

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

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

WRIT PETITION NO. 3848 / 2009

ASHRAF KHAN S/O YUNUS KHAN

Vs.

STATE OF MP & OTHERS

A N D

WRIT PETITION NO. 8902 / 2009

PALLAVAKUMAR S/O INDERMAL

Vs.

STATE OF MP & OTHERS

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Mr. Rohit Mangal, learned counsel for the petitioner.

Mr. Romesh Dave, learned counsel for the respondent.

Ms. Seema Sharma, learned Government Advocate for the respondent – State.

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**ORDER**

( 18/5/2011)

Regard being had to the similitude in the controversy involved in the matter, the above cases were heard together and a common order is being passed. The facts of WP No. 3848 / 2009 are narrated as under :

The petitioner before this Court has filed this present writ petition being aggrieved by order dt. 25/4/2008 (Annexure P/9) by which the respondents have rejected

claim of the petitioner for grant of annual increments. The contention of the petitioner is that he was appointed as a Shiksha Karmi under the Rules framed by the State Government known as M.P. Panchayat Shiksha Karmis (Recruitment & Conditions Service) Rules, 1997 and under the Rules of 1997 the requirement of B. Ed. / D. Ed., / other teaching diploma was not in existence. The petitioner has further stated that he was appointed by an order dt. 20/7/98 on probation for a period of 3 years in the pay scale of Rs. 1200 – 40 – 2000 and as per the terms and conditions of the appointment order he was entitled for the minimum of the pay scale for a period of 3 years and till completion of probationary period. It was further stated that the State Government took a policy decision to absorb all Shiksha Karmis in Adhyapak Samvarg (teaching cadre) and Rules were enacted by the State Government in exercise of powers conferred by sub-section (1) of Sec. 95 read with sub-Section (2) of Sec. 70 of the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 known as M.P. Panchayat Adhyapak Samvarg (Employment and Conditions of

Service) Rules, 2008. The contention of the petitioner is that an order was passed by the State Government on 28/6/2007 absorbing the Shiksha Karmis and the petitioner was also absorbed in the Adhyapak Cadre. Petitioner has further stated that the respondents have stopped the payment of annual increments to the petitioner and therefore a representation was submitted by him on 1/4/08 and the respondents have turned down his representation by passing an order on 25/4/08 on the ground that he does not fulfill the requisite qualification for the post of Varishtha Adhyapak.

A reply has been filed on behalf of the respondent and the stand of the State Government is that as per the provisions of Rules of 1997 unless and until a Shiksha Karmi absorbed in the Adhyapak Samvarg obtains the qualification of B. Ed. / D. Ed., or any other equivalent teaching diploma, he is not entitled for annual increments. The respondents have placed reliance upon Rule 5 of the Rules of 2008 and their contention is that the petitioner as he is not holding B. Ed. / D. Ed. Qualification is not entitled for annual increments.

Heard learned counsel for the parties at length and perused the record.

In the present case, the petitioner was initially appointed by an order dt. 20/7/98 as a Shiksha Karmi Grade I and in the Rule governing the field at the relevant point of time relating to appointment of Shiksha Karmis known as M.P. Panchayat Shiksha Karmis (Recruitment & Conditions of Service) Rules, 1997 there was no such qualification of B. Ed. / D. Ed., or any other teaching diploma for appointment to the post of Shiksha Karmi. The petitioner was appointed in a pay scale of Rs. 1200 – 2000 with a condition that he will be entitled for a fixed pay in the minimum of the pay scale for a period of 3 years meaning thereby during the period of probation. The petitioner has successfully completed the probationary period and was thereafter granted regular annual increments by the respondents. The contention of the petitioner is that he is entitled for annual increments after completion of a year's service, cannot be accepted in the light of the judgment delivered by the Division Bench of this Court in the case of

The State of MP Vs. Raghvendra Sohgaure W.A.No. 1098 / 2006, decided on 21/1/2009. The Division Bench of this Court in the aforesaid case has held that Shiksha Karmis are not entitled for regular increments during probationary period. Petitioner was therefore rightly granted regular increments on completion of probationary period and his problem arose only after his absorption as Adhyapak by virtue of the provisions of M.P. Panchayat Adhyapak Samvarg Employment & Conditions of Service) Rules, 2008. The State Government took a policy decision to absorb all Samvida Shala Shikshaks as well as Shikshakarmis in the Adhyapak Samvarg and the petitioner has also been absorbed by an order dt. 3/12/07. The order of absorption in clause V reveals that those Shiksha Karmis who have not obtained B. Ed. / D. Ed., will not be entitled for annual increments unless and until they obtain the aforesaid requisite qualification. This Court has carefully gone through Rule 5 of the aforesaid Rules.

Rule 5 reads as under :

5. Selection and Method of  
appointment. - The recruitment in

Adhyapak Samvarg after commencement of these rules shall be done in accordance with the following method, namely :

(1) By merger of the Shiksha Karmies appointed under the Madhya Pradesh Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1997 :

Explanation :

(i) Shiksha Karmi Grade – 1 shall be merged on the post and pay scale of Varishth Adhyapak.

(ii) Shiksha Karmi Grade – 2 shall be merged on the post and pay scale of Adhyapak.

(iii) Shiksha Karmi Grade – 3 shall be merged on the post and pay scale of Sahayak Adhyapak.

(iv) Every person merged in Adhyapak Samvarg on dated 1/4/2007 while fixing his pay in Adhyapak Samvarg, a person having three years continuous service as a Shiksha Karmi shall be given the benefit of one increment in Adhyapak Samvarg. The date of next increment shall be effective from 1/4/2008.

(2) The Samvida Shala Shikshak shall be appointed on the relevant post of the 'Adhyapak Samvarg' under the following conditions :-

1. In the Adhyapak Samvarg such Samvida Shala Shikshak shall be appointed who have completed the three years contract appointed period and have found eligible as per the norms fixed by the scrutiny committee constituted to consider the eligibility for appointment in Adhyapak Samvarg.

2. Samvida Shala Shikshak Grade – 1 shall be appointed as Varishth Adhyapak, Samvida Shala Shiksha Grade – 2 as Adhyapak and Samvida Shala Shikshak Grade – 3 as Sahayak Adhyapak respectively on minimum of the pay scale of Adhyapak Samvarg. The date of next

increment shall be after completion of one year service.

3. In Adhyapak Samvarg such Samvida Shala Shikshak shall be appointed who have acquired the educational and teaching / training qualification as prescribed in column (3) of the Schedule – II.

4. A committee shall be constituted known as Scrutiny Committee for the appointment of Adhyapak Samvarg which shall consist of the following persons :

1. Chief Executive Officer, Jila Panchayat – President.

2. Chief Executive Officer, Janpad Panchayat (concerned) – Member.

3. District Education Officer / Assistant Commissioner Tribal Welfare – Member Secretary.

4. One officer from the Schedule Caste / Schedule Tribe Category – Member.

(3) At the time of appointment / merger the provisions of Madhya Pradesh Lok Seva (Reservation for Schedule Caste, Schedule Tribe and Other Backward Classes) Act, 1994 and the instructions issued by the General Administration Department vide its notification No. F-6-1-2002-A.P. One dated 19/9/2002 shall be complied with and action shall be taken in pursuance of the orders issued from time to time.

The aforesaid statutory provision of law makes it very clear that a Samvida Shala Shikshak / Shiksha Karmi shall be appointed in the Adhyapak Samvarg in case he holds the prescribed qualification and teaching / training qualification as prescribed in Column 3 of Schedule II. The qualification prescribed under the Rules certainly includes a B. Ed / D. Ed

/ DSC / BTC meaning thereby special qualification in respect of teaching. The petitioner is not having the aforesaid qualification and it is an admitted fact, meaning thereby the absorption of the petitioner has been done in violation of the statutory recruitment rules. This Court is of the considered opinion that in the first place the petitioner was not entitled for regularization / absorption and therefore he has been regularized with a condition to obtain a diploma in teaching. The petitioner who was appointed as Shiksha Karmi has been absorbed as Adhyapak and the recruitment Rules governing the field makes it mandatory to possess B.Ed., / D. Ed., qualification for the post in question. The petitioner has accepted his absorption with open eyes wherein he was informed categorically in Clause 5 of Order dt. 3/12/07 that he will not be entitled for grant of regular increments unless and until he acquires the mandatory qualification for the post of Adhyapak Samvarg.

Resultantly this court is of the considered opinion that absorption of the petitioner will not entitle him for grant of regular increments in the cadre of Adhyapak unless and until



he acquires the qualification prescribed for the post in question. The question of granting regular increments to the petitioner inspite of the fact that he does not possess the requisite qualification as per the recruitment Rules, does not arise and therefore the question of issuing any writ or direction to the respondents to grant regular increments to the petitioner does not arise. However, it will be open for the petitioner to submit a representation to the respondent State, in case he wants to continue in the cadre of Shiksha Karmi and shall be entitled for all benefits and the pay scale of the post of Shiksha Karmi alone. The petitioner shall also be free to submit a representation for his absorption in the Adhyapak Cadre after he acquires the qualification for the post of Adhyapak which is mandatory as per the provisions of M.P. Panchayat Adhyapak (Employment & Conditions of Services) Rules, 2008.

With the aforesaid, the writ petition stands disposed of.

No order as to costs.

(S. C. SHARMA)  
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