

(2019) 03 MP CK 0020

In the Madhya Pradesh High Court

Case No : Writ Petition No. 28143 Of 2018

Udaybhan Singh And Others

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Madhya Pradesh Panchayat Samvida Shala Shikshak (Employment And Conditions Of Contract) Rules, 2005 — Rule 6(2), 7A, 14

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 70(2), 95(1)

Citation : (2019) 03 MP CK 0020

Hon'ble Judges : Sanjay Yadav, J; Vivek Agarwal, J

Bench : Division Bench

Advocate : R.D. Jain, Shivendra Singh, Ankur Mody

Judgement

Sanjay Yadav, J

[1] Vide Notification No. F-16-2-18-XXII-P-2 published in Madhya Pradesh Gazette dated 21/03/2018, the State Government in exercise of the powers conferred by sub-section (1) of Section 95 read with sub-section (2) of Section 70 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, brought amendment in the Madhya Pradesh Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Rules 2005 by substituting Rule 7-A as under:-

"7-A. Special provision for appointment on the post of Samvida Shala Shikshak Grade 3 from present working Guruji/ Supervisors of Madhya Pradesh Education Guarantee Scheme and Instructors and Supervisors of erstwhile Government Non Formal Education Centers.

(1) The present working and as per rule appointed Guruji and Supervisors of Madhya Pradesh Education Guarantee Scheme may be appointed on the post of Samvida Shala Shikshak Grade 3.

(2) Instructors and Supervisors of erstwhile Government Non Formal Education Centers who had worked continuously for one year as on 31st March 2000 or worked continuously up to one year till any date in between the 31st March and 29th August, 2000 may be appointed on the post of Samvida Shala Shikshak Grade-3.

(3) For the appointment under sub-rule (1) and (2) , the candidate should pass the eligibility examination conducted by such an agency as may be specified by the order of the State Government.

(4) Eligibility examination shall be organised only two times. The norms and minimum qualifying marks may be specified by executive order of the State Government.

(5) For appearing in the examination under sub-rule (3), the candidate should possess the qualification as prescribed in column (5) against serial number 3 of Schedule-II of these rules.

(6) After appointment on the post of Samvida Shala Shikshak Grade-3, the candidate shall get the same contract amount as prescribed in these rules or as they were getting on the previous post, whichever is more.

(7) The maximum age limit should not be more than 62 years for said appointment.

(8) After the appointment under this rule, the other service conditions shall be such as prescribed in these rules."

[2] The petitioners challenge the validity of said Rule to the extent of its being brought in vogue from retrospective date, i.e., 1st January, 2008.

[3] The brief facts which led the petitioner to challenge the validity of the amendment may be noted first.

[4] The State Government in order to meet its Constitutional obligation of providing free basic and primary education to the children between the age of 6-14 years mooted Non-Formal Education Scheme and established centres where the facility of teacher/ primary school was not available. The State Government appointed Co-ordinators and Supervisors under the said scheme. The non-formal education scheme later on paved way for Education Guarantee Scheme brought in vogue by the Government in the year 1997. These EGS centres were later on converted into upgraded schools under the Sarva Shiksha Abhiyan.

[5] In the year 2001, the State Government enacted Madhya Pradesh Jan Shiksha Adhiniyam, 2002 with an object to declare the right to get primary education as fundamental right of a child. In the year 2001, the State Government framed Madhya Pradesh Panchayat Samvida Shala Shikshak (Appointment and Conditions of Contract) Rules, 2001. The provisions whereof were declared ultra vires. The matter travelled to Supreme Court. That necessary amendments were carried out and the amended rules were brought in vogue,

viz, Madhya Pradesh Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, 2005 w.e.f. 06/05/2005.

[6] The State Government in order to give one time opportunity to the Co-ordinators and Supervisors who were appointed under the non-formal education scheme, advertisement was issued on 06/06/2008 in exercise of powers conferred by Rule 14 of the Rules of 2005, known as "Madhya Pradesh Ki Shiksha Guarantee Shalaon Mein Karyarat Guruji, Paryavekshak Tatha Shahsan Ke Tatkaleen Opcharikettar Shiksha Kendron Ke Prayavekshakon/ Arundeshkon Ke Liye Samvida Shala Shikshak Shreni-III Patrata Pariksha, 2008". The examinations were conducted on 31/08/2008. In October 2008, the results were declared.

[7] That by order dated 05/10/2009 issued by the Department of School Education, Government of Madhya Pradesh, certain conditions for eligibility of Co-ordinators/ Supervisors of erstwhile non-formal education scheme was roled out in the following terms:-

"(स) सरकार के तत्कालीन औपचारिकेत्तर शिक्षा केन्द्रों के अनुदेशक/पर्यवेक्षक हेतु :-

1. नियुक्ति आदेश- नियुक्ति आदेश की मूल प्रति से मिलान करें।
2. नियुक्ति दिनांक- अनुदेशक व पर्यवेक्षक के प्रकरण में जारी नियुक्ति आदेश किसी भी स्थिति में 21 अप्रैल 1999 के बाद की नहीं होनी चाहिये।
3. निरंतरता- नियुक्ति की दिनांक से जो कि 21 अप्रैल 1999 के पूर्व की हो तथा 22 अप्रैल 2000 को अर्थात औपचारिकेत्तर शिक्षा केन्द्र की योजना समाप्ति के समय कम से कम 1 वर्ष नियमित रूप से कार्यरत रहा हो तथा मानदेय प्राप्त किया हो, ऐसे अनुदेशक एवं पर्यवेक्षक ही संविदा शाला शिक्षक श्रेणी-3 के नियोजन हेतु पात्र होंगे। चयन परीक्षा में अर्ह घोषित किये गये उक्त श्रेणी के अनुदेशक एवं पर्यवेक्षक की सेवा निरंतरता की पुष्टि कम्प्यूटर् विधि पर उपलब्ध अभिलेख यथा कैशबुक मानदेय भुगतान पत्रक/तत्समय की बैंक पासबुक के आधार पर मानदेय भुगतान की पुष्टि से अनिवार्यतः होनी चाहिये।"

[8] The order dated 05/10/2009 came to be challenged in Writ Petition No. 91/2011 (Anil Bhatt and others Vs. State of Madhya Pradesh and others: 2012 (2) MPLJ 82) wherein it was held that the order dated 05/10/2009 cannot be given retrospective effect:-

"10. Admittedly, the examination in question was held under the 2005 Rules. Rules 4 and 5 deals with minimum educational qualification as well as prescribe minimum marks for qualifying examination. From a perusal of Rule 4 it is apparent that a candidate must have passed the Higher Secondary School Examination or an equivalent examination. Rule 5 provides that in the qualifying examination candidates belonging to SC/ST/OBC and disabled category should have secured a minimum 40% marks whereas cut-off marks in respect of other categories were fixed 50%. In pursuance of the notification of the vacancies, the examination was held on 31-8-2008 in which the petitioners appeared and they were declared successful. Admittedly, the petitioners were declared successful in the examination which was held on 31-8-2008. Thereafter, Annexure-P/6, i.e.,

the circular, dated 5-10-2009 was issued by which the criteria for selection was changed and the revised select list was issued which is contained in Annexure-P/8 which is legally impermissible. The contention of learned counsel for the respondents that the State Government could have withheld the process of selection and could have filled up subsequently in accordance with amended criteria need not be examined as no such plea in the return has been taken.

11. The amendment made in the Rules which was published in the gazette, dated 4-1-2010. It is well settled in law that prima facie every amendment is prospective unless there is clear indication in statute or rule that it would apply with retrospective effect. It is not discernible from the amendment that it is retrospective in nature. Therefore, the amended rule would not apply retrospectively to the proceedings for selection which were already completed. For this additional reason also, the action of the respondents in excluding the names of the petitioners from consideration cannot be sustained in the eyes of law."

[9] In the terms of Anil Bhatt (supra) various Writ Petitions were filed, viz, W.P. No. 1102/2010 (Manmohan Mathur and others Vs. State of M.P. and others), W.P. No. 1688/2009 (Sarbar Khan Vs. State of M.P. and others), W.P. No.6268/2009 (M.P. Rajya Shiksha Guarantee Yojana Gurujī Sangh Vs. State of M.P. and others), W.P. No. 1472/2011 (Vinod Kumar Sharma and others Vs. State of M.P. and others), W.P. No. 6819/2011 (Dinesh Kumar Namdev Vs. State of M.P. & others), W.P. No.6857/2010 (Pawan Shrivastava and others Vs. State of M.P. & others), W.P. No. 6744/2010 (Ghanshyam Singh Kushwah & others Vs. State of M.P. & others), W.P. No. 4445/2010 (Ramveer Singh Raghuvanshi and others Vs. State of M.P. and others), W.P. No.6792/2010 (Mukesh Singh Yadav Vs. State of M.P. & others), W.P. No. 6782/2010 (Bharat Kumar Yadav Vs. State of M.P. & others), W.P. No. 9217/2012 (Chandrabhan Singh Sengar Vs. State of M.P. and others), which were decided in the same manner as Anil Bhatt (supra).

[10] Pertinent it is to note at this stage that the Gazette notification dated 04/01/2010 referred to in Anil Bhatt (supra) inserted Rule 7-A in the following terms:-

"7(A). Special provision for appointment on the post of Samvida Shala Shikshak Grade 3 from present working Gurujī/ Supervisors of Madhya Pradesh Education Guarantee Scheme and Instructors and Supervisors of erstwhile Government Non Formal Education Centers.

(1) The present working and as per rule appointed Gurujī and Supervisors of Madhya Pradesh Education Guarantee Scheme may be appointed on the post of Samvida Shala Shikshak Grade 3.

(2) Instructors and Supervisors of erstwhile Government Non Formal Education Centers who had worked continuously for one year as on 31st March 2000 or worked continuously up to one year till any date in between the 31st March and 29th August, 2000 may be appointed on the post of Samvida Shala Shikshak

Grade-3.

(3) For the appointment under sub-rule (1) and (2) , the candidate should pass the eligibility examination conducted by such an agency as may be specified by the order of the State Government.

(4) Eligibility examination shall be organised only two times. The norms and minimum qualifying marks may be specified by executive order of the State Government.

(5) For appearing in the examination under sub-rule (3), the candidate should possess the qualification as prescribed in column (5) against serial number 3 of Schedule-II of these rules.

(6) After appointment on the post of Samvida Shala Shikshak Grade-3, the candidate shall get the same contract amount as prescribed in these rules or as they were getting on the previous post, whichever is more.

(7) The maximum age limit should not be more than 62 years for said appointment.

(8) After the appointment under this rule, the other service conditions shall be such as prescribed in these rules."

[11] The order passed in Writ Petition No. 1102/2010 (Manmohan Mathur and others Vs. State of M.P. and others) and batch of similar Writ Petitions were challenged unsuccessfully in Writ Appeal No. 185/2013 (State of M.P. and others Vs. Manmohan Mathur and others) which was dismissed on 06/05/2013 and the petition for special leave to appeal (c) CC Nos. 16115-16116/2015 dismissed on 07/09/2015. Even a Review Petition No. 99/2017 was dismissed on 19/04/2017.

[12] Various Contempt Petitions came to be filed, viz, Conc. No. 814/2014, Conc. No. 815/2014, Conc. No. 837/2014, Conc. No. 839/2014, Conc. No. 840/2014, Conc. No. 842/2014, Conc. No. 846/2014, Conc. No. 263/2015, Conc. No. 264/2015 and Conc. No. 1030/2016, which led the Director, Rajya Shiksha Kendra to take following decision on 04/05/2018:-

"प्रश्नाधीन अवमानना प्रकरणों में पारित इन आदेशों के आलोक में विशेष प्रकरण मानते हुये इन अवमानना प्रकरण के याचिकाकर्ताओं को नियुक्ति प्रदान करने हेतु प्रशासकीय अनुमोदन प्राप्त कर म.प्र. शासन स्कूल शिक्षा विभाग के आदेश क्रमांक एफ 44-56/07/20-2 भोपाल, दिनांक 05.10.2009 की कण्डिका 2.3 (स) के बिन्दु क्रं. 3 (सरकार के तत्कालीन औपचारिकेतर शिक्षा केन्द्रों के अनुदेशक/पर्यवेक्षक जिनकी नियुक्ति दिनांक 21 अप्रैल 1999 के पूर्व की हो तथा 22 अप्रैल 2000 को अर्थात् औपचारिकेतर शिक्षा केन्द्र की योजना समाप्ति के समय कम से कम एक वर्ष तक नियमित रूप से कार्यरत रहा हो तथा मानदेय प्राप्त किया हो) की शिथिल करते हुए स्थानीय निकाय के माध्यम से संविदा शाला शिक्षक वर्ग-3 के पद पर नियोजन हेतु स्वीकृति दी जाती है। प्रकरण जिला कलेक्टर शिवपुरी की इस निर्देश के साथ प्रत्यावर्तित किया जाता है कि म.प्र. शासन स्कूल शिक्षा विभाग आदेश क्रमांक एफ 44-56/07/20-2 भोपाल, दिनांक 05.10.2009 में विहित शेष प्रावधानुसार उपरोक्त उल्लेखित अवमानना याचिका के याचिकाकर्ताओं को संविदा शाला शिक्षक वर्ग-3 के नियोजन हेतु जिला स्तर पर गठित छानबीन समिति के माध्यम से पात्रता का परीक्षण किया जाये। छानबीन समिति के द्वारा पात्र आवेदकों को कलेक्टर के अनुमोदन के उपरांत म.प्र. शासन स्कूल शिक्षा विभाग आदेश

क्रमांक एफ 44-56/07/20-2 भोपाल, दिनांक 16.07.2010 के अनुसार संविदा शाला शिक्षक वर्ग-3 के पद पर नियोजन हेतु आवश्यक कार्यवाही की जाये।

यह आदेश अन्य किसी प्रकरण में उदाहरण के रूप में मान्य नहीं होगा।"

[13] It is in the above factual background, the petitioners seek that the amendment brought in vogue vide notification dated 21/03/2018 be declared ultra vires or non applicable to the petitioners who took up eligibility examination in the year 2008. Further direction is sought to consider the case of petitioners in view of un-amended criteria, for appointment on the post of Contract Teacher Grade III and if found otherwise eligible to appoint with all consequential benefits.

[14] Pertinent it is to note that none of the petitioners, collectively or individually had approached the Court of law prior to filing of this petition. This fact is evident from the admission made in paragraph 5 (xviii) of the Writ Petition.

[15] Thus besides the issue as regard to retrospective operation of Rule 7-A brought in vogue vide amendment dated 21/03/2018, it is also to be considered whether the petitioners are entitled for the relief for direction to the respondents to consider and appoint the petitioners as Samvida Shala Shikshak Grade III.

[16] The State on its turn while not disputing the facts and events adverted. And the fact of the petitioners having qualified in the Eligibility Test 2008; however, question their entitlement for the relief sought for consideration for appointment as Samvida Shala Shikshak Grade III on the contention that one time relaxation was granted to the Co-ordinators/ Supervisors of non-formal education. The acquisition of eligibility was not for time immemorial. It is contented that the validity of the eligibility examination is for two years after the declaration of result or next eligibility examination to be held, whichever is earlier. Reference is made to sub-rule (2) of Rule 6 of the Rules of 2005.

[17] Sub-rule (2) of Rule 6 of Rules 2005 as was substituted vide notification No. F-2-01-2013-XXII-P-2 dated 24/09/2014 published in Madhya Pradesh Rajpatra (Asadharan) dated 24/09/2014 at page 902 is as under:-

"(2) 'Samvida Shala Shikshak Eligibility Examination', hereinafter referred to as 'Eligibility Examination' as prescribed shall be conducted for the employment of Samvida Shala Shikshak. The eligibility examination shall be conducted by an agency prescribed by the Government. The validity of the eligibility examination shall be for two years after declaration of result or next eligibility examination to be held, which will be earlier."

[18] That prior to its substitution, sub-rule (2) of Rule 6 was in the following form:-

"(2) 'Samvida Shala Shikshak Eligibility Examination', hereinafter referred to as 'Eligibility Examination' shall be conducted by such norms as prescribed for the employment of Samvida Shala Shikshak. The eligibility examination shall be conducted by an agency prescribed by the Government. The validity of the

eligibility examination relating to year 2011-12 and validity of result of eligibility examination to be held after the aforesaid year shall be valid for employment of Samvida Shala Shikshak, Excluding the validity of result of examination held in the year 2005 and 2008."

[19] The aforesaid sub-rule was substituted on 17/01/2014 vide notification No. F-2-1-2013-XX-P-2 dated 17/01/2014 published in Madhya Pradesh Rajpatra (Asadharan) dated 17/01/2014 page 68. Prior to it and w.e.f. 27/06/2011, sub-rule (2) reads thus:-

"(2) 'Samvida Shala Shikshak Eligibility Examination', hereinafter referred to as 'Eligibility Examination' as prescribed shall be conducted for the employment of Samvida Shala Shikshak. The eligibility examination shall be for two years after declaration of result or next eligibility examination to be held, which will be earlier."

[20] It is urged on behalf of the State that since the petitioners have no accrued right for even consideration for appointment to the post of Samvida Shala Shikshak, there is no right in them to question the validity of Rule 7-A of 2005 Rules. As regard to the decisions in Anil Bhatt (supra), Manmohan Mathur (supra) and connected Writ Petitions, it is urged that the petitioners therein filed petitions before the next eligibility test held in the year 2011; therefore, there is no parity between the present petitioners and the petitioners in W.P. No. 1102/2010 (supra), W.P. No. 1688/2009 (supra), W.P. No.6268/2009 (supra), W.P. No. 1472/2011 (supra), W.P. No. 6819/2011 (supra), W.P. No.6857/2010 (supra), W.P. No. 6744/2010 (supra), W.P. No. 4445/2010 (supra), W.P. No.6792/2010 (supra), W.P. No. 6782/2010 (supra), W.P. No. 9217/2012 (supra).

[21] There is substantial force in the contentions on behalf of the State as regard to legal right of the petitioners to seek direction for their consideration for appointment as Samvida Shala Shikshak Grade III. Sub-rule (2) of Rule 6 of the Rules 2005 determines the outer limit within which the eligibility examination is valid. In the case at hand, it is not in dispute that besides two years from the date of declaration of result, the next eligibility examinations were held in 2011. Being trite it is that an appointment is not a right, there is no vested right in the petitioners to seek mandamus for consideration for appointment. For an Authority, in respect of the proposition that an incumbent has no right of appointment, reference can be had of the decisions in State of Haryana Vs. Subhash Chander Marwaha and others [(1974) 3 SCC 220], Jatinder Kumar and others Vs. State of Punjab and others [(1985) 1 SCC 122], Miss Neelima Shangla Vs. State of Haryana and others [(1986) 4 SCC 268], Shankarsan Dash Vs. Union of India [(1991) 3 SCC 47].

[22] In Subhash Chander Marwaha (supra), it is held:-

"10. One fails to see how the existence of vacancies give a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for

appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed.

11. It must be remembered that the petition is for a mandamus. This Court has pointed out in *Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College* (AIR 1962 SC 1210) that in order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performance. Since there is no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have no legal right under the rules to enforce its performance the petition is clearly misconceived. "

[23] In *Jatinder Kumar (supra)*, it is held:-

"16. The Candidates did not acquire any right merely by applying for selection or for appointment after selection."

[24] In *Miss Neelima Shangla (supra)*, it is held:-

"4. But having regard to the fact that most of the others have not chosen to question the selection and the circumstance that two years have elapsed we do not propose to make any such general order as that would completely upset the subsequent selection and create confusion and multiplicity of the problems. ..."

[25] In *Shankarsan Dash (supra)*, it is held:-

"9. We, therefore, reject the claim that the appellant had acquired a right to be appointed against the vacancy arising later on the basis of any of the rules."

[26] The next question which arises for consideration is whether when the petitioners have no vested or accrued right for appointment nor for consideration have any locus to maintain Writ Petition under Article 226 of the Constitution.

[27] In *State of Orissa Vs. Madan Gopal Rungta* [AIR 1952 SC 12], it is held:-

"5. The language of the Article shows that the issuing of writs or directions by the Court is founded only on its decision that a right of the aggrieved party under Part III of the Constitution (Fundamental Rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore the existence of the right is the foundation of the exercise of jurisdiction of the Court under this Article."

[28] It can be argued that the petitioners still have the right to question the validity of Rule 7-A of Rules 2005.

[29] In *Sheoshankar Vs. State Government of Madhya Pradesh and others* [AIR 1951 Nagpur 58], it is held by Full Bench:-

"43. It is true that Article 226 gives the power not only for the enforcement of fundamental rights but also for 'any other purpose'. The words 'any other purpose' are of very wide significance, but it cannot be postulated that the High Courts were given unlimited power to do anything by their writs, orders or directions. Some limitations must be placed by the High Court on its own powers. In the Bombay Prohibition case, 'Fram Nusserwanji v. State', AIR (38) 1951 Bom 210, (Chagla C.J.) & in 'Indian Sugar Mills Ltd. v. Secretary to Govt. of U.P.', 1950 ALJ 767, the same opinion was expressed.

44. While I do not pretend to lay down principles for all cases, I am quite clear that a petition for the examination of the constitutionality of an Act does not lie even under the wide powers conferred by Article 226. There is no need to go into the question whether original jurisdiction is conferred by Article 226. Even in those countries where original jurisdiction is possessed judgments are not rendered unless the petitioner can show some injury or some imminent injury to himself as a cause of action. But in no country is the constitutionality of a statute examined on a mere petition to a superior Court. In other words, advisory opinions or declaratory judgments on the constitutionality of legislation cannot be given apart from some concrete injury or controversy.

100. But that apart, even the constitutionality of the legislation can be challenged by a petitioner only if he can show injury to himself."

[30] Reference in the context can also be had of the decision in Dwarkadas Shrinivas Vs. The Sholapur Spinning & Weaving Co. Ltd. [AIR 1954 SC 119], wherein it is held:-

"46. The true principle being that only a person who is directly affected by a law can challenge the validity of that law and that a person whose own right or interest has not been violated or threatened cannot impugn the law on the ground that somebody else's right has been infringed, the same principle must prevail irrespective of the form of the proceeding in which the question of constitutionality is raised."

[31] In Om Prakash Shukla Vs. Akhilesh Kumar Shukla and others [AIR 1986 SC 1043], it is held:-

"23. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination."

[32] In view whereof, since there is no accrual of right in favour of the petitioners for appointment as Samvida Shala Shikshak Grade III and the right

for consideration is exhausted with the expiry of two years and with the holding of next examination in the year 2011, we refrain from examining the validity of Rule 7-A of the Rules of 2005 in context to its being made effective from retrospective date at the instance of the petitioners and keep the issue open to be decided in appropriate case.

[33] In view whereof, since no relief can be granted, petition fails and is dismissed. No costs.