

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

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

WRIT PETITION NO. 14011 / 2010

SATISH SAXENA  
& FIVE OTHERS

Vs.

STATE OF MP  
& THREE OTHERS

\* \* \* \* \*

**ORDER**  
( 30/9/2011)

The petitioners before this Court have filed this present writ petition being aggrieved by the order dt. 19/8/10 passed by the Commissioner, State Education Centre by which the Commissioner has directed the Collector not to entertain applications for the post of Jan Shikshaks from those persons who have already completed 4 years of tenure as Jan Shikshaks. The contention of the petitioners is that the controversy involved in the present case, has already been concluded by this Court in the case of Mehboob Khan Vs. State of MP (WP No. 5705 / 2011) and a similar order be passed in this case also.

Learned Government Advocate on the other hand has vehemently argued before this court that the petitioners cannot claim continuance on deputation indefinitely keeping in view the executive instructions framed by the State Government as contained in (Annexure R/1) dt. 29/2/08.

However, she has not disputed the judgment delivered by this Court in the aforesaid. This Court in the aforesaid case has held as under :

1/ In these writ petitions a challenge has been raised to the circular of the State dated 6.7.2011, by which fresh process of appointment of the Jan Shikshak and Block Academic Coordinator has been initiated to implement the provisions of Right of Children to Free & Compulsory Education Act, 2009.

2/ These writ petitions are at the instance of Assistant Teachers, Assistant Teachers drawing the salary of UDT, teachers and headmasters who are already working as Janshikshak/BAC.

3/ The case of the present writ petitioners is that their substantive post is that of Assistant Teachers or Teachers or headmasters and they have been selected and appointed on the post of Jan Shikshak/Block Academic Coordinator on deputation and are performing those duties. Their appointment as Jan Shikshak/BAC is for a period of three years. In spite of the fact that the said period is not over, the respondents have issued the Circular dated 6.7.2011 initiating the fresh process for appointment of Jan Shikshak/BAC. The petitioners are not considered in the fresh selection process either because they being Assistant Teachers do not fulfill the eligibility condition of UDT/Adhyapak prescribed in the Circular or because they are already working as Jan Shikshak/BAC, therefore, excluded from consideration. Some petitioners' are also excluded because of the upper age limit prescribed in the Circular.

4/ The respondents have filed the reply in some of the writ petitions and have opposed the writ petitions submitting that the similar writ petitions have been dismissed by the main seat at Jabalpur and Gwalior Bench of this Court and that the process of fresh selection has been taken in accordance with the Act and Rules.

5/ I have heard the learned counsel

for the parties at length and have minutely perused the record of the case.

6/ The controversy in the present matters is in respect of the appointment to the post of Jan Shikshak/BAC which is governed by the Madhya Pradesh Jan Shiksha Adhiniyam, 2002 (for short “the Act”) and the Rules framed thereunder. The Act has been enacted to achieve the object of the right of every child to access elementary education of quality and to provide for decentralized planning and participatory management and elementary and adult education, redefining rules and creating institutions sensitive to the need of quality education for all. Section 14 of the Act provides that the State Government will designate one of the middle school for a cluster of primary and middle schools in every districts, as Jan Shiksha Kendra for improving the quality of elementary and adult education. Sub Section 2(b) of Section 14 further provides that a teacher of one of the schools of the Jan Shiksha Kendra shall be designated as Jan Shikshak to act as coordinator between the schools under the cluster and the Jan Shikshak is nominated from amongst the teachers of the school of the Jan Shiksha Kendra, by rotation. Rules, namely, Madhya Pradesh Jan Shiksha Niyam, 2003 (for short “the Rules”) have been framed in exercise of powers conferred by Section 36(1) of the Act. Rule 12 deals with the designation of Jan Shiksha Kendra. Rule 13 deals with the requisite qualification, term, procedure of appointment and removal of Jan Shikshak and Rule 14 provides the responsibilities of Jan Shikshak. The contentions raised by the petitioners needs to be examined in the light of the provisions of the Act and the Rules made thereunder.

7/ The first argument of the counsel for the petitioners is that the petitioners, who are working as Assistant Teachers, fulfill the eligibility conditions, therefore, they are entitled for consideration for appointment to the post of Jan Shikshak/BAC and they can not be excluded from consideration. The said argument has been opposed by the counsel for the State submitting that Assistant Teachers do not fulfill the requisite eligibility condition for

appointment.

8/ The Rule 13 of the Rules prescribes the qualifications for appointment to the post of Jan Shikshak. Rule 13 has been amended by the notification published in the gazette on 8<sup>th</sup> June, 2011 which reads as under :-  
“In the said rules, in rule 13,-

(i) for sub-rule (1), the following sub-rule shall be substituted, namely:-

“(1) Each Jan Shiksha Kendra shall have two Jan Shikshak to act as co-ordinator between Kendra and its schools. The **Upper Division Teacher or Adhyapak** shall be selected for the post of Jan Shikshak. A committee shall be formed to select Jan Shikshak.”

(ii) For sub-rule (2), the following sub-rule shall be substituted, namely :-

“(2) Jan Shikshak shall be selected from amongst **Upper Division Teacher and Adhyapaks.**”

9/ Under the amended Rule only the Upper Division Teachers or Adhyapaks are entitled for selection to the post of Jan Shikshak. Learned counsel for the State has pointed out that in the Panchayat Department the hierarchy is of Sahayak Adhyapak, Adhyapak and Varisht Adhyapak, whereas in the education and tribal department the hierarchy is of Assistant Teacher, Upper Division Teacher and Lecturer. The amended rule is very clear that those who are working as UDT or Adhyapak can only be considered for selection to the post of Jan Shikshak. The Assistant Teachers, who are neither UDT nor Adhyapak, can not be considered for selection to the post of Jan Shikshak after the amendment in the Rules.

10/ The Gwalior Bench of this Court in W.P. No.4670/2011 by order dated 22.7.2011 in the matter of Shivraj Singh and others Vs. State of M.P. and others has examined this aspect of the matter and after noting the amended Rule 13, has held that :-

“This amended rule has substituted the earlier rule, and therefore, the main thing which is required to be examined is as to whether under the amended rule present petitioners - Assistant

Teachers/Sahayak Adhyapaks are eligible for consideration on the post of Jan Shikshak or not. A bare perusal of the amended rule makes it clear that neither Assistant Teacher nor Sahayak Adhyapak is eligible to be considered for the post of “Jan Shikshak” and the consideration is confined for Upper Division Teacher or Adhyapak under the amended provision. In the teeth of amended provision the petitioners herein are not even eligible to be considered. The constitutional validity of the said amended rules is not under challenge. In this view of the matter, in a writ petition under Article 226 of the Constitution, the locus to challenge is available to a “person aggrieved” only. The petitioners by no stretch of imagination can be said to be “person aggrieved” since they are not eligible under the rules to be considered on the post of “Jan Shikshak”. In this view of the matter, I do not propose to examine the contentions of the petitioners against the impugned order dated 6.7.2011 for want of their locus standi.”

11/ The Single Bench at Principal Seat at Jabalpur in W.P. No.11911/2011(S) by order dated 26.7.2011 has also rejected the similar contention of the Assistant Teachers by taking note of the amended Rule 13.

12/ The petitioner have also referred to the definition of teacher given in the Act. The Section 2(k) of the Act defines teachers but this definition is relatable to Section 5 dealing with the appointment and responsibilities of teachers. The same has no relevance while considering the eligibility for appointment as Jan Shikshak, since the amended Rule 13(1) specifically mentions Upper Division Teacher and Adhyapak and does not include all the teachers.

13/ Thus, it is held that the Assistant Teachers, who are neither the Upper Division Teacher nor Adhyapak, have rightly been excluded from consideration under the impugned Circular dated 6.7.2011, since they do not possess the requisite eligibility prescribed under the Rules.

14/ The next contention is in respect of the eligibility of those Assistant Teachers, who are working in the pay scale of UDT. It

has been submitted that since these assistant teachers are drawing the pay scale of UDT, therefore, they are entitled for consideration. Such a contention of the petitioners can not be accepted since the amended rule provides for selection from amongst the Upper Division Teachers and Adhyapaks. If the petitioners are not working on the substantive post of UDT or Adhyapak, they can not be considered for appointment in terms of the rules.

15/ The next contention of the petitioners is that the age limit of 49 years has wrongly been prescribed in the Circular dated 6.7.2011.

16/ In the unamended Rule 13(2)(c), the upper age limit of 50 years was prescribed for recommending a person for the post of Jan Shikshak but by the amendment dated 8<sup>th</sup> June, 2011 sub-rule 2 has been substituted. If amended rules are silent in respect of the upper age limit, then considering the nature of activities of Jan Shikshak and BAC it is open to the State to prescribe the upper age limit commensurate with the object of appointment on that post. The prescription of the upper age limit of 49 years in the Circular, therefore, can not be faulted.

17/ A further argument of the counsel for the petitioners is that no eligibility conditions have been prescribed under the Rules for the post of BAC, therefore, the circular can not prescribe any eligibility condition. Such a contention can not be accepted. If the Act and Rules do not prescribe the eligibility condition for BAC, then it is always open to the State to prescribe eligibility conditions by issuing executive instructions in this regard. It may be open to the petitioners to challenge such eligibility condition as arbitrary, unreasonable or discriminatory but it is not open to them to contend that the State does not have power to prescribe such eligibility conditions. In the present case the conditions so prescribed have not been questioned on the ground of being arbitrary, unreasonable or discriminatory.

18/ A further contention has been raised by all the petitioners, whose substantive post is Asstt. Teacher, Teacher or Headmaster or others but they are presently working as Jan

Shikshak/BAC, that by virtue of one of the clause of the circular dated 6.7.2011, the presently working Jan Shikshak and BAC have been excluded from consideration for fresh appointment.

19/ The petitioners' grievance in this regard no longer survives since the Commissioner, Rajya Shiksha Kendra, Bhopal has issued the circular No.jkfkds/2011/283 dated 23.7.2011, which has been produced before this Court by the learned counsel for the State, and this circular shows that the State has considered the grievance of presently working Jan Shikshak/BAC and decided that those Jan Shikshak and BAC who fulfill the eligibility condition prescribed in the circular dated 6.7.2011 and have not completed their three years' tenure as Jan Shikshak or BAC, they will be allowed to participate in the fresh selection process and counselling.

20/ The next grievance of the petitioners is that since the petitioners are working as Jan Shikshak/BAC and by the impugned circular the appointment is being made on the post they are working, therefore, their appointment will come to an end at any time, which is not inconsonance with the provisions of the Act and the Rules.

21/ Learned counsel appearing for the petitioners have placed reliance upon the judgment of the Supreme Court in the matter of **Union of India through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and others reported in 2005(8) SCC 394** in support of their submission that since they have been appointed on deputation for a specified term, therefore, their term can not be curtailed. In the said judgment, it has been held by the Supreme Court that ordinarily deputationist has no right to continue on the post, but when the tenure of deputation is specified, despite a deputationist not having any indefeasible right to hold the post, ordinarily the term of deputation should not be curtailed except on just grounds.

22/ Learned counsel for the State has fairly stated that the provisions of the Acts and the Rules will be followed in this regard.

23/ Sub-rule 3 of Rule 13 provides that :-

“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.”

Under the aforesaid rule the nomination of Jan Shikshak is for a minimum period of 3 years.

24/ The Single Bench at Principal Seat at Jabalpur has examined this aspect of the matter in respect of the similarly situated Jan Shikshak/BAC by the order dated 26.7.2011 in **W.P. No.11911/2011(S) in the matter of Anil Kumar Singh and others Vs. State of M.P. and others**, has held that :-

“However, it is always open to the respondents to keep any person on deputation. Admittedly the persons like the petitioners were taken on deputation for a period of 3 years initially. If the said period is over, they have no right to continue on deputation any longer and they are required to be sent back to their parent department. Any deputationist has no right to say that he be permitted to continue on deputation as to remain on deputation is not a fundamental right. Thus, it was open to the respondents to issue the order of deputation of the petitioners, if their services were no longer required to their parent department, make the vacancies, initiate the process of selection, appoint the persons on deputation from amongst the persons, who are eligible as on the date in terms of the amendment made in the Rules of 2003 and post them in appropriate places. Thus, in the opinion of this Court, petitioners are not to be replaced in the manner they are being sought to be. On the other hand, they are required to be repatriated back to their parent department on their substantive post first and then to make the appointment against the vacancies of suitable and eligible persons as Jan Shikshak. No other course is left open for the respondents in view of the aforesaid circumstances.

Therefore, present writ petitions are being disposed of with a direction to the respondents to look into the matter, issue necessary orders in respect of petitioners and if

they completed the period of deputation posting, to repatriate them back to the parent department and then only to start the process of appointment of Jan Shikshak against such vacancies in accordance to the amended rules, which will be subject to the final decision of the writ petition pending before the Division Bench of this Court.

The writ petition is disposed of with the aforesaid direction.”

25/ The present petitioners being similarly situated Janshikshak/BAC are also entitled to the same relief which has been granted to other Janshikshak/BAC by the Principal Seat in the above order.

26/ In view of the aforesaid, the present writ petitions are disposed of by directing the respondents to consider the cases of the present petitioners in the light of the observations made above and to pass necessary orders of their repatriation if they have completed the period of deputation posting and then only make the appointment on the post of Jan Shikshak/BAC, on which they are working.

27/ The main order be kept in the file of W.P. No.5705/2011(S) and the copies thereof be placed in the record of other connected writ petitions, as per list enclosed herewith.

No costs.

Resultantly, Keeping in view the judgment delivered by this Court, the respondents are required to appoint Jan Shikshaks strictly in consonance with the Act framed by the State Government known as MP Janshikshaks Adhiniyam, 2002 and also keeping in view the Rules framed by the State Government known as MP Janshikshaks Niyam, 2003.

The petitioners in case they hold the qualification for the post of Janshikshaks under the Rules and under the provisions of the Act are certainly entitled to be considered

for posting on deputation and therefore the writ petition is allowed directing the respondents to consider the cases of the present petitioners keeping in view the provisions of the Adhiniyam of 2002 read with the Rules framed in the year 2003 as aforesaid.

With the aforesaid, the writ petition stands disposed of.  
No order as to costs.

(S. C. SHARMA)  
J U D G E

*SR*