

SUPREME COURT OF INDIA

State of M.P.

Vs.

Laxmishankar Mishra

S.L.P. (Civil) Nos. 4062-4066 and 4069 of 1978

(D. A. Desai and A. P. Sen, JJ.)

29.03.1979

ORDER:-

1. Mr. Gambhir, learned counsel for the petitioners 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.

2. 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.

3. 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 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 schools manifested in the demand for taking over of such institutions by the State and all over the country the transition has begun.

4. In Madhya Pradesh the State regulated the functioning and standards of academic instruction in Higher Secondary Schools under Madhya Pradesh Madhyamik Shiksha Adhiniyam, 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 management and the teachers should be accorded the status of Government servants.

5. 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 provided for absorbing teachers serving in Middle Schools and Primary Schools managed by local authorities in Government service.

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

"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."

7. 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 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.

8. It appears that this question was first examined by the Madhya Pradesh High Court in Satyendra Prasanna Singh Yadav v. State of Madh. Pra., Misc. Petition No. 368 of 1973, D/- 14-4-1976, 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 Art. 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.

9. 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 period 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 v. State of Maharashtra*, (1977) 3 SCR 775 : (AIR 1977 SC 2051) 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 someone 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 person working as a confirmed holder of substantive post and an incharge of 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 confirmed holder of a substantive post may look tautologous because one can only be confirmed in the substantive post.

10. 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 someone may be appointed in an officiating capacity or may be directed to hold charge but nonetheless such holder of the post will have to perform duties and discharge functions attached to the post.

11. 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* (AIR 1977 SC 2051) 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.

12. Our attention was drawn to *State of Assam v. Kanak Chandra Dutta* (1967) 1 SCR 679 : (AIR 1967 SC 884). 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 Art. 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 Govt. 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.

13. Perhaps there would have been some merit in the submission on behalf of the petitioner if in Rule 3 (b) of 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 of Rule 3 (b). The controversy that surfaced in *Ramratan v. State of Madh. Pra.*, ILR (1964) Madh Pra 242 : (AIR 1964 Madh Pra 114) and the subsequent decision in *State of Madh. Pra. v. Gokul Prasad*, 1971 MPLJ 609 : (1971 Lab IC 896) which led to a reference to a Full Bench in *Girja Shankar v. S. D. O. Harda*. AIR 1973 Madh Pra 104, 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.

14. 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 in-charge Head Masters/Principals ought to be taken into account by the State Government for computing the period of 7 years.

15. These petitions are accordingly dismissed.

Petition dismissed.