, she has worked for a period of sixty two years on account of interim order passed by this court.

Mr Patne has informed this court that the controversy involved in the present case has been concluded by the judgment delivered by this court in Writ

Petition No.13560/2013 dated 08-09-2016. Paragraphs-02 to 13 of the aforesaid judgment reads as under :-

2- The petitioner before this Court has filed this present petition being aggrieved by order dated 04/07/2013 / 29/06/2013 by which the petitioner has

been informed that her services will come to an end on completion of 60 years of age w.e.f. 31/12/2013, meaning thereby, the petitioner is being

retired at the age of 60 years.

3- The contention of learned counsel for the petitioner is that the petitioner was appointed on the post of Instructor in telephone operation in the

establishment of M.P. Welfare Association for the Blind which is a Institution receiving 100% grant in aid. The factum of receiving 100% grant in aid

has not been disputed by learned counsel for the respondent.

4- Shri Patne, learned counsel for the petitioner has argued before this Court that the State Government has issued a circular dated 03/09/1990

(Annex.-P/7) and the same provides for retirement of employees in the Institution like the present Institution where the petitioner is posted is at the age of 60 years and in respect of Teachers at the age of 62 years. Executive instructions were issued on 12/04/2013 by the Department of Social

Welfare and on 04/07/2013 the Joint Director, Social Welfare Department, Indore has held that Teachers will retire at the age of 62 years. Thus, in

short the contention of Shri Patne is that the petitioner who is a Teacher is also entitled to continue up to the age of 62 years.

5- Learned counsel for the petitioner has drawn the attention of this Court towards paragraph No.5(i) of the petition and his contention is that

identically placed persons namely Mr. Rajaram Bhorse, Mr. John Pare, Ms. Iswari Prasad Patidar, Ms. Jyoti Soni, Ms. Shalini Karandikar and Ms.

Kusum Dube were permitted to continue up to the age of 62 years and in case of the present petitioner, the respondents have discriminated the

petitioner for the reasons best known to them.

6- Shri Patne has vehemently argued before this Court that the petitioner is a Teacher and she is entitled to continue up to the age of 62 years as the

respondents have permitted half of a dozen persons to continue up to the age of 62 years and therefore, the respondents cannot be permitted to

discriminate between the identically placed persons.

7- The another important aspect of the case is that the petitioner on account of the interim order granted on 07/05/2014 has continued up to the age of

62 years and after completion of 62 years of age has attained the age of superannuation.

8- On the other hand, learned counsel for the respondent / State has argued before this Court that the petitioner cannot be treated as a Teacher as she

was appointed on the post of Instructor and therefore, the petitioner is entitled to continue up to the age of 60 years only. However, respondents have

not denied the fact that more than six identically placed persons were permitted to continue up to the age of 62 years.

9- In the present case, it is an admitted fact that the 3 WP Nos. 8690/2013 & 2892/2014 respondents have permitted as many as six persons to

continue up to the age of 62 years. Even the present petitioner has also continued up to the age of 62 years on account of the interim order granted by

this Court. All the identically placed persons including petitioner were appointed

to teach in a Institution which is meant for the welfare of the blind

persons and therefore, the present petitioner is also entitled to continue up to the age of 62 years. Though it is a vocational training post, however, the

fact remains that the petitioner has imparted teaching to the blind children.

10- Resultantly, impugned order dated 04/07/2013 / 29/06/2013 are hereby quashed. The petitioner has already attained the age of superannuation and

therefore, the petitioner shall be entitled for all consequential benefits by treating her in service up to the age of 62 years.

11- It has been brought to the notice of this Court that the respondents have paid salary to the petitioner after the interim order was passed from

07/05/2014 to 31/12/2015 and therefore, for the period prior to 07/04/2015, the respondent/State shall release the salary within a period of sixty days

from today and the Institution in turn will pay the salary to the petitioner thereafter. The petitioner shall also be entitled for all benefits by treating her

in service up to the age of 62 years.

12- In Writ Petition No.7778/2014, the petitioner is still working and in light of the aforesaid order, he shall be permitted to continue up to the age of 62

years.

13- With the aforesaid, writ petitions No.13560/2013 and 7778/2014 stand allowed and in light of the aforesaid order, Contempt Case Nos.804/2014

and 823/2015 stands disposed of.

The aforesaid judgment has not been disputed by the other side. Not only this a similar view has been taken by the Division Bench of this court in Writ

Appeal No. 112/2017 (State of M.P. and another Vs. Balkrishna Burde) decided on 22-04-2017 and Writ Petition No. 11699/2012 decided on 14-10-

2016.

In light of the aforesaid, the present writ petition also stands allowed. As the petitioner has already completed sixty two years of service and she has

attained the age of superannuation the petitioner shall be entitled for all consequential benefits by treating her in service upto the age of 62 years. The

respondents are directed to extent all the terminal dues and 4 WP Nos. 8690/2013 & 2892/2014 benefits to the petitioner, within a period of three

months, from the date of receipt of certified copy of this order. The impugned orders dated 12-02-2013 and 10-07-2013 in Writ Petition No. 8690/2013

are hereby quashed. In connected Writ Petition No. 2892/2014 impugned order dated 13-01-2014 is hereby quashed.

No order as to costs.

In the meanwhile, the matter which has been referred to the Full Bench has been decided by the Principal Bench on 25.01.2018 in W.A.No.613/16

(State of M.P & others vs. Yugal Kishore Sharma). Paras-31 to 43 of the said order are relevant which read as under:

31. However, the view taken by the Division in Mahendra Pal Singh (supra) that the training of students in National Cadet Corps for

developing officer-like quality is not education under the Act is not the correct W.A. No. 613/2016 interpretation. The Bench rightly found that the

object of the National Cadet Corps is to develop leadership, character, comradeship and to create a force of disciplined and trained manpower and to

develop officer-like quality in students enrolled in different educational institutions enabling them to commission in the Armed Forces but the conclusion

drawn "is not the advancement of education" does not merit acceptance. The factors noticed by the learned Division Bench will make the

Instructors in the National Cadet Corps as Teacher, as what he is doing as Instructor is what a teacher is expected to do in a regular class-room

teaching. Therefore, the finding that the object of the National Cadet Corps is not advancement of education is not tenable.

32. In absence of any meaning to the word "Education" or "Educational Institution" in the Statute, one may have to revert to the dictionary

meaning of such words. In Oxford Advanced Learner's Dictionary (New 8th Edition 2010), the meaning of words "Education", "Institution"

and "Institute" is given as under:-

"education" 1. a process of teaching, training and learning, especially in schools or colleges, to improve knowledge and develop skills:

primary/elementary education " secondary education " further/higher/post-secondary education " students in full-time education " adult

education classes " a college/university education " the state education system.....2. a particular kind of teaching or training; health

education.....3. (also Education : the institutions or people involved in teaching and training: the Education Department " the Department of Health,

Education and Welfare4. the subject of study that deals with how to teach: a

College of Education" a Bachelor of Education degree...?

institution" 1. a large important organization that has a particular purpose, for example, a university or bank; an educational/financial, etc.

institution..... 2. A building where people with special needs are taken care of, for example because they are old or mentally ill; a mental

institution.....?

"institute" an organization that has a particular purpose, especially one that is connected with education or a particular profession; the building

used by this organization; a research institute" the Institute of Chartered Accountants" institutes of higher education. ?

33. The meaning of the words "education", "institution" and "institute" as find place in Collins Cobuild English Dictionary New Edition

(Reprinted 1997), read as under:-

"education. 1. Education involves teaching people various subjects, usually at a school or college, or being taught.

2. Education of a particular kind involves teaching the public about a particular issue..... better health education.

institute 1. An institute is an organization set up to do a particular type of work, especially research or teaching. You can also use institute to refer to

the building the organization occupies....the National Cancer Institute.... an elite research institute devoted to computer software.....

institution. 1. An institution is a large important organization such as a university, church, or bank. Class size varies from one type of institution to another...

2. An institution is a building where certain people are looked after, for example people who are mentally ill or children who have no parents.?

34. In Black's Law Dictionary (Tenth Edition) the term "educational institution" is defined as under:-

"educational institution. (1842) 1. A school, seminary, college, university, or other educational facility, though not necessarily a chartered institution.

2. As used in a zoning ordinance, all buildings and grounds necessary to accomplish the full scope of educational instruction, including those things

essential to mental, moral, and physical development.?

35. In P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edition Reprint 2007) the words "education" and "institution" have been

elaborated as under:-

Education is the bringing up; the process of developing and training the powers an word comprehends not merely the instruction received at school, or college but the whole course of training moral, intellectual and physical; is not limited to the ordinary instruction of the child in the pursuits of literature. It also comprehends a proper attention to the moral and religious sentiments of the child. And it is sometimes used as synonymous with 'learning'.

Institution. The word 'institution', both in legal and colloquial use, admits of application to physical things. One of its meanings, as defined in Webster's Dictionary is 'an establishment, especially of public character, or affecting a community.' The term 'institution' is sometimes used as descriptive of an establishment or place where the business or operations of a society or association is carried on. At other times it is used to designate the organised body.'

The word 'institution' properly means an organisation organised or established for some specific purpose, though it is sometimes used in statutes and in common parlance in the sense of the building or establishment in which the business of such a society is carried on.

36. Therefore, in view of the dictionary meaning of the word 'educational institution', and when the object of National Cadet Corps is to develop leadership, character, comradeship and to create a force of disciplined and trained manpower and to develop officer-like quality in students, therefore, we find that the training of the students by the Instructors in the NCC and in weaving would be a 'Teacher' for the purpose of the Act.

37. The judgment in Smt. Maya Verma's case (supra) was dealing with the expression 'Teacher' as it appears in M.P. Jawaharlal Nehru Krishi Vishwavidyalaya Act, 1963 (in short 'the 1963 Act'). The teacher as defined in the said Act does not necessarily exclude the teachers as defined in the Act as the purport and object of the two Statutes is different. The statute under consideration in Smt. Maya Verma's case (supra) was a Statute in respect of recruitment of teachers and their service conditions whereas the Act specifically deals with only one aspect i.e. the age of superannuation, therefore, the 1963 Act is a general Statute and the Act is a special Statute which will have preference over the provisions of the

1963 Act. Thus, the judgment in Smt. Maya Verma (supra) is not helpful to determine the age of superannuation of the teachers.

38. The Single Bench decision in S.A.M. Ansari's case (supra) is a case of Weaving Instructor employed in a jail. We find that the said judgment

is not applicable in the facts of the present case because the jail cannot be treated to be a Technical Educational Institution, therefore, the benefit of

extension of age cannot be granted to the Weaving Instructor employed in the jail.

39. Similarly, in a Division Bench judgment in Ashok Kumar Gupta's case (supra) the finding recorded is that he was teaching in a departmental

training institute. The departmental training institute is also an educational institute and therefore, such person appointed in a training institute of a

technical nature would be entitled to benefit of extension of age of superannuation. Therefore, even the judgment in Ashok Kumar Gupta's case

(supra) is not a correctly decided principle of law.

40. In view of the above, we do not approve the judgments passed by Single Bench of this Court in S.A.M. Ansari (supra) and Smt. Maya Verma

(supra) and Division Bench decision in Ashok Kumar Gupta (supra) and a part of Division Bench judgment in Mahendra Pal Singh (supra).

However, we approve the meaning assigned to words "teacher", "training" and "education" in Maina Swamy's case (supra). We

also approve the Single Bench judgments of this Court in W.P. No.2289/2003 (Annapurna Prasad Shukla vs. State of M.P. and others) passed on

07.11.2003 and Chokhelal Sahu (supra).

41. In view of the above, we hold that classification in the recruitment Rules is not determinative of the fact: whether a Government servant is a

Teacher or not "as the meaning assigned to Teacher in the State Act has to be preferred over the classification of Teacher in the recruitment

Rules. The Amending Act has given wide meaning to the expression "Teacher", which includes the "Teachers irrespective of the designation

and appointed in a Government Technical and Medical Institutions". Therefore, the "Instructors" engaged for imparting training to women in the

Tailoring Centre work under the Department of Women & Child Development are entitled to extension in age up to the age of 62 years being

teachers as mentioned in the amending Act.

42. In respect of the second question, it is held that the Training Centres and the Vocational Training Centres of the State Government are Educational

Institutions for extending the benefit of age of superannuation to a person imparting training as the Instructor is a Teacher for the purpose of the Act,

which has been given very wide definition.

43. Now, the question arises is that what relief should be granted to the teachers, who stand superannuated on attaining the age of superannuation of

60 years prior to this Judgment. The provisions of the Act are to extend the age of superannuation of the teachers so that services of experienced

workforce of the teachers are utilized for constructive work of imparting education for another period of two years. The provision is not meant for a

personal benefit of the teachers but for larger public good that the experienced teachers should impart education for another period of two years. In

view of the said fact, we hold that the teachers, who have attained the age of 62 years prior to the order of this Court passed today, shall not be

entitled to any consequential benefit of pay and allowances but the teachers, who have not attained the age of 62 years, shall be called upon to

perform their duties up-to the age of 62 years.

In view of the aforesaid, we are of the view that learned writ Court has not committed any legal error in allowing the writ petition of the respondent by

holding that he shall be entitled for all consequential benefits by treating her in service up to the age of 62 years.

The writ appeals stand dismissed