

(2011) 12 MP CK 0036
In the Madhya Pradesh High Court
Case No : W.A. No. 72 of 2011

State of M.P. and others

APPELLANT

Vs

Smt. Chitra Rai (Malviya)

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Citation : (2011) 12 MP CK 0036

Hon'ble Judges : Vimla Jain, J;K.K. Lahoti, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is directed against an order dated 27.10.2009 passed by learned Single Judge in W.P.No.553/2006(S), by which order dated 6.5.2005, so far as it relates to respondent and the impugned order dated 15.12.2005 were quashed and it was directed that the respondent/authorities shall place the petitioner in regular cadre and grant her all consequential benefits.

2. The aforesaid order has been assailed by the appellants on following grounds :

1. That no due procedure was followed at the time of appointment by the private college, in absence of which she was not entitled to be absorbed, though the aforesaid college was taken over by the Government.

2. That she was not possessing requisite qualification to be appointed as Lecturer/ Assistant Professor, so she was not entitled to be absorbed in the Government job.

3. The facts of the case are that respondent was initially appointed as Lecturer in a private college namely Thakur Savdekar College at Khategaon on 1.10.1985. This college was taken over by the State Government by order dated 11.9.1987 with a condition that the staff would be absorbed in the Government college, subject to screening in accordance with the provisions of the M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1967. Thereafter an order was

passed on 30.5.1988 by the Principal of the college, by which the services of respondent were discontinued on the ground that it was no longer required. This order dated 30.5.1988 was challenged by the respondent along with some other co-employees, which were subject matter of State of M.P. & others Smt. Chitra Rai (Malviya) T.A.No.89/88 and T.A.No.90/88 before the M.P. State Administrative Tribunal, Bench at Bhopal. A Full Bench of the Tribunal decided the matter on 20.1.1989 and passed an order, the relevant portion of the order reads thus :

(10) It was not disputed before us that the petitioners fulfill the requisite qualification, educational or otherwise, as required under the Schedule.

(17) Thus, the stand taken by the respondents that the petitioners' services were liable to be summarily discontinued on the ground that they were not selected by a properly constituted Selection Committee cannot prima facie be accepted.

(18) As already observed earlier, as per Schedule IIIA of the Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1967, as amended from time to time, the Screening Committee alone was competent to consider the cases of the petitioners for absorption of lecturers keeping in view their education qualifications and competency in accordance with the conditions laid down in the Schedule. The Principal, or for a matter of that the State Government, was not competent to unilaterally discontinue the services of the petitioners on the ground that they were appointed on daily wages or they were improperly selected. The Screening committee was the only body as per the rules which could examine the claims of the petitioners for absorption after the college was taken over by the Government. The Principal or the Government could not by-pass this requirement of the rules.

(19) In view of the discussion above, we hold that orders removing the petitioners from services are incompetent and invalid. The impugned order removing the petitioners from service as Lecturers are therefore quashed. They will continue and deem to have continued as Lecturers of the College on the terms and conditions on which they were allowed to continue at the time of taking over of the college. The respondents are directed to refer the cases of the petitioners for consideration to the Screening Committee and pass appropriate orders on the basis of the recommendations of the said Committee. The entire exercise should be completed expeditiously and not later than the four months from the date of this order. Respondents shall pay the costs of the petition. Advocate's fee Rs. 250/- in each petition.

4. This order of the Full Bench attained finality and it was not assailed before any other forum. The Full Bench of the Tribunal by the aforesaid order found that the respondent and others were selected by a properly constituted selection committee and Principal of the College was having no power and authority to discontinue the services of respondent. After taking note of the fact that the appellants had not disputed the fact that respondent was fulfilling the requisite

educational and other qualification, directed the appellants herein to refer the case for absorption of respondent for being considered by the screening committee, constituted in accordance with the provisions of Schedule III-A of the M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1967. It appears that thereafter the matter of respondent was scrutinized and by order dated 6.10.1989 the services of the respondent were again dispensed with. This order dated 6.10.1989 was subject matter of O.A.No.2695/1989 before the M.P. State Administrative Tribunal Bench at Bhopal. The matter was transmitted to the High Court of Madhya Pradesh, after abolition of the Tribunal, the case was registered as W.P.No.5902/2003 and by order dated 14.7.2004 the case was decided finally. For ready reference the relevant portion of the order is reproduced, as the aforesaid is relevant for the decision of this case :

The learned senior counsel for the petitioners submits that this petition can be disposed of by giving similar direction to the respondent No. 2/ Secretary, Higher Education, Bhopal, to consider the case of the petitioners in the light of the orders passed by the Tribunal in O.A. No. 431/95 (Smt. Anita Gangrade Vs. State of Madhya Pradesh and others) decided on 6.11.1998, T.A. NO. 1921/88 (Ram Kishore Choubey Vs. State of Madhya Pradesh) decided on 5.8.1992 and O.A. No. 1488/98 (Ashok Kumar Yadav Vs. State of Madhya Pradesh and others) decided on 9.9.1999.

On going through the record, it is gathered that on 23.10.89 the Tribunal passed stay order in favour of the petitioners and that order is still continuing. In this view of the matter let the respondent no. 2 may decide the case of the petitioners in the light of the decisions passed by the Tribunal and after consideration the case of the petitioners if it is found that they are entitled for the benefit as given to the similarly situated co-employees, the same benefit be given to the petitioners.

With these observations, this petition is disposed of.

5. Thereafter the respondent continued in the service, though she was placed in dying cadre pursuant to the orders, which were under challenge. The authorities of appellant pursuant to the order dated 14.7.2004 in W.P.No.5902/2003 again screened the case of respondent and passed orders dated 6.5.2005 and 15.12.2005, by which it was found that the respondent was not possessing requisite educational qualification and was placed in dying cadre. This order was assailed by the respondent before the High Court. The learned Single Judge after notice to the other party and considering the reply filed by the appellants herein, has found that the case of respondent was at par with Ram Kishore Choubey and Roop Chand Badkul, who had filed T.A.No.1921/88 and T.A.No.1057/88 and were granted reliefs by quashing similar impugned order. This order is under challenge in this petition.

6. So far as the contention of appellants that respondent was not possessing requisite qualification is concerned, the aforesaid contention was already

examined by the Full Bench of the Tribunal by order dated 20.1.1989 referred hereinabove, so it was not necessary for the Single Bench to reconsider the aforesaid question. In spite of this the learned Single Judge in para 8 of the order considered this aspect and found that the respondent was having requisite educational qualification. So far as screening is concerned, other two co-employees Ram Kishore Choubey and Roop Chand Badkul were extended similar benefits. While this matter was placed for hearing before this Court on 31.3.2011, it was submitted by the respondent that the case of respondent was at par with Smt.Anita Gangrade, Ram Kishore Choubey and Ashok Kumar Yadav and as they were extended similar benefits and were absorbed by the appellants, without following the procedure of screening committee and the respondent was entitled for the same benefit from the same date, we directed appellants herein to produce such record for the perusal of this Court. Thereafter the State sought adjournment to produce the record, but in spite of this, after several adjournments, on 5.9.2011 State was allowed last opportunity to produce the record on payment of costs of Rs.1,000/-. On 12.10.2011 a statement was made on behalf of the appellants that the aforesaid record was not available and we directed that this case be listed for hearing. Again on 23.11.2011 similar statement was made by C.B. Padwar, Dy. Secretary, Higher Education, Bhopal that the record was not traceable and an F.I.R., was lodged in Police Station Jahangirabad in respect of missing of record and copy of the F.I.R., was also filed in this regard.

7. In view of aforesaid, it is apparent that the record in spite of various directions were not produced. Hence the contention of respondent that her case was at par with other co-employees Smt.Anita Gangrade, Ram Kishore Choubey and Ashok Kumar Yadav can be believed. Apart from this, the case of respondent was turned down merely on the ground that she was not possessing requisite qualification, but this question has already attained finality by the order of the Tribunal in T.A.No.89/88 and T.A.No.90/88, in which it was not disputed before the Tribunal that the respondent was fulfilling the requisite qualification - education and otherwise, required under the Schedule III-A of the Rules, so the rejection of the case of respondent by the appellant, merely on the ground that she was not possessing requisite qualification is not tenable.

8. In view of aforesaid, we do not find any error in the order passed by the learned Single Judge warranting our interference in the writ appeal jurisdiction. This appeal is dismissed, with no order as to costs.