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STATE OF MADHYA PRADESH

v.

LAXMISHANKAR MISHRA AND ORS. ETC.

March 29, 1979

B [D. A. DESAI AND A. P. SEN, JJ.]

Madhya Pradesh Local Authorities School Teachers (Absorption in Government Service) Rules, 1963, Rule 3(b)—Interpretation of the words "should have worked on the post for a minimum period of 7 years".

The Madhya Pradesh Local Authorities School Teachers (Absorption in C Government Service) Act provided for absorbing teachers serving in Middle Schools and Primary Schools managed by local authorities in Government service.

The relevant rule for absorption enacted under the Act in rule 3 and rule 3(b) read as follows :

D "3(b) For absorption on the post of Head Master/Principal of a High/Higher Secondary School, the person concerned should possess the post graduate degree and should have worked on the post for a minimum period of 7 years in the same institution and should have 10 years' teaching experience in any recognised institution of Madhya Pradesh".

On the question of interpretation of the words "should have worked on E the post for a minimum period of seven years" the High Court was of the view that the period during which a Head Master/Principal worked as incharge Principal ought to be taken into account for computing the period of 7 years.

Dismissing the special leave petitions by the State the Court,

HELD : 1. While computing the period of 7 years for the purpose of rule 3(b) what is determinative is performing duties and discharging functions F of the post of Head Master/Principal irrespective of the capacity in which the post was held. [635. C]

2. The absorption of a person as Principal under rule 3(b) does not depend on rank but on the nature of functions and duties that is incumbent discharges for a particular number of years (i.e.) the duties of a Principal for a period of seven years. The language, in the instant case, indicates emphasis on work being done while on the post irrespective of capacity. [635 B-C]

G

Ramrattan v. *State of M.P. and Ors.*, I.L.R. 1964 M.P. 242; *State of Madhya Pradesh* v. *Gokul Prasad*, [1971] M.P.L.J. 609; *Girja Shanker* v. *S.D.O. Harda and Ors.*, A.I.R. 1973 M.P. 104; distinguished.

3. On a pure grammatical construction of the expression "should have worked on the post for a minimum period of seven years in the same institution", it is clear that the person claiming to be absorbed must have worked on the H post of Head Master/Principal of a High/Higher Secondary School for a minimum period of 7 years, the emphasis being on the experience gained by working on the said post. A person in charge of the post also works and

discharges the duties and functions of the post of which he has taken charge. Even an officiating incumbent of the post does discharge the functions and duties of the post. If the rule expressly did not make any differentiation between the persons working as a confirmed holder of substantive post and an incharge or officiating holder of the post, there is nothing in the expression itself which by necessary implication excludes service in any other capacity except as a confirmed Head Master/Principal in a substantive post. [633 D-E, G-H]

Confirmation in a post being one of the glorious uncertainties of service as observed by this Court in *S. B. Patwardhan's* case, it is rational to believe that the framers of the rule did not want to attach any importance to the capacity in which the post is held but the emphasis was on working on the post meaning thereby discharging the duties and performing the functions assigned to the post. [634 C-D]

S. B. Patwardhan and Ors. etc. v. *State of Maharashtra and Ors.*, [1977] 3 SCR 775; applied.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) Nos. 4062-4066 of 1978.

From the Orders dated 11-1-1978 of the Madhya Pradesh High Court in M.P. Nos. 390, 391, 393, 395 and 397/75.

AND

SPECIAL LEAVE PETITION (CIVIL) NO. 4069 of 1978.

From the Order dated 5-1-78 of the Madhya Pradesh High Court in M.P. No. 580/75.

S. K. Gambhir for the Petitioners in all the S. L. Ps.

The Order of the Court was delivered by

DESAI, J. Mr. Gambhir, learned counsel for the petitioner informed us that a number of petitions are pending in the High Court of Madhya Pradesh in which the question raised in the present group of petitions is involved and as we are not inclined to grant leave, we would rather indicate our reasons by a speaking order.

At the commencement of the British Raj both in the Raj ruled area of India and the princely States institutions of higher education were set up and manned under Government aegis. As the demand for institutions of higher education increased with the proliferation of State activity and need of white collar employees, these institutions speedily multiplied and they were generally set up and manned by educational societies or local authorities.

The turmoil since independence and especially in the last one and a half decade in the world of academicians led to the reversal of the policy of Government directly setting up educational institutions and

A in fact whatever they had set up, being slowly handed over to educational societies and/or local authorities, and it has turned a full circle. The grievance of the teachers in such school manifested in the demand for taking over of such institutions by the State and all over the country the transition has begun.

B In Madhya Pradesh the State regulated the functioning and standards of academic instruction in Higher Secondary Schools under Madhya Pradesh Madhyamik Shiksha Adhiniyem, 1965. This supervisory role of the State hardly improved the situation with the result that tensions increased and the demand became louder that these institutions should be taken over by the Government for its direct C management and the teachers should be accorded the status of Government servants.

The State Government responded to this demand by enacting the Madhya Pradesh Local Authorities School Teachers (Absorption in Government Service) Act, 1963 ('the Act' for short). The Act D provided for absorbing teachers serving in Middle Schools and Primary Schools managed by local authorities in Government service.

The relevant rule for absorption is rule 3 of the Rules enacted under the Act. In these petitions we are concerned with rule 3(b) which reads as under :

> E "3(b). For absorption on the post of Head Master/ Principal of a High/Higher Secondary School, the person concerned should possess the post graduate degree and should have worked on the post for a minimum period of 7 years in the same institution and should have 10 years teaching experience in any recognised institution of Madhya Pradesh".

F While implementing the aforementioned rule there arose a cleavage on the interpretation of the rule, the concerned teacher contending that what is relevant is that working on the post for a minimum period of 7 years would for the purpose of computation of 7 years include service even as incharge Head Master/Principal or officiating service in the post whereas the State contended that the G teacher claiming to be absorbed as Head Master/Principal should have worked as a confirmed Head Master/Principal in a substantive post for the full period of 7 years. The State in accordance with its interpretation declined absorption to a number of Head Masters/ Principals which led to the filing of a number of writ petitions in the Madhya Pradesh High Court.

H It appears that this question was first examined by the Madhya Pradesh High Court in *Satyendra Prasanna Singh Yadav* v. *State of*

Madhya Pradesh & 3 *Ors.*(1), in which the High Court took the view that the period during which a Head Master/Principal worked as incharge Principal ought to be taken into account for computing the period of 7 years. Following this decision the present group of petitions were allowed by a Division Bench of the Madhya Pradesh High Court and an application for leave to appeal to this Court under Article 133 of the Constitution was rejected. Hence the State of Madhya Pradesh has filed this group of petitions for special leave to appeal. It may be mentioned that the earlier decision which the High Court seeks to follow appears to have been accepted by the State of Madhya Pradesh.

Mr. Gambhir, learned counsel for the petitioner urged that the expression : "should have worked on the post for a minimum period of 7 years in the same institution" would, in the context of the rule and the consequences flowing from it, mean only a substantive post on which the Head Master/Principal was confirmed and the confirmed holder of the substantive post for a period of 7 years would be entitled to absorption as envisaged by rule 3 (b). On a pure grammatical construction of the expression it would indisputably appear that the person claiming to be absorbed must have worked on the post of Head Master/ Principal of a High/Higher Secondary School for a minimum period of 7 years. Emphasis is on the experience gained by working on the post of Head Master/Principal. A person incharge of the post also works and discharges the duties and functions of the post of which he has taken charge. Even an officiating incumbent of the post does discharge the functions and duties of the post. While examining the relative positions of confirmed Deputy Engineers and Officiating Deputy Engineers in *S. B. Patwardhan & Ors. etc.* v. *State of Maharashtra & Ors.*,(2) this Court observed that the officiating Deputy Engineers discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in the respective assignments. Viewed from this angle, the confirmed holder of a substantive post would be discharging the functions attached to the post and when some one is placed in that very post in an officiating capacity or directed to hold charge of the post, he would be required to perform the duties and discharge the functions of the post rendering identical service. If the rule expressly did not make any differentiation between the persons working as a confirmed holder of substantive post and an incharge or officiating holder of the post, is there anything in the expression itself which by necessary implication excludes service in any other capacity except as a confirmed Head Master/Principal in a substantive post ? A

(1) Misc. Petition No. 368 of 1973, decided on 14-4-1976

(2) [1977] 3 S.C.R. 775.

confirmed holder of a substantive post may look tautologous because one can only be confirmed in the substantive post.

Now, every High School or Higher Secondary School must of necessity have the post of Head Master/Principal and it was nowhere suggested that there would not be a post of Head Master/Principal. If that would mean that there was always a substantive post of Head Master/Principal it may be that the confirmed holder of the post may be away and not in a position to discharge the duties and some one may be appointed in an officiating capacity or may be directed to hold charge but none-the-less such holder of the post will have to perform duties and discharge functions attached to the post.

Further, the emphasis in the expression is on working on the post meaning thereby performing the duties and discharging the functions assigned to the post and not the capacity in which the post is held. Confirmation in a post being one of the glorious uncertainties of service as observed by this Court in *S. B. Patwardhan's* case, (supra) it is rational to believe that the framers of the rule did not want to attach any importance to the capacity in which the post is held but the emphasis was on working on the post meaning thereby discharging the duties and performing the functions assigned to the post.

Our attention was drawn to *State of Assam & Ors.* v. *Shri Kanak Chandra Dutta*(1). We fail to see how this decision can assist in deciding the question one way or the other. The question that came for consideration of this Court was : whether the holder of a post designated as Moujadar in the Assam valley was holding a civil post in the context of Article 311 of the Constitution ? After examining the duties and functions attached to the post of Moujadar, this Court held that a post can exist apart from the holder of the post and that Moujadar is the holder of a civil post under the State and that it makes no difference that he is remunerated by way of a commission on the collection of Government dues and does not draw a salary. In fact, if at all this decision helps, it would fortify the view which we are taking that the post is independent of the holder thereof and the requirement of the rule is that the person claiming to be absorbed must have worked in the post of Head Master/Principal.

Perhaps there would have been some merit in the submission on behalf of the petitioner if in rule 3(b) the words used were "who held the post" but the language in rule 3(b) is so materially different and it speaks that a person should have worked on the post. The State was apparently wrong in introducing the element of rank for the purpose

(1) [1967] 1 S.C.R. 679.

of rule 3(b). The controversy that surfaced in *Ramrattan* v. *State of Madhya Pradesh & Ors.*,(1) and the subsequent decision in *State of Madhya Pradesh* v. *Gokul Prasad*,(2) which led to a reference to a Full Bench in *Girja Shankar* v. *S.D.O., Harda & Ors.*,(3) on account of the use of the expressions such as "person appointed to be incharge of the current duties of the office" which indicated that such person did not hold the rank and, therefore, could not discharge statutory functions assigned to the post should not detain us. The language here indicates emphasis on work being done while on the post irrespective of the capacity. The absorption of a person as Principal under rule 3(b) does not depend on rank but on the nature of functions and duties that an incumbent discharges for a particular number of years, i.e. the duties of a Principal for a period of 7 years.

It thus clearly transpires that while computing the period of 7 years for the purpose of rule 3(b) what is determinative is performing duties and discharging functions of the post of Head Master/Principal irrespective of the capacity in which the post was held. The High Court was, therefore, right in holding that the period during which the petitioners (respondents in these petitions) worked as incharge Head Masters/Principals ought to be taken into account by the State Government for computing the period of 7 years.

These petitions are accordingly dismissed.

V.D.K. *Petitions dismissed.*

(1) I.L.R. 1964 MP 242
(2) 1971 MPLJ 609
(3) AIR 1973 MP 104.