

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

(SB : VIVEK AGARWAL, J.)
Writ Petition No.1922/2007(S)

Anil Belsare & Another
Vs.
State of MP & Another

Shri D.S. Raghuwanshi, learned counsel for the petitioners.
Shri Prakhar Dhengula, learned Panel Lawyer for respondents-
State.

ORDER

(Passed on 27th April, 2017)

1. Petitioners have filed this writ petition alleging that they have been discriminated in the matter of regularization on the post of Sports Officer with effect from the date Rules of Madhya Pradesh Regularization of Ad hoc Appointment Rules, 1986 (for short "Rules of 1986") have been enforced and it is submitted that similarly situated persons have been given the benefit by the Indore Bench of this High Court in **WP No.1150/1997 Smt. Pushpa Kekre & Another v. State of MP & Others** and therefore the petitioners are also entitled to get the benefit of regularization of their services on the post of Sports Officer in terms of the Rules of 1986. The operative part of the order in the case of **Smt. Pushpa Kekre & Another** is reproduced as under :-

"7. Learned counsel for the respondents has fairly conceded this position. The petition is accordingly disposed off by the following consent order :-

"Respondents shall consider petitioners' case for regularization of their services on the post of Sport Officer in terms of

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Regularization Rules of 1986 and pass requisite orders of their regularization and other consequential benefits uninfluenced by the controversy related to prescribed higher qualification vide amended Recruitment Rules. They shall also pass appropriate orders for their placement in the higher grade from the date of acquiring the prescribed higher qualification. The requisite orders shall be passed within three months from the date of receipt of this order.”

2. Seeking parity, the learned counsel for the petitioners prays that since his clients are similarly placed, therefore, they are also entitled to the same relief as was extended by this High Court in the case of **Smt. Pushpa Kekre & Another**.

3. Brief facts leading to the present petition are that admittedly the petitioners were appointed in the year 1982 on *ad hoc* basis and they were holding the qualification of Bachelor in Physical Education. In the year 1986, the State Government had promulgated the Rules for regularization of *ad hoc* employees and these Rules are called M.P. Regularization of *Ad hoc* Appointment Rules, 1986. Rule 5 of these Rules provides condition for eligibility for regularization and Rule 5 (iii) provides that one of the eligibility for regularization will be possessing requisite qualification prescribed for regular appointment in the existing Recruitment Rules applicable to the post held by them on *ad hoc* basis. It is also true that the Rules were extended to certain posts as are mentioned in Schedule to the said Rules of 1986. In the Schedule, the posts of Sports Officer and Librarian were not included when the Rules of 1986 were brought into existence. Thereafter, vide amendment dated 28th May, 1987, the posts

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of Sports Officer and Librarian under Higher Education Department were incorporated in the Schedule. It is also an admitted position that this amendment is prospective. Prior to this amendment on 28th May, 1987, the State Government had amended the Recruitment Rules as were prevailing in the Higher Education Department, namely, M.P. Educational (Collegiate Education) Recruitment Rules of 1967, on 02.03.1987, i.e., prior to the amendment dated 28th May, 1987. Therefore, in terms of the amended Recruitment Rules of the Collegiate Education Department, the qualification for the post of Sports Officer was prescribed as Master of Physical Education. Therefore, in terms of the provisions contained in Rule 5 (iii) of 1986 Rules, the petitioners were required to possess requisite qualification as was prescribed in the existing Recruitment Rules of the Higher Education Department for regularization of their *ad hoc* appointment.

4. Since the requisite qualification in the existing Recruitment Rules, as were existed on the date of amendment to the Rules of 1986 on 28th May 1987, whereby the post of Sports Officer was included for the purpose of giving benefit of Rules of 1986, was Master of Physical Education, therefore the petitioners could not have been regularized without fulfilling that qualification and it is the contention of the respondents that since the petitioners had acquired that qualification after obtaining permission from the State Government in the year 1991, therefore, they have been granted this benefit with effect from the date on which they have acquired necessary qualification. This aspect of applicability of the amendment dated 28th May 1987 has not been dealt with by the Indore

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Bench of this High Court while deciding WP No.1150/1997, therefore in the humble opinion of this Court, the ratio of the judgment of the High Court passed in WP No.1150/1997 is not applicable to the facts and circumstances of the present case and thus this writ petition fails and is hereby dismissed.

(Vivek Agarwal)
Judge
27/04/2017

Mehfooz/-