

THE HIGH COURT OF MADHYA PRADESH

WP-04761-2017

((SMT.USHA DUBEY Vs SCHOOL EDUCATION DEPARTMENT))

Indore, Dated : 31-10-2017

Shri Dharmendra Chelawat, learned counsel with Shri Vikas Yadav, learned counsel for petitioners.

Shri Vibhor Khandelwal, learned counsel for respondents.

Heard finally with consent.

This order will govern disposal of WP No.4406/2017, WP No.4573/2017, WP No.4697/2017 and WP No.4761/2017 since it is jointly pointed out by learned counsel for parties that all these writ petitions involve the same issue on the identical fact situation.

For convenience, facts have been noted from WP No.4406/2017.

These writ petitions have been filed by the petitioners who are working as Teachers in the Excellence and Model Schools aggrieved with the order/Circular dated 3/7/2017 (Annexure P/1) and 12/7/2017 (Annexure P/2) requiring them to appear along with the other candidates for selection for posting in Excellence and Model Schools.

The case of the petitioners is that their substantive post is that of Lecturer/Shiksha Karmi Grade I, Varisht Adhyapak/ Pradhan Adhyapak, Samvida Shikshak Varg I, Shikshak (UDT) and Adhyapak with Post Graduate. In pursuance to the earlier guidelines Annexure P/4, the oral test and interview of the petitioners was done and they were posted in the Excellence and Model Schools vide order dated 13/8/2015 and similar other orders and they are performing their duties with full satisfaction, yet the impugned orders/circulars have been issued for fresh appointment in the Excellence and Model Schools after online test.

The reply of the respondents is that no special right was created in favour of the petitioners while appointing them as Teachers in the

Excellence and Model Schools and further plea has been taken that the online test had been prescribed in order to ensure the selection and appointment of the suitable teachers in these schools since these schools have been developed for the special purpose for catering the needs of good students.

Learned counsel for petitioners submits that the petitioners are already working as Teachers in the Excellence and Model Schools and they were earlier selected in pursuance to the guidelines Annexure P/4, therefore, they cannot be required to undergo the online test again. He further submits that the appointment of the teachers on the basis of online test will result into the transfer of the petitioners and will cause inconvenience.

As against this, learned counsel for respondents has opposed the writ petition submitting that there is no legally enforceable right exists in favour of the petitioners for issuing a direction to continue them on the Excellence and Model Schools. He further submits that with the object to achieve excellence, the online test has been prescribed and that the petitioners inspite of the interim order of this court have not participated in the online test, therefore, nothing survives in the present writ petition.

Having heard the learned counsel for parties and on perusal of the record, it is noticed that the Excellence and Model Schools have been developed by the State in every district to cater the needs of better performing students who are admitted in these schools through examination, therefore, there is a need to appoint the suitable teachers. As per the scheme, no special benefit accrues to a teacher appointed in these schools and working conditions, service rules and promotional avenues etc. remains unaffected. The record further reflects that the petitioners who were working in other schools were initially appointed as

Teachers in the Excellence and Model Schools only on the basis of the oral test and interview. Now with a view to enhance the quality of education in the Excellence and Model Schools, the government has taken a policy decision to post the teachers in the Excellence and Model Schools on the basis of the online examination and the marks obtained in the examination. The impugned circular dated 3/7/2017 further makes it clear that the examination has been conducted only for the purpose of selection of good suitable teachers for the Excellence and Model Schools and result of this examination will not affect the service conditions and avenue of promotion etc. of the teachers. By the order dated 12/7/2017 it was clarified that the existing teachers who are working in the Excellence and Model Schools and who want to continue to work there will have to participate in the online examination.

The record further reflects that this court vide order dated 21/7/2017 had permitted the petitioners to appear in the examination, but inspite of the said opportunity the petitioners have not appeared in the examination. The reply of the respondents reveal that 10380 candidates had appeared in the examination and out of the existing 3744 teachers currently working 1526 teachers had appeared. Hence, the examination and selection in pursuance to the impugned communication has already taken place.

The petitioners have expressed their apprehension that they will be transferred in the mid session, but the reply of the respondents reveals that their apprehension is misconceived. In para 2 of the reply it has been revealed that the eligible teachers on the basis of online test will be placed as per merit in these schools and currently working teachers who have not qualified or who have not appeared in the examination will be placed through counseling process at district level where they can choose the vacant place of their interest within the district. This takes

care of the apprehension of the petitioners in this regard.

Having regard to the aforesaid and considering the fact that it was a policy decision of the State government to conduct online test for the purpose of posting the suitable teachers in the Excellence and Model Schools and that no extra benefit of right accrues on getting such a posting, I am of the opinion that the petitioners have no legally enforceable right to contend that they are already working in those schools, therefore, they should not be asked to appear in the online test. The plea which has been raised by the petitioners is found to be devoid of any merit and no case for interference in the impugned orders is made out. Hence, the writ petitions are dismissed.

The signed order be placed in the record of WP No.4406/2017 and copy whereof be placed in the record of connected Writ Petitions No.4573/2017, WP No.4697/2017 and WP No.4761/2017.

(PRAKASH SHRIVASTAVA)
JUDGE