

**SUPREME COURT OF INDIA**

Gwalior Mahila Mandal

Vs.

State of M.P

C.A.No.5688 of 2008

(R.V. Raveendran and Lokeshwar Singh Panta JJ.)

16.09.2008

**ORDER**

1. Leave granted. Heard learned counsel for the parties.
2. The appellant is a society running several educational institutions, one of which is a Mahila Mandal Higher Secondary School at Danaoli. The third respondent claims to be the only recognized Upper Division Teacher in the said school.
3. On the retirement of an earlier Principal of the School (Uma Gadvekar), the appellant by letter dated 29.6.2004, sought a clarification from the District Education Officer, as to whether the third respondent being the senior most teacher amongst the recognized staff should be appointed to the post of Principal. The District Education Officer sent a reply on 20.7.2004 stating that after 4.1.2000 the State Government was neither filling up the vacant posts in non-governmental institutions nor providing grant for the posts that were filled up and the institution may do so and bear the cost of running the institution. The District Education Officer, however, suggested that the third respondent may be permitted to work as In-charge Principal.
4. The appellant accordingly posted the third respondent as In-charge Principal on 21.7.2004. Thereafter the appellant transferred and posted the fourth respondent as regular Principal of Higher Secondary School, Danaoli, vide order dated 3.8.2004. The fourth respondent was earlier working as Principal of the Higher Secondary School run by the appellant at Kherapati.
5. The third respondent being aggrieved by the posting of fourth respondent as the Principal by order dated 3.8.2004 filed Writ Petition No.291 of 2005 seeking the following two reliefs : (a) to quash the order dated 3.8.2004 appointing the fourth respondent as the Principal; and (b) to direct the appellant to appoint her as the In-charge Principal of the School. There was no other prayer in the writ petition.

6. A learned Single Judge of the MP High Court allowed the petition by order dated 10.2.2006 and quashed the order dated 3.8.2004 appointing the fourth respondent as Principal of the Danaoli School. He also directed that till a regular appointment was made to the post of Principal, the third respondent may be permitted to serve as In-charge Principal. The appeal filed by the appellant against the said order was dismissed by a Division Bench by order dated 30.8.2006. The present appeal is filed challenging the said order of the Division Bench.

7. Two subsequent developments have made it unnecessary to consider this appeal on merits. The first is that the fourth respondent who was appointed as Principal by the appellant and whose appointment was quashed by the High Court has left the service of the appellant and is no longer the Principal. It is stated that thereafter one Ajay Upadhya, a Lecturer working in an other institution run by the appellant, was transferred and posted as the Principal of the Danaoli School and he has also left the service of the appellant. According to the third respondent, one Radhika Neema another Lecturer from one of the other institutions of the appellant is presently the In-charge Principal of the Danaoli School.

8. The second development is in regard to the grant in aid. Earlier, out of the 55 teaching staff of the Appellant, grant was being extended only in respect of two posts, that is the post of Principal and one post of Upper Division Teacher occupied by the third respondent. We are informed that on the retirement of Uma Gadvekar, the post of Principal also became a non-grant post. At present only the post occupied by third respondent as a recognized teacher is a post covered by the block grant. The fact that other teachers are not recognized does not mean that their appointments are illegal or irregular. It is stated that recognition and grant was linked and there is no need for recognition in regard to teachers appointed non-grant posts. The appellant claims that it has already written to the Department to stop the block grant which is being extended with reference to only one teaching post, so that it can become an unaided institution.

9. As noticed above, the High Court has granted two reliefs. As far as the first relief, which was the main relief, it has now become infructuous as the fourth respondent is no longer in service. In so far as the second relief, what is prayed and what is granted is that the third respondent should be permitted to work as an In-charge Principal until a regular Principal was appointed.

As noticed above, there was no prayer in the writ petition that the third respondent should be appointed as a regular Principal.

10. In regard to the second relief, on the facts and circumstances, we find no need to interfere with the direction of the High Court that the third respondent should be permitted to serve as In-charge Principal as she is the seniormost and only recognized teacher until the appellant appointed a regular Principal in accordance with the Rules. We are informed that in pursuance of the order of the learned Single Judge, the third respondent was in fact appointed as In-charge Principal on 12.9.2006. When the order of the High Court was stayed, the appellant posted someone else to work as Principal. As the present incumbent Radhika

Neema is said to be only an In-charge Principal, as per the direction of High Court, third Respondent should be permitted to serve as In-charge Principal till a regular Principal is appointed.

11. But the applicability of the provisions of the *Madhya Pradesh Ashaskiya Shikshan Sanstha (Anudan Ka Pradaya) Adhiniyam, 1978* and the *Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ki Bharti) Niyam, 1979* would depend upon the fact whether it continues as an aided institution or unaided institution. The appellant may decide whether it wants to continue as an aided institution or whether it wants to be an unaided institution and take consequential action for appointment of a regular Principal. If it becomes an unaided institution, obviously the Act or the Rules regulating appointment will not apply, subject to fulfilment of the prescribed minimum qualifications. The appeal is accordingly disposed of, without expressing any opinion on merits.

12. Learned counsel for the third respondent submitted that even though the third respondent has been working in the Danaoli School continuously, she has not been paid the salary from November, 2004. The appellant may also look into this aspect and if she has been working in the School and has not been paid salary, take steps to release her salary, if there is no legal impediment.