

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: HON'BLE MR. S. C. SHARMA, J

WRIT PETITION NO. 6626 / 2010 (s)

Rajmal Rathore s/o Fakir Chand Rathore  
& Ors.,

Vs.

The State of MP & Ors.,

WRIT PETITION NO. 6619 / 2010 (s)

Sanjay Mehta

Vs.

The State of MP & Ors.,

WRIT PETITION NO. 6623 / 2010 (s)

Sanjay

Vs.

The State of MP & Ors.,

WRIT PETITION NO. 6628 / 2010 (s)

Yogendra Kumar & Ors.,

Vs.

The State of MP & Ors.,

WRIT PETITION NO. 6629 / 2010 (s)

Sunil Giri & Ors.,

Vs.

The State of MP & Ors.,

WRIT PETITION NO. 6637 / 2010 (s)

Rameshchandra and Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6638 / 2010 (s)**

Rajendra Kumar & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6656 / 2010 (s)**

Rajendra Joshi & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6657 / 2010 (s)**

Manohar & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6658 / 2010 (s)**

Ramesh Chand & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6659 / 2010 (s)**

Omkarlal Patidar & ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6660 / 2010 (s)**

Salim Ahmed & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6661 / 2010 (s)**

Krishna Chand & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6662 / 2010 (s)**

Bharat & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6663 / 2010 (s)**

Yogesh Kasera & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6667 / 2010 (s)**

Lokendra & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6676 / 2010 (s)**

Kamal Singh & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6677 / 2010 (s)**

Ashok Kumar & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6678 / 2010 (s)**

Chetandas & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6679 / 2010 (s)**

Rajesh Vyas & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6680 / 2010 (s)**

Govind Madhav

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6681 / 2010 (s)**

Rajiya Ninama

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6682 / 2010 (s)**

Manoj Sisodiya & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6686 / 2010 (s)**

Omprakash Rai & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6689 / 2010 (s)**

Sunil Kumar & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6690 / 2010 (s)**

Ramgopal & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6691 / 2010 (s)**

Mohanlal & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6692 / 2010 (s)**

Manmohan & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6693 / 2010 (s)**

Mukesh & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 6706 / 2010 (s)**

Shyamsingh Panwar & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 7851 / 2010 (s)**

Satish Mishra & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 7852 / 2010 (s)**

Inder Singh & Ors.,

Vs.

The State of MP & Ors.,

**WRIT PETITION NO. 7853 / 2010 (s)**

Sachin Joshi & Ors.,

Vs.

The State of MP & Ors.,

**A N D**

**WRIT PETITION NO. 9301 / 2010 (s)**

Prakash Chandra Patidar

Vs.

The State of MP & Ors.,

\* \* \* \* \*

Mr. P. R. Bhatnagar, Mr. G. P. Singh, Mr.  
Akash Sharma, Mr. Sanjay Zamindar, Mr. K.  
Bhargava, learned counsel for the petitioner.  
Mrs. Anjali Jamkhedkar, learned  
Government Advocate for the respondent – State.

\* \* \* \* \*

**[ O R D E R ]**

25/11/2010

Regard being had to the similarity in the controversy involved in the present bunch of cases they were heard analogously together and by a common order all the writ petitions are being disposed of by this court. Facts of WP NO. 9301 / 2010 are stated as under :

The petitioner before this court has filed this present petition being aggrieved by an advertisement dt. 24/5/10. The contention of the petitioner is that they are working as Samvida Shala Shikshak, Grade III and they were appointed after facing a process of selection as provided under the provisions of M.P. Panchayat Shiksha Karmi (Recruitment & Conditions of Service) Rules, 1998. Petitioners have further stated that they were confirmed also on the post of Shiksha Karmi and later on

the designation of Shiksha Karmi was changed to Sahayak Adhyapak. It is pertinent to note that some of the teachers in other identical cases are Asstt. Teachers working in the School Education Department of the State of MP. The contention of the petitioner is that the State Government has enacted M.P. Jan Shiksha Adhiniyam, 2002 and thereafter Rules have been framed under the Adhiniyam of 2002 known as MP JanShiksha Niyam, 2003. The petitioners have further stated that Rule 13 of the aforesaid Rules provides for appointment of Jan Shikshak and the following qualifications have been prescribed for the post of Jan Shikshak under the Rules of 2003.

13. Jan Shikshak :

(1) A teacher of one of the schools of Jan Shiksha Kendra shall be designated as Jan Shikshak, to act as coordinator between the schools and the Jan Shiksha Kendra, Jan Shiksha Prabhari shall send a list of names of three persons to the Janpad Shiksha Kendra. A committee comprising of the Education Programme Officer – I, Block In Charge from the District Institute of Education and Training and the Janpad Shiksha Kendra Coordinator shall select one person from the list. The Janpad Shiksha Kendra shall nominate the Jan Shikshak on the recommendation of the committee.

(2) Following points shall be considered while nominating the Jan Shikshak :

(a) Names of assistant teachers,

Upper Division Teacher and Shiksha Karmi grade-2 or 3 (regular) shall be proposed for the post of Jan Shikshak.

(b) Only D. Ed., and B. Ed., trained persons shall be proposed for the nomination of Jan Shikshak.

(c) Age of the person, recommended for the post of Jan Shikshak should normally be below 50 years.

(d) The person proposed for the nomination of Jan Shikshak must have 5 years of teaching experience in school.

(3) The Jan Shikshak shall be nominated for a minimum period of 3 years. After the stipulated period of 3 years the Jan Shikshak may continue to hold the post till the nomination of his successor.

(4) The Janpad Shiksha Kendra can remove the Jan Shikshak with the permission of the Zila Shiksha Kendra if he / she is irresponsible towards his / her duties, found incompetent to perform the expected activities and due to other administrative reasons.

The petitioners grievance is that the aforesaid statutory provisions of law permits the Asstt. Teacher, Upper Division Teacher, Shiksha Karmi Grade II and III to participate in the process of selection for the post of Jan Shikshak. However, the impugned advertisement only permits teachers in the pay scale of Rs. 5000 – 8000 and teachers in the pay scale of Rs. 4000 – 6500 to participate in the process of selection. Learned counsel



for the petitioner has argued before this Court that the State Government cannot modify the eligibility criteria prescribed under the Rules of 2003 by issuing an executive instructions without amending the recruitment Rules of 2003 or the Act of 2002. A reply has been filed on behalf of respondent State and the contention of the respondents is that the State Government has amended the MP Jan Shikshak Adhiniyam 2002 by enacting M P Jan Shikshak Sanshodhan Adhiniyam 2010 and the Rules have also been amended and a notification to that effect has been issued on 23/6/10. The contention of the respondent State is that by virtue of the aforesaid amendment the teachers or Adhyapaks are only entitled to participate in the process of selection. It has also been argued before this court that executive instructions were issued by the State Education Centre and as per the executive instructions dt. 24/5/10 teachers in the pay scale of Rs.5000 – 8000 and teachers in the pay scale of Rs.4000 – 6500 are alone entitled to participate in the process of selection. The respondents have prayed for dismissal of the writ petition.

Heard learned counsel for the parties at length and perused the record. The matter is being disposed of with the consent of

the parties at the admission stage itself.

In the present case the MP Jan Shiksha Adhiniyam 2002 has been enacted to translate the Constitutional vision of the right of every child to access elementary education of quality and to provide for decentralised planning and participatory management of elementary and adult education redefining roles and creating institutions sensitive to the needs of quality education for all. The State Government has established various Jan Shiksha Kendra under the Adhiniyam of 2002. The Adhiniyam also defines a Teacher u/S. 2(k) and the same reads as under :

2. (k) “Teacher” means any member of the teaching staff of a school known by any name as approved by Government and duly appointed to teach in that school.

The Rules have been framed under the Adhiniyam of 2002 known as MP Jan Shiksha Adhiniyam 2002 and a procedure has been prescribed for appointing Jan Shikshaks in respect of Jan Shiksha Kendra. Rule 13 of the aforesaid Rules prescribes qualification for the post of Jan Shikshak and the same reads as under :

जन शिक्षक:—

;1द्ध जनशिक्षा केन्द्र के स्कूलों में से एक स्कूल का शिक्षक, स्कूलों तथा जन शिक्षा केन्द्र के बीच समन्वयक के रूप में कार्य करने के लिए जनशिक्षक के रूप में अभिहित किया जाएगा। जन शिक्षा प्रभारी तीन व्यक्तियों के नाम की एक सूची जनपद शिक्षा केन्द्र को भेजेगा। शिक्षा कार्यक्रम अधिकारी-1 जिला शिक्षा तथा प्रशिक्षण संस्थान के प्रभारी और जनपद शिक्षा केन्द्र समन्वयक से मिलकर बनने वाली समिति की सिफारिश पर एक व्यक्ति का चयन करेगी। जनपद शिक्षा केन्द्र, समिति को सिफारिश पर जनशिक्षक नाम निर्देशीत करेगा।

;2द्ध जन शिक्षक को नामनिर्देशीत करते समय निम्नलिखित बातों पर विचार किया जाएगा।

क सहायक शिक्षक, उच्च श्रेणी शिक्षक तथा शिक्षा कर्मी श्रेणी-2 अथवा 3;नियमितद्ध के नाम जन शिक्षक के पद के लिए प्रस्तावित किए जाएंगे।

;खद्ध केवल डी एड तथ बी एड प्रशिक्षित व्यक्ति, जन शिक्षक के नाम निर्देशन के लिए प्रस्तावित किए जाएंगे।

;गद्ध जन शिक्षक के पद के लिए सिफारिश किए गए व्यक्ति की आयु सामान्यतः 50 वर्ष से कम होनी चाहिए।

;घद्ध जन शिक्षक के नाम निर्देशन के लिए प्रस्तावित व्यक्ति को स्कूल में अध्यापन का 5 वर्ष का अनुभव होना आवश्यक है।

;3द्ध जनशिक्षक 3 वर्ष की न्यूनतम कालावधि के लिए नामनिर्देशीत किया जाएगा। जनशिक्षक 3 वर्ष की नियत कालावधि के पश्चात् उसके उत्तराधिकारी के नाम-निर्देशन तक पद पर बना रहेगा।

;4द्ध जनपद शिक्षा केन्द्र, जनशिक्षक को यदि वह

अपने कर्तव्यों के प्रति गैर-उत्तराधिकारी है, उससे अपेक्षित गतिविधियों को पूरा करने में अक्षम पाया गया है अथवा अन्य प्रशासनिक कारणों से जिला शिक्षा केन्द्र की अनुज्ञा से हटा सकेगा।

The M P Jan Shikshak Adhiniyam 2002 was amended by enacting M P Jan Shikshak Sanshodhan Adhiniyam 2010 and the MP Jan Shikshak Niyam 2003 were also amended and notified vide notification dt. 23<sup>rd</sup> June 2010. Rule 13 relating to qualifications for the post of Jan Shikshaks has also been amended and it provides that the Jan Shikshaks shall be selected from amongst teachers or Adhyapaks. It is pertinent to note that the amendment under the Rules also does not provide for a particular pay scale. It only provides for selecting Jan Shikshaks from teachers or Adhyapaks. The petitioners are certainly teachers as they were working on the post of Asstt. Teacher, Shikshak Grade I, II and III keeping in view the definition as contained u/S. 2(k) of the Adhiniyam of 2002. The qualification for holding a particular pay scale was introduced for the first time by way of an executive instruction dt. 24/5/10 and the executive instruction issued by the Commissioner, Rajya Shiksha Kendra does mention for an amendment under the Rules. However, no amendment as on date has been made in the

Rules of 2003 incorporating the qualification of having a particular pay scale ie., Rs.5000 – 8000 and Rs.4000 – 6500, meaning thereby the aforesaid qualification for the first time was introduced by way of an executive instruction. The apex court in the case of State of Rajasthan and others Vs. Jagdish Narain Chaturvedi (2009) 12 SCC 49 in para 8 has held as under :

8. It needs to be noted that there is no scope for raising an issue that executive instructions can override the Rules. The law is to the contrary. The Notification dated 3-4-1993 speaks of “in accordance with recruitment rules”. Clarification was necessary because of doubts regarding regular appointment. It is made clear that the period rendered in the existing cadre before regular employment in accordance with the relevant recruitment rules to the post is because of change of cadre the previous period is not counted so there is no question of giving the benefit to ad hoc employees and the appointment letters which were illustratively filed indicate that the appointments were till regular appointment was made.

The apex court in the aforesaid case has held that the executive instructions cannot over ride statutory rules and therefore the executive instructions issued by the Commissioner cannot certainly over ride the Rules framed under the Adhiniyam of 2002 namely; Jan Shiksha Rules 2003. The apex

court in the case of State of Haryana Vs. Mahender Singh and others (2007) 13 SCC 606 in paragraph 39 has held as under :

39. It is now well settled that any guidelines which do not have any statutory flavour are merely advisory in nature. They cannot have the force of a statute. They are subservient to the legislative Act and the statutory rules. (See *Maharao Sahib Shri Bhim Singhji v. Union of India*, *J.R. Raghupathy v. State of A.P.* and *Narendra Kumar Maheshwari v. Union of India*)

The apex court in the case of New Delhi Municipal Council and others Vs. Tanvi Trading and Credit Private Ltd., and others (2008) 8 SCC 765 in para 35 has held as under :

35. Even assuming that the LBZ guidelines are not relatable to the DD Act or the NDMC Act, the Central Government undoubtedly could, in exercise of executive power introduce these guidelines. At this stage, it would be instructive to refer to the extent of executive power of the Union as provided in Article 73 of the Constitution. Article 73 inter alia provides that, subject to the provisions of the Constitution, the executive power of the Union extends to the matters with respect to which Parliament has power to make laws. Parliament has enacted the Delhi Development Act, 1957 and the New Delhi Municipal Council Act, 1994. Article 73 does not define what an executive function is, neither does it mention the matters over which the executive power is exercised. The extent

defined in Article 73 is not exhaustive. The Union Government has power to issue executive directions relating to the matters dealt with under the DD Act, 1957 and the NDMC Act, 1994, though the directions contrary to the provisions of those Acts cannot be issued. The executive power of the Union, under Article 73 extends to the matters with respect to which Parliament has power to make laws and hence, the field in which law could have been made, executive instructions may be issued in the absence of legislation in the field or if there is existing legislation, then to supplement it.

In the aforesaid case it has been held that the Union Government was having the power to issue executive direction relating to the matters dealt with under Delhi Development Act, 1957 and NDMC Act 1994. However, the directions contrary to the provisions of the Act could not have been issued. In the present case the respondents have framed Rules under the Adhiniyam of 2002 providing qualifications for the post of Jan Shikshaks and by issuing executive instructions dt. 24/5/2010 only a particular class of teachers are being permitted to participate in the process of selection who are otherwise eligible under the Adhiniyam of 2002 and under the Rules of 2003.

Resultantly the condition introduced by way of executive instructions is set aside. The petitioners if they are otherwise

eligible shall be permitted to join the post of Jan Shikshaks in case they are selected on merits. It is needless to mention that the respondents while considering the cases of the petitioners and while finalising the list, shall strictly adhere to the qualifications prescribed under the Rules of 2003 read with the provisions of Adhiniyam of 2002 and the respondents shall not incorporate any new condition relating to appointment on the post of Jan Shikshaks or shall not impose any restrictions in the matter of appointment of Jan Shikshaks disqualifying a particular candidate which is not in existence under the Rules of 2003 and under the Adhiniyam of 2002.

With the aforesaid writ petition stands allowed. No order as to costs.

This order be retained in WP NO. 6626/10(s) and a copy each be placed in the record of connected petitions.

(S C SHARMA)  
J U D G E