

**HIGH COURT OF MADHYA PRADESH BENCH AT
GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

WRIT APPEAL NO.930/2023

SURESH CHAND SHARMA AND OTHERS

VS.

STATE OF M.P. AND OTHERS

Appearances:-

Shri N.K. Gupta – Senior Advocate with Shri Nitin Agrawal – Advocate for the appellants.

Shri Vijay Sundaram – Government Advocate for the respondents/ State.

Shri Rohit Bansal – Advocate for respondent No.4.

JUDGMENT

(Delivered on 16th day of June, 2025)

1. The instant Writ Appeal is filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) being aggrieved by the order dated 06th April, 2023 passed in Writ Petition No.2765/2014 by the learned Single Judge whereby writ petition preferred by the petitioners (hereinafter referred as "appellants) got dismissed.

2. Appellants were appointed on the post of "Peon" on a regular pay scale in the school run by the respondent No.4/ Adarsh Vidhyalaya Samiti, which is a Private Aided Educational Institution. Since appellants were appointed as peon on regular pay scale in Private Aided Educational Institution therefore, their appointments were duly recognized by the State Government, Director of Public Instructions.

3. On 08/01/2005, services of appellants were terminated by respondent No.4/ Society and vide order dated 09/06/2005, District Education Officer, Morena/ respondent No.3 accorded sanction to termination order passed by respondent No.4 in respect of appellants. Later on, it appears that representation was preferred by the appellants seeking reinstatement of their services and on the basis of same, respondent No.4/ Society passed an order dated 15/07/2005 of reinstatement of appellants and communicated the said order to respondent No.3/District Education Officer, Morena.

4. Therefore, as submitted appellants became entitled for the salary as they were getting prior to their termination but allegedly same has not been paid to them by the respondents/ authority. Different representations were given and respondent No.2 called for the entire record pertaining to the inquiry conducted by respondent No.4 in respect of appellants and after perusal of the record, respondent No.2/ Director Public Instructions rejected the

proposal/representation for reinstatement of the appellants sent by respondent No.3 vide order dated 18/03/2008.

5. On 29/03/2010, the State Government remanded the matter back to the respondent No.2/Director, Public Instructions for making further inquiry and submit its report as early as possible. Since no compliance has been made in this regard by respondent No.2 therefore, appellants filed Writ Petition No.4237/2013, which was decided vide order dated 01/07/2017 with the direction for consideration of representations of the appellants. In compliance of the Court's order, on 28/03/2014, respondent No.3 rejected the representation preferred by the appellants, therefore, writ petition (W.P. No.2765/2014) was preferred.

6. The learned Writ Court after considering the rival submissions and going through the documents, came to the conclusion that no case for interference is made out and dismissed the writ petition, therefore, appellants are before this Court in writ appeal.

7. It is the submission of learned counsel for the appellants that appellants were illegally terminated without following due process of law. When respondent No.4/ society realized its mistake then immediately reinstated the appellants, however, respondents/authorities are not permitting the appellants to work nor they are giving salary as per regular pay scale. According to learned counsel, respondents are going contrary to the relevant provisions of

Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adhiniyam, 1978.

8. On the other hand, learned counsel for respondents No.1 to 3/State opposed the prayer and on the basis of return filed, submits that services of appellants were already terminated and new liability on the public funds cannot be raised if respondent No.4/ Society intends to reinstate the appellants. He supports the impugned order and prayed for dismissal of writ appeal.

9. Learned counsel for respondent No.4 opposed the impugned order and supported the cause of appellants.

10. Heard the learned counsel for the parties and perused the documents appended thereto.

11. This is a case where appellants, who are employees (of Regular Pay Scale) in Private Aided Educational Institution and therefore, their salary is to be paid as part of grant-in-aid. When their services were terminated, then as per the circular quoted by the Writ Court in its order at page no. 8, in the cases of Private Aided Schools, whenever the posts lie vacant and are to be filled by promotion, extension or reinstatement, the same can not be done through the Block Grant. Institution can make the said appointments on their own expenses.

12. One more glaring aspect is being noted by the learned Writ Court that once order dated 28/03/2014 was passed in which

representation of appellants was rejected then to safeguard the interest of the appellants, respondent No.4/ Society gone in appeal and vide order dated 18/03/2018, the appeal got dismissed against which respondent No.4/ Society preferred Second Appeal before the State which also got rejected by the State thereafter, appellants moved before this Court in writ petition.

13. Once, appeal preferred by respondent No.4/ Society got dismissed then scope of consideration of Writ Court and thereafter of this Court in writ appeal constricts.

14. The learned Writ Court rightly discussed the issue in correct perspective. Relevant discussions of the Writ Court for ready reference is reproduced as under:-

“The facts of the case with regard to appointment, termination, sanction accorded by the authority as well as declining representations by the petitioners are not in dispute. The question put before this Court for adjudication is whether the petitioners are entitled for claiming the relief which they have claimed by way of present petition with regard to the payment of salary and other service benefits after their reinstatement or their appointment on the post, aided by the State Government. From the order dated 28.03.2014, which is a detailed and elaborate order narrating certain facts which had not been made either in

the petition memo nor in the reply, reflects that against the order sanctioning the termination of petitioners dated 09.06.2005 the respondent No.4/Society had gone in appeal but vide order dated 18.03.2018 the appeal preferred by the respondent No.4 was dismissed against which respondent No.4 had preferred a second appeal before the State which also appears to have been rejected by the State and, thereafter the petitioners have moved before this Court vide W.P. No.4237/2013 for deciding their representations, wherein this Court vide order dated 01.07.2013 had directed the respondents to decide the representations of the petitioners. The arguments of the petitioners that since the provisions of the Act, 1978 had not been complied with, no inquiry has been conducted nor any opportunity of hearing has been granted to the petitioners, the order of termination itself was bad and also when the said termination was recalled by the society, its sanction accorded by an authority not competent was bad in law, doesn't inspire much confidence as the petitioners have never challenged the order dated 09.06.2005, whereby the District Education Officer has accorded sanction to the termination orders passed by respondent No.4 and it was the respondent No.4 who had unsuccessfully challenged the said order up till the

second appellate stage. It also appears from the order of the sanctioning authority that notices were issued to the petitioners vide letters dated 23.02.2005 and 06.05.2005 but the same were not replied and the petitioners slept over their rights. From the order dated 28.03.2014, it also reflects that there were some Circulars of the State Government which are quoted as under:-

"म.प्र. शासन स्कूल शिक्षा विभाग मंत्रालय, बल्लभ भवन भोपाल के पत्र क्रमांक/एफ 13-16/99/20-5/ पार्ट भोपाल दिनांक 30.11.99, पत्र क्रमांक एफ 16/99/20 5/ पार्ट भोपाल दिनांक 06.12.01 व पत्र क्रमांक/एफ 73 16/20-5/ पार्ट भोपाल दिनांक 25.02.02"

which laid down that in the cases of Private Aided Schools whenever the vacant posts are to be filled by promotion, extension or reinstatement, the said appointments should not be through the block grant, the institution can make the said appointments on their own expenses. Thus, in the light of the aforesaid that the petitioners have never challenged the sanctioning order of their termination nor had preferred any appeal against the aforesaid order and in the light of the Circulars which have been quoted above, reflected from the order dated 28.03.2014, at this belated stage, this Court does not find any reason to interfere with the said orders on the point of incompetency by the authority passing the

orders or the legality or illegality of the earlier orders."

15. In view of the above discussion, it appears that the Writ Court rightly applied its mind and dismissed the writ petition preferred by the petitioners. No case for interference is made out.

16. The writ appeal sans merits and the same is hereby dismissed

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE