



**IN THE HIGH COURT OF MADHYA PRADESH
AT Indore
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
ON THE 16th OF OCTOBER, 2024
WRIT PETITION No. 850 of 2016
SUSHIL KUMAR JAIN
Versus
*SCHOOL EDUCATION DEPARTMENT AND OTHERS***

Appearance:

Shri L. C. Patne - Advocate for the petitioner.

Shri Vishal Singh Panwar – G.A./P.L. for respondent Nos.1 to 3/State.

Shri Sanjay Jamindar – Advocate for respondent No.4.

ORDER

- 1] Heard finally, with the consent of the parties.
- 2] This writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

“(a) to call for the relevant records of the case from the respondents;

(b) to direct the respondents No.1 to 3 to absorb the petitioner as Samvida Shala Shikshak and subsequently as Sahayak Adhyapak, at par with junior respondent No.4 with all consequential benefits with retrospective effect, by a writ of mandamus or any other appropriate writ, direction or order;

(c) to allow this petition with costs;

(d) to pass such other order(s) as may be deemed appropriate in the facts and circumstances of the case, to grant relief to the petitioners.”



3] The grievance of the petitioner is that he has not been absorbed in the service, despite he being eligible to be absorbed as per the Circulars dated 05.10.2009 (Annexure R/1) and 10.02.2014 (Annexure P/6), on the post of *Samvida Shala Shikshak Grade – III*, and subsequent non-appointment as *Sahayak Adhyapak* at par with his junior, the respondent No.4 herein.

4] Counsel for the petitioner has drawn the attention of this Court to the reply filed by the State in which the aforesaid Circular dated 05.10.2009 has also been filed on which the petitioner has also relied upon, and Clause (स) (3), which provides for continuity of service, which reads as under:-

“(स) सरकार के तत्कालीन औपचारिकेतर शिक्षा केन्द्रों के अनुदेशक / पर्यवेक्षक हेतु –

1- xxxxxxxxxxxxxxx

2- xxxxxxxxxxxxxxx

3- निरंतरता -- नियुक्ति की दिनांक से जो कि 21 अप्रैल 1999 के पूर्व की हो तथा 22 अप्रैल 2000 को अर्थात् औपचारिकेतर शिक्षा केन्द्र की योजना समाप्ति के समय कम से कम 1 वर्ष तक नियमित रूप से कार्यरत रहा हो तथा मानदेय प्राप्त किया हो. ऐसे अनुदेशक एवं पर्यवेक्षक ही संविदा शाला शिक्षक श्रेणी-3 के नियोजन हेतु पात्र होंगे। चयन परीक्षा में अर्ह घोषित किये गये उक्त श्रेणी के अनुदेशक एवं पर्यवेक्षक की सेवा निरंतरता की पुष्टि DEO/BEO Office पर उपलब्ध अभिलेख यथा केशबुक, मानदेय भुगतान पत्रक/ तत्समय की बैंक पासबुक के आधार पर मानदेय भुगतान की पुष्टि से अनिवार्यतः होनी चाहिए।”

5] Counsel has also submitted that the petitioner has worked continuously on the post of Instructor from 16.11.1981 to 22.08.1992 at primary level and, thereafter 23.08.1992 to 11.06.1997 at secondary level. Thus, it is submitted that as per the aforesaid Circular, the last date of the Scheme i.e., 22.04.2000, the petitioner had already worked continuously for a period of one year and in such circumstances, he was entitled to be



absorbed as per the Circular. Whereas in the second Circular dated 10.02.2014 (Annexure P/6), it has been provided as under:-

“ब. शिक्षा गारंटी शाला के पर्यवेक्षकों हेतु:-

(1.) xxxxxxxxxxxx

(2.) xxxxxxxxxxxx

(3.) निरन्तरता:- नियुक्ति/अनुबंध की दिनांक से जो कि 31 दिसम्बर 2000 के पूर्व की हो, वर्तमान तक नियमित रूप से मानदेय प्राप्तबकिया हो, ऐसे पर्यवेक्षक ही संविदा शाला शिक्षक श्रेणी-3 में नियोजन के पात्र होंगे। पर्यवेक्षक को संवा निरन्तरता की पुष्टि संबंधित विकासखण्ड स्रोत केन्द्र / जिला शिक्षा केन्द्र द्वारा मानदेय भुगतान हेतु मासिक उपस्थिति एवं मानदेय भुगतान के सत्यापन पत्रक से की जाये।”

(Emphasis Supplied)

6] Thus, the attention of this court is drawn to Annexure P/3 dated 11.06.1997 where the petitioner as also the respondent No.4's names can be found at Serial No.18, where the petitioner had given the charge of Primary Teacher to respondent No.4 Mahendra Kumar Agrawal S/o Babulal Agrawal, when the petitioner moved from primary to middle class of school section. Thus, it is submitted that since the respondent No.4 has already been granted the benefit of the aforesaid circulars, the petitioner may also be given the same treatment and be absorbed as per the aforesaid circulars.

7] A reply to the petition has also been filed, traversing the averments made in the writ petition.

8] Counsel for the State has submitted that as per the policy, the requisite criterion for absorption is continuance in service till 22.04.2000 i.e., one year after the Non Formal Education Scheme came to an end. Thus, it is submitted that since the petitioner has not worked up to 22.04.2000, he is not entitled to be given any relief.



9] Heard. Having considered the rival submissions, perusal of the documents filed on record as also the aforesaid Circulars, this Court finds that the requirement for absorption as per the aforesaid Circulars is that a person whose appointment is that of prior to 21.04.1999, and who must have worked continuously for a period of one year as on 22.04.2000, and the aforesaid interpretation as adopted by the respondents that a person must have worked continuously for a period of one year upto 22.04.2000, cannot be countenanced as this Court is of the considered opinion that no purpose could have been served to mandate that the candidate must have worked continuously for a period one year till 22.04.2000, for which there appears to be no justification.

10] In view of the same, the petition stands allowed and the respondents are directed to absorb the petitioner as Samvida Shala Shikshak and subsequently as Sahayk Adhyapak at par with the respondent No.4 with all the consequential benefits with retrospective effect.

11] Let the aforesaid exercise be completed within a period of three months from the date of receipt of certified copy of this order.

12] With the aforesaid, the petition stands *allowed* and *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

Pankaj