

**IN THE HIGH COURT OF MADHYA
PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 6th OF DECEMBER, 2023

WRIT PETITION No.4469 of 2013

(BRINDAWAN LAL SHARMA

Vs

STATE OF M.P. & ORS.)

Appearance:

***(BY SHRI SIDDHARTH SHARMA– ADVOCATE FOR
PETITIONER)***

***(BY SHRI VIVEK KHEDKAR – ADDITIONAL ADVOCATE
GENERAL FOR RESPONDENT/STATE)***

ORDER

The present petition under Article 226 of the Constitution of India has been filed by the petitioner against the order dated 19.02.2011 whereby the appointment of the petitioner has been refused on the post of Sahayak Shikshak by the respondents.

2. The short facts of the case are that the process for recruitment to the post of Sahayak Shikshak was started for District Morena under Operation Black Board in the year 1993. The petitioner had applied for the same and his name was included in the select list. Out of that list, the persons mentioned from serial No.1 to 166 were appointed vide order dated 01.07.1995. Though initially 220 persons were shortlisted but appointments were given only to 166 persons

and remaining persons were not appointed. The name of the petitioner found mentioned in the list of candidates who were left out though were kept in the waiting list.

3. In regard to the aforesaid anomaly, one District Mansevi Shikshak Sangh had filed original application bearing No.2395/1993 before erstwhile State Administrative Tribunal in which stay order was passed in 18.03.1994. The said stay order was challenged by one Arun Tiwari and others before Hon'ble Apex Court by filing an appeal in which vide order dated 04.01.1995, the said stay order dated 18.03.1994 was stayed. In pursuance of the aforesaid interim order, vide order dated 24.04.1995, the School Education Department, State of M.P. directed that all the teachers who have been selected under the Operation Black Board Scheme after completion of all the formalities shall be given appointment. In the light of the aforesaid order, from the 220 selected candidates, appointments were given to 166 candidates vide order dated 01.07.1995 and rest of the candidates were left out.

4. The left out persons thereafter had preferred one SLP bearing No.6718/1996 (Ravindra Singh Tomar Vs. State of M.P.). The said SLP was admitted and was tagged alongwith Civil Appeal No.77/1995 which later on, was renumbered as SLP No.4579/1997. In pursuance of the directions issued by Hon'ble Apex On 24.02.1997, the School Education Department vide letter dated 19.08.1997 sought information of the vacant posts from Commissioner, Public Instructions and Deputy Director, Education Morena, in this regard and the

General Administration Department gave its opinion in a tip dated 06.08.1997 that when the matter is pending before the Court, then the selection list will be considered as valid till decision of the court. On 29.10.1997, the said information was sent to the Apex Court. Thereafter, on 19.11.1997, the appointment orders were issued in favour of parties before the Court on the posts which were vacant. Even when some of the candidates were not selected from the so-called waiting list, they preferred one C.A. No.8446/1997 in which certain applications were moved. On 03.04.2000, the Hon'ble Apex Court issued an order that we are unable to issue any directions as prayed for in the said applications, however, it would be open for the applicant to seek appropriate remedies before appropriate forum.

5. In pursuance of the aforesaid direction, one O.A. No.2997/2000 came to be filed before erstwhile State Administrative Tribunal but after its abolition the matter was transferred to High Court where it was numbered as W.P. No.5851/2003 wherein vide order dated 17.12.2004, directions were issued for giving appointments to the petitioners therein on the post of Sahayak Sikshak. In the light of the order dated 17.12.2004, the petitioners therein moved a representation. An opinion was sought from the Government Advocate in the matter which was given on 17.01.2005 opining that the persons who were kept in the waiting list should be given appointments as per their entitlement in the merit list but even after receiving the said opinion, the representation of the petitioner, was not decided in accordance with the directives

of this Court and thus, he was discriminated and though similarly situated persons were given appointment, the appointment to petitioner was denied. Citing as an example of a case of one similarly situated person Yogendra Singh Bhadoriya, petitioner has contended that since he was given appointment in the year 2011 on the post of Teacher, the petitioner should also be given appointment on the said post. Challenging the order Anneuxre P/1 whereby the representation of the petitioner has been rejected, the present petition has been filed.

6. Learned counsel for the petitioner has argued while deciding the writ petition bearing No.6092/2003, this Court has taken into consideration every aspect of the matter and had clearly made an observation that the State Administrative Tribunal's order cancelling the selection process since has been quashed by the Hon'ble Apex Court and the respondent/department had been directed to take action in the matter keeping in view the directives issued by Hon'ble Apex Court in the case of Arun Tiwari (supra) and pass an order and communicate it to the petitioner within a period of three months from the date of receipt of certified copy of that order but without considering the representation of the petitioner within the parameters as directed by this Court, the same was rejected arbitrarily which is bad in law and therefore not sustainable.

7. It was further argued that there is no reason with regard to abolition of posts and non availability of posts of Sahayak Shikshaks as the said posts in the wake of new rules

were converted into Siksha Karmi Varg III which were later on converted into Sahayak Adhyapak, were of no consequences as on the date of consideration of representations posts were lying vacant.

8. It was further argued that the status as was existing on the date of declaration of select list was required to be taken into consideration and since the persons were parties to the litigation before the Hon'ble Apex Court in SLP bearing No.4579/1997 had been given appointment, the petitioner should also have been given appointment.

9. It was further argued that though 45 posts were said to be vacant, the said posts should have been filled by respondents in the year 1997 itself but since the respondents had deprived the petitioner from his legitimate right and had discriminated with the petitioner, therefore, suitable directions are required to be issued to the respondents to give appointment to the petitioner. Thus, alleging it to be violation of Article 14 and 21 of the Constitution of India, it has been submitted that the order rejecting representation of the petitioner (Annexure P/1) is required to be quashed and further suitable directions are required to be issued in the matter.

10. Per contra, learned counsel for the respondents has submitted that w.e.f. 1.1.1998, the cadre of Assistant Teacher has been abolished and the same has been replaced by introducing Service Recruitment Rules for Shiksha Karmi Grade III and, later on, those recruitment rules of Shiksha Karmi has also been repealed and Recruitment Rules for contract Teachere Grade III came into force. Since w.e.f.

1.1.1998 no post of Assistant Teacher is vacant in the department, therefore, on the basis that petitioner's name is kept in waiting list, he cannot be appointed as Assistant Teacher.

11. It was further argued that so far as the case of Yogendra Singh Bhadoria is concerned, same has been made due to order passed in Contempt Petition though said appointment was subjected to final decision which can be taken by the Hon'ble Apex Court in Special Leave Petition.

12. It was further argued that the present petition also suffers from delay and laches since the representation of petitioner was rejected on 19.02.2011, but the petition has admittedly been filed in the month of July, 2013 and the explanation which has been given by the petitioner for delay that since the very contempt petition in which the order of rejection of representation alongwith the return dated 18.03.2011 was placed on record by the respondents/contemnors therein was disposed of on 14.05.2013, therefore, the petition would be said to be within limitation, cannot be accepted. Thus, on the ground of delay and laches also the present petition deserves to be dismissed. To bolster his submissions, reliance has been placed in the matter of **S.S. Balu Vs. State of Kerla reported in 2009 (2) SCC 479** and **Ghulam Rasool Lone v. State of Jammu and Kashmir and another reported in 2009 (15) SCC 321**.

13. It was further argued that at no point of time either the Apex Court or this Court had directed that the petitioner be appointed on the post of Assistant Teacher rather the Apex

Court while deciding civil appeal No.77/2015 had upheld the selection of the teacher already done and had not issued any further direction and so far as the order of W.P. No.6092/2023 is concerned, directions were issued to decide the representation. Thus, at no point of time, there were clear directions to appoint the petitioner, therefore, present petition is wholly misconceived and is liable to be dismissed.

14. Heard learned counsel for the parties and perused the record.

15. From the record, it is not clear as to whether the name of petitioner appeared in the persons who were directed to be kept in the select list i.e 220 teachers from whom selection was to be made as the entire list has not been submitted by the petitioner but from the various litigations which have been initiated by the persons, it could be presumed that the name of petitioner also appeared in the said list. The claim which the petitioner has raised for his appointment as Sahayak Sikshak is on the basis of two documents, one the order passed by the Apex Court in Civil Appeal No.77/95 dated 01.12.1997 and another an order passed by this Court in W.P. No.6092/2003 dated 17.12.2004. The extract of the order dated 1.12.1997 passed by Apex Court in Civil Appeal No. 77/95 is appended as Annexure P/3. From bare perusal of said annexure, it would be evident that at no point of time any directions for giving appointment to the rest of the teachers kept in the select list was issued rather it was not found worth interfering the appointment of persons made in the pursuant to the selection procedure as well as amendments to the

Recruitment Rules and also the circulars relating to the procedure for selection and the criteria for selection were upheld.

16. So also the order passed by this Court in W.P. NO.6092/2003 dated 17.12.2004 (though the order is not on record), there was only direction to consider the representation of petitioner which would be evident from the first couple of lines of the impugned order. Thus, in both the orders, there were no clear direction that the petitioner to be given appointment.

17. W.e.f. 1.1.1998, a policy decision was taken by the State and the posts of Sahayak Sikshak were abolished and for the local bodies, Sikskha Karmi Varg III and Samvida Shala Shikshak Varg III were created and as on 1.1.1998 in the School Education Department, there were no post lying vacant so far as Sahayak Shikshak were concerned, therefore, the representation of petitioner was rejected.

18. The petitioner by way of rejoinder has tried to seek parity with similarly situated persons who were given appointments in different districts but the fact remains that both the instances which have been shown by the petitioner where in pursuant to clear direction of the Court, the appointments were given to those persons but in the case of petitioner, there is no clear-cut direction of any court. Thus, no parity can be claimed by the petitioner so far as other similarly situated persons are concerned.

19. The Supreme Court in the case of **State of U.P. And others Vs. Rajkumar Sharma and others reported in (2006) 3**

SCC 330 has held as under:

"14. Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination.

(See Shankarsan Dash Vs. Union of India [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95 : AIR 1991 SC 1612] ; Asha Kaul v. State of J&K [(1993) 2 SCC 573 : 1993 SCC (L&S) 637 : (1993) 24 ATC 576] ; Union of India v. S.S. Uppal [(1996) 2 SCC 168 : 1996 SCC (L&S) 438 : (1996) 32 ATC 668 : AIR 1996 SC 2340] ; Hanuman Prasad v. Union of India [(1996) 10 SCC 742 : 1997 SCC (L&S) 364] ; Bihar Public Service Commission v. State of Bihar [(1997) 3 SCC 198 : 1997 SCC (L&S) 775 : AIR 1997 SC 2280] ; Syndicate Bank v. Shankar Paul [(1997) 6 SCC 584 : AIR 1997 SC 3091] ; Vice-Chancellor, University of Allahabad v. Dr. Anand Prakash Mishra [(1997) 10 SCC 264 : 1997 SCC (L&S) 1265] ; Punjab SEB v. Seema [1999 SCC (L&S) 629] ; All India SC & ST Employees' Assn. v. A. Arthur Jeen [(2001) 6 SCC 380 : AIR 2001 SC 1851] ; Vinodan T. v. University of Calicut [(2002) 4 SCC 726 : 2002 SCC (L&S) 606] ; S. Renuka v. State of A.P. [(2002) 5 SCC 195 : 2002 SCC (L&S) 689 : AIR 2002 SC 1523] and Batiarani Gramiya Bank v. Pallab Kumar [(2004) 9 SCC 100 : 2004 SCC (L&S) 715 : AIR 2003 SC 4248].)

15. Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See Sneh Prabha v. State of U.P. [(1996) 7 SCC 426 : AIR 1996 SC 540] ; Secy., Jaipur Development Authority v. Daulat Mal Jain [(1997) 1 SCC 35] ; State of Haryana v. Ram Kumar Mann [(1997) 3 SCC 321 : 1997 SCC (L&S) 801] ; Faridabad C.T. Scan Centre v. D.G., Health Services [(1997) 7 SCC 752] ; Jalandhar Improvement Trust v. Sampuran Singh [(1999) 3 SCC 494 : AIR 1999 SC 1347] ; State of Punjab v. Dr. Rajeev Sarwal [(1999) 9 SCC 240 : 1999 SCC (L&S) 1171] ; Yogesh Kumar v. Govt. of NCT, Delhi [(2003) 3 SCC 548 : 2003 SCC (L&S) 346] ; Union of India v.

International Trading Co. [(2003) 5 SCC 437] and Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit v. President, Indore Development Authority [(2006) 2 SCC 604 : JT (2006) 2 SC 259] .)"

20. In view of above, no case for interference is made out. Consequently, the present petition stands **dismissed**.

(MILIND RAMESH PHADKE)
JUDGE