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Court : Madhya Pradesh

Decided On : Apr-04-2005

Reported in : 2006(1)MPHT8; 2005(4)MPLJ559

Judge : Arun Mishra, J.

Acts : Madhya Pradesh Panchayat Samvida Shala Shikshak Recruitment and Service Conditions Rules, 2001

Appeal No. : Writ Petition No. 1454/2003

Appellant : Narendra Singore and anr.

Respondent : State of M.P. and ors.

Advocate for Def. : V.P. Nema, Govt. Adv.

Advocate for Pet/Ap. : Uddyan Tiwari, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Arun Mishra, J.

1. Petitioners in this petition have assailed the advertisement (P-5), dated 16-9-2003 by which vacancies were advertised of contract teachers under the M.P.

Panchayat Samvida Shala Shikshak Recruitment and Service Conditions Rules, 2001. Petitioners have submitted that as the petitioners were earlier appointed on compassionate basis as Asstt. Teacher, petitioners' case has to be considered only against the post of Asstt. Teacher not against the post of contract teacher.

2. It is not in dispute that earlier the petitioners were appointed on compassionate basis; appointment has been set aside as it was procured illegally after retirement of the employee concerned. The order of cancellation of appointment on compassionate basis was upheld by the State Administrative Tribunal; matter travelled to this Court in W.P. 2523/2000 and several other writ petitions which were decided by this Court. This Court has issued the following directions :--

16. However, keeping in view the totality of circumstances and bearing in mind the principle laid down in the case of Arun Kumar Rout (supra) we are inclined to issue the following directions :--

(a) The State Government shall proceed to fill up the vacancies in accordance with law. If necessary, it shall advertise the posts in the news papers and may also call for names from the Employment Exchange.

(b) The petitioners shall be permitted to compete with the new applicants and their cases shall be considered on merits by relaxing their age.

(c) The petitioners shall be considered in their respective category SC/ST. We may hasten to add that there is no bar on their part to compete in the general category.

(d) The State Government shall evolve a rational formula to give weightage to the petitioners who have rendered services for almost eight years as experienced in a particular post has its own effect and impact.

(e) The petitioners, except the petitioners in Writ Petition No. 144/2001 shall be allowed to continue in their respective posts till the entire exercise as directed above is completed.

(f) The aforesaid exercise shall be completed on quite promptitude but in any case it shall not exceed the outer limit of one year.

3. Thereafter, petitioners have participated in the process of selection, they could not be appointed as they were not selected. Petitioners have submitted that the weightage has not been given to the past experience. It is also submitted that appointment ought to have been considered as against the post of Asstt. Teacher. Petitioners have also submitted that in similar writ petition as per order (P-14), dated 28-8-2003 passed in W.P. No. 4638/01 fresh appointment was ordered on compassionate basis; order has been complied with; as such petitioners have submitted that their case be ordered to be dealt with in terms of the direction issued in the order passed in W.P. No. 4638/01.

4. In the return filed by the respondents, it is contended that the appointments were earlier cancelled as per order dated 29-12-95; others persons have filed W.P.S. No. 1260/03 which was dismissed by order dated 25-9-03. Order (R-1) was passed in W.P. (S) No. 1260/03. L.P.A. No. 696/03 was preferred before the Division Bench of this Court which was disposed of as per order (R-2), dated 5-11-03. As per the observation made in the order passed in LPA the petitioners were given due weightage for their experience and also age relaxation in the matter of appointment to the post of contract teachers, hence, petition is devoid of substance and is liable to be dismissed.

5. Shri Uddyan Tiwari, learned Counsel for the petitioners, has submitted that case ought to have been considered for appointment as Asstt. Teacher not as contract teacher; he has prayed for similar benefit given in W.P. No. 4638/01.

6. Shri V.P. Nema, learned GA for respondents, has submitted that no interference is called for as the order passed earlier by Division Bench of this Court in the case of petitioners has attained finality. Petitioners were given chance to stake their claim on competition by grant of the age relaxation and weightage of past service rendered was also given; still they could not be selected; order of Division Bench of this Court has been complied with, hence, no interference is called for in this petition. Question of continuance of appointment stands decided finally by Division Bench against petitioners.

7. After hearing the learned Counsel for the parties, in my opinion, petitioners are bound by the decision rendered earlier by this Court in the afore quoted Para 16 of the order passed in W.P. No. 2523/2000 in the case of petitioners. The right of the petitioners were confined for consideration of their cases afresh; they had to participate in the process of selection, they had participated in the process; they could not be selected; age relaxation was given; weightage was also given to the petitioners, hence, petitioners can not claim any further right than the order passed by this Court which has attained finality. Merely by the fact that an order (P-14) has been passed in another case, petitioners can not claim parity on that ground as the order passed in the case of petitioners in W.P. No. 2523/2000 is binding.

8. It is not in dispute that the appointment was procured illegally/ fraudulently on compassionate basis after retirement of employee which was set aside; reinstatement was not ordered by this Court; as such direction to continue the petitioners in service can not be given on the strength of another order (P-14) passed in different writ petition.

9. The submission raised by the learned Counsel for the petitioner that earlier petitioners were appointed as Asstt. Teachers; advertisement should have been issued for appointment as Asstt. Teachers. There is no direction issued by this Court to advertise the post of Asstt. Teacher; appointment has to be made as per the prevailing rules as the posts of Asstt. Teachers are no more available in the schools run by the Panchayat as earlier the rules of appointment of Shiksha Karmi were framed in the year 1998; thereafter contract teacher's appointment rules have been framed in the year 2001; on the date of issuance of advertisement rules framed in the year 2001 were prevailing, hence, the advertisement was issued for open competition for all in terms of the Rules of 2001; petitioners can not claim better treatment than the incumbents who have to apply under the rules as per the procedure prescribed, as petitioners have participated in selection, they have failed, hence I find no ground to make interference in the writ petition.

10. Writ petition is devoid of merit; same is hereby dismissed. Parties to bear their own costs as incurred.

