

HIGH COURT OF MADHYA PRADESH BENCH AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE ANAND PATHAK
&
HON'BLE SHRI JUSTICE HIRDESH
ON 14th FEBRUARY, 2025

WRIT APPEAL NO. 353/2025
Mahesh Kumar Koli and Another
Vs.
State of Madhya Pradesh and Others

Shri K. Kartikey – Advocate for the appellant.

Shri Vivek Khedkar – learned Additional Advocate General and learned Senior Advocate and with Shri Deependra Singh Kushwaha – Additional Advocate General for respondents No.1,2 and 3-State.

1. The instant Writ Appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal), Adhiniyam, 2005 is directed against the order dated 31st January, 2025 passed in Writ Petition No.3578/2025 by the learned Single Judge whereby writ petition preferred by the petitioners was dismissed.

2. Precisely stated facts of the case are that petitioners (hereinafter referred as 'appellants') are working as Primary School Teachers in Primary School. They are aggrieved by the Circular dated 28/11/2024 (Annexure P-1) of writ petition whereby CEO, Jila Panchayat, Vidisha issued the circular for ensuring presence of teachers and students in the Primary School/ High School/ Higher Secondary School falling in the district Vidisha. In the said circular, for ensuring presence of the teachers

and students, it is mandatory that every teacher shall mark his presence at 10:00 am and shall remain present till 04:00 pm in the school. It is stipulated that when teachers/ students will join the school at 10:00 am then he/ she will have to submit **JIO Tap Photo on Whatsapp** in Control Room of BRC Office and District Education Center.

3. Point of agitation for appellants is that it is contrary to the scheme framed by School Education Department Government of M.P. vide policy dated 15/11/2019 (Annexure A-1). By way of said policy, one School Academy Committee has been constituted, in which teachers and parents of the students are members and they ensure attendance of the teachers and students in the school as well as over all development and training of the teachers and other co-curricular activities for holistic development of teachers and students. Therefore, circular dated 28/11/2024 issued by the CEO Jila Panchayat, Vidisha goes contrary to the policy dated 15/11/2019.

4. It is further submitted that issue of privacy of female teacher staff as well as girl students is also worth consideration because if female teaching staff has to send their photographs uploaded on whatsapp then possibility of misuse of those photographs cannot be ruled out, therefore, appellants preferred the writ petition, which was dismissed by the learned Writ Court on the ground that every employer has the right to manage his workforce for effective and smooth functioning of the Institution during working hours.

5. According to counsel for the appellants, approach of the learned Writ Court was erroneous because circular dated 15/11/2019 was not

considered in correct perspective while dismissing the writ petition.

6. Learned counsel for the respondents-State opposed the prayer and submits that this mechanism has been devised because it is being observed that teachers are not regularly visiting the school premises for imparting education to the students as sometimes, they remain absent without disclosing to the higher authorities and sometimes, some instances are available in which teachers after appointment delegate their job of teaching to some other persons on part payment basis therefore, to check this anomalous situation, this mechanism has been conceptualized. It is to ensure attendance of the teachers so that they can impart education to the students in proper manner.

7. Heard the learned counsel for the parties and perused the record appended thereto as well as the impugned order.

8. This is a case where appellants are teachers of the Primary School and are taking exception to the Circular dated 28/11/2024 issued by CEO, Jila Panchayat, Vidisha by which presence of the teachers has been ensured by way of uploading their photographs on Whatsapp. To bring clarity to the issue, the said circular is reproduced as under:-

“ विषयान्तर्गत संदर्भित आदेशानुसार विभाग के समस्त मैदानी अमले के लिए शालाओं के निरीक्षण हेतु लक्ष्य नियत किए गए हैं साथ ही जिला स्तर से लगातार शालाओं के निरीक्षण कराकर दोषियों पर कार्यवाहियां की गई हैं परंतु शालाओं के समय प्रातः 10:00 बजे के बाद खुलने एवं समय सांय 4:30 के पूर्व बंद होने एवं शिक्षकों के अनाधिकृत अनुपस्थिति की स्थितियां लगातार प्रकाश में आ रही है तथा शिक्षकों की आदतों में कोई सुधार दृष्टिगत नहीं हो रहा है।

अतः शिक्षकों एवं छात्रों की शाला में समय पर उपस्थिति सुनिश्चित

करने हेतु विदिशा जिले की समस्त शासकीय शालाओं के लिए दिनांक 01.12.2024 से निम्न व्यवस्था लागू की जाती है।

1. प्रत्येक जनशिक्षक प्रतिदिन किसी एक शाला में प्रातः 10:00 बजे उपस्थित होकर एवं सांय 4:00 बजे अन्य शाला में उपस्थित होकर अपना जियो टैग फोटो बीआरसी कार्यालय में स्थापित कंट्रोल रूम प्रभारी एवं जिला शिक्षा केन्द्र को भेजेगा।
2. प्रत्येक शाला प्रभारी को प्रातः 10:00 बजे से 10:30 बजे के मध्य एवं सांय 4:00 से 4:30 बजे मध्य शाला के सभी शिक्षकों एवं छात्रों का जियो टैग ग्रुप फोटो एवं शिक्षक उपस्थिति पंजी का जियो टैग फोटो जनशिक्षक को भेजना होगा तथा जनशिक्षक के द्वारा मांग किए जाने पर लाइव विडियो से समस्त स्टाफ एवं छात्रों की उपस्थिति प्रमाणित कराएगा।
3. जनशिक्षक संलग्न प्रारूप-1 पर अनुपस्थित शिक्षकों की जानकारी बीआरसीसी कार्यालय में स्थापित कंट्रोल रूम प्रभारी को प्रातः 11:00 बजे तक एवं सांय 5:00 बजे तक भेजा जाना सुनिश्चित करेंगे।
4. जियो टैग फोटो जिन शालाओं द्वारा जनशिक्षक को नहीं भेजा जावेगा उस शाला के समस्त शिक्षकों को अनुपस्थित मानकर जनशिक्षक द्वारा बीआरसी कंट्रोल रूम प्रभारी को जानकारी भेजी जाएगी।
5. संकुल प्राचार्य द्वारा स्वीकृत तथा हस्ताक्षर पंजी में अवकाश अंकित शिक्षकों के आवेदन के फोटो प्रधानाध्यापक द्वारा जनशिक्षक को ग्रुप फोटो के साथ भेजे जाएंगे जिनकी जानकारी जनशिक्षक द्वारा प्रपत्र-1 पर अवकाश कालम में दी जावेगी तथा सूचना संकुल प्राचार्य को भी दी जावेगी।
6. बीआरसीसी द्वारा इस प्रकार से अनुपस्थित पाए गए शिक्षकों की जानकारी एक पृथक पंजी में प्रपत्र-2 पर संधारित की जावेगी तथा माह की 20 तारीख को बीआरसी द्वारा बीईओ एवं संकुल प्राचार्यों को भेजी जावेगी तथा प्रतिलिपी जिला शिक्षा केंद्र विदिशा को भेजी जावेगी।
7. बीआरसी द्वारा भेजी गई अनुपस्थित शिक्षकों की सूची के समस्त

शिक्षकों की अनुपस्थिति दिनांक की वेतन संकुल प्राचार्य एवं बीड़ओ द्वारा अनिवार्यता: काटी जावेगी। इस संबंध में कोई नोटिस आदि विकासखण्ड/संकुल स्तर से जारी नहीं किया जावेगा। वेतन काटे जाने का विधिवत आदेश माह की 25 तारीख तक बीड़ओ द्वारा जारी किया जावेगा।

8. जिन शिक्षकों की वेतन काटी जावेगी वह अपना अभ्यावेदन जिला शिक्षा केन्द्र विदिशा के माध्यम से प्रस्तुत कर सकेंगे। अभ्यावेदन पर जांच/ विचार उपरांत उपयुक्त आदेश अद्योहस्ताक्षरकर्ता द्वारा जारी किया जावेगा।

9. यही व्यवस्था विकासखण्ड शिक्षा अधिकारियों द्वारा हाई स्कूल एवं हायर सेकण्डरी विद्यालयों के लिए लागू की जाएगी तथा अभ्यावेदनों का निराकरण जिला शिक्षा अधिकारी के माध्यम से अद्योहस्ताक्षरकर्ता द्वारा किया जावेगा। हाई स्कूल एवं हायर सेकण्डरी के लिए शाला समय प्रातः 10:00 बजे से सांय 5:00 बजे होगा।

10. विकासखण्ड शिक्षा अधिकारी द्वारा अगले माह की 5 तारीख तक विकासखण्ड अंतर्गत माह में काटी गई वेतन की शिक्षकवार जानकारी जिला शिक्षा केन्द्र के माध्यम से प्राथमिक एवं माध्यमिक एवं जिला शिक्षा अधिकारी के माध्यम से (हाईस्कूल एवं हायर सेकण्डरी) जिला पंचायत को भेजी जावेगी तथा काटी गई वेतन का प्रपत्र-3 पर संधारण किया जावेगा।

11. अद्योहस्ताक्षरकर्ता द्वारा माह की 10 तारीख तक काटी गई वेतन की संख्यात्मक जानकारी प्रपत्र-4 पर कलेक्टर महोदय के समक्ष प्रति माह प्रस्तुत की जावेगी।

12. बार बार अनुपस्थित पाए जाने वाले शिक्षकों की विभागीय जांच संस्थित करने की कार्यवाही जिला शिक्षा केन्द्र/ जिला शिक्षा अधिकारी द्वारा की जावेगी।

13. जिन शिक्षकों की विभागीय जांच हेतु आरोप पत्र दिया जावेगा उन्हें

अनिवार्यतः विकासखण्ड के बाहर दूरस्थ क्षेत्रों में पदांकित करने की कार्यवाही स्थानान्तरण से प्रतिबंध खुलने पर जिला शिक्षा अधिकारी द्वारा की जावेगी।

14. जनशिक्षक /विकासखण्ड कंट्रोल रूम प्रभारी वीएसी के अवकाश या अन्य आवश्यक गतिविधि में संलग्न होने की दशा में इस कार्य को करने हेतु वीआरसी/ वीडो द्वारा वैकल्पिक व्यवस्था करना अनिवार्य होगा। ”

9. Perusal of the Circular dated 28/11/2024 indicates that the CEO Jila Panchayat, Vidisha is cognizant of the fact that the teachers at times, do not come to the school to impart education to the students and at times, they do not furnish correct information regarding their attendance. This is very common that many a times (not always), teachers of primary school take their job causally regarding imparting education whereas they are Builders of Nation and they have to teach and train the new generation for posterity. Indeed, they are over burdened with their work like election duties, census and health related surveys etc., but their main/ basic job is to impart education to the students, therefore, if their attendance is tried to be ensured by the respondents/ department by way of technology as referred in the circular dated 28/11/2024, then it ought to be a welcome step rather than a point of adjudication.

10. One more aspect deserves consideration is constitutional protection given to the students studying in the primary schools by way of Article 21-A of the Constitution of India (Right to Education) by which it is the duty of the State that it shall provide free and compulsory education to all the children of the age of six to fourteen years in such manner as the State

may, by law, determine. Therefore, it is solemn duty of teachers specially working in primary school to ensure imparting of education to the students of this age group to achieve Right to Education of these children. This dispute is to be seen from this vantage point also. Therefore, if attendance of the teachers is not ensured by the respondents and if proxy teachers are continued to work on behalf of regular appointed teachers, then it would be a mockery of the education and defeat of constitutional provisions.

11. In view of the above discussion, in the considered opinion of this Court, so far as ensuring presence of the teachers by the respondents/ department is concerned, it has no element of arbitrariness or illegality. So far as point raised by counsel for the appellants regarding circular dated 15/11/2019 and creating a School Academy Committee, they both can go side by side and are *infact* complimentary to each other. They are not at loggerheads. Even otherwise, those committees are not statutorily formed therefore, contention of counsel for the appellants in this regard stands rejected.

12. So far as privacy of female teachers is concerned, this is a cause which deserves attention and ratification. It is true that possibility cannot be ruled out that regular photographs sent by the female staff and girl students on the Whatsapp as discussed above may be misused by miscreants, therefore, this aspect deserves to be re-looked by the respondents/ Department. Just as a food for thought, this Court expect from the respondents/ Department especially the Department of Information and Technology, Government of M.P. (MAP-IT) that it would

come out with a tangible solution by way of creating an 'APP' or amending the already existing 'APP' so that privacy of the female staff and girl students can be protected and at the same time, attendance of the teachers whether male or female must be ensured so that they would regularly appear in the school and impart education to the students.

13. Another aspect which is being raised by counsel for the respondents is regarding proxy teachers, it has a sound ground for contemplation. It is a practice adopted at many places by the teachers. **The State Government is directed to ensure that such practice of proxy teachers be stopped immediately so that teachers who are appointed to impart education to students would stick to their work only, rather than doing any mischief.** If any teachers is found involved in such practice then suitable civil/service and criminal action shall be ensured against such teachers as well as the person who is imparting teaching on behalf of said appointed teacher.

14. It is expected that the State Government/ respondents shall look into the matter regarding marking of attendance as discussed above in right earnest and come out with a tangible solution in that behalf. Till solution is evolved, female teacher would be permitted to send photographs of the Campus or Office of the Principal treating it to be attendance. Since every smart phone carries META-DATA, therefore, Control Room would decipher actual presence of that staff on the basis of META-DATA. Although, appellants are male teachers therefore, they are not affected by the privacy issue as projected by counsel for the appellants in respect of female staff however, till some more comprehensive solution

is evolved by the respondents/ Department, female staff shall continue to upload photographs as suggested above.

15. Therefore, in the considered opinion of this Court, appeal appears to be misconceived and thus, appellants are saddled with liability of cost of **Rs.2,500/- each** which is to be paid by both the appellants in the High Court Legal Services Authority within one month from today.

16. Appeal stands ***dismissed*** but with aforesaid direction to the State Government/ respondents to contemplate and comply with this order.

17. Principal Registrar of this Court is directed to send copy of this order to the respondents for information and compliance.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE