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WP-15013-2013

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 15013 of 2013*PRADHYAPAK SANGH AND OTHERS**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

.....
Appearance:

*Shri Manoj Sharma- Senior Advocate with Ms. Lavanya Verma & Shri Priyal
Suryavanshi-Advocates for the petitioners.*

Shri Praveen Namdeo- Government Advocate for the respondent-State.
.....

ORDER

(Reserved on : 28/07/2022)
(Pronounced on : 04/09/2025)

The present petition has been filed by a registered Association of directly recruited professors working in the State Government of the Madhya Pradesh so also by two such directly recruited Professors.

2. The petitioners have sought relief that the respondents should redraw the gradation list of professors for the year 2011 onwards strictly in terms of the directions passed by a Division Bench of this Court in the case of *Nisha Tiwari Vs. State of M.P. and others (W.P. No. 11324/2003)* and also to direct the State to fill up the Posts of Principals in Degree Colleges in State of Madhya Pradesh by promotion from amongst members of the cadre of professors in terms of the directions passed in *Nisha Tiwari (supra)* in time bound manner.

3. Essentially the petitioners seek that only the directly recruited Professors should be considered for promotion to the post of Principals in



Degree College and P.G. Colleges and that the promotee Professors should not be considered for such promotions in terms of the judgment in the case of Nisha Tiwari (*supra*).

4. Learned counsel for the petitioner has vehemently argued that the Higher Education Department presently has only 704 substantive posts of Professors as per Schedule-I to Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1990 (for short referred to as Rules of 1990) after amendment of the year 2015 and prior to the amendment, the strength was 915. It is contended that before the amendment on 27.08.2015, direct recruitment was the only mode for appointment to substantive post of Professors as per rule 2 of the Rule of 1990 and after amendment promotion has been added as second mode of appointment for the first time and ratio between direct and promotion is now fixed at 25 to 75% but till now none of the posts which is 75% of 704 posts have been filled up by promotion and the only substantive professors in the State of M.P. are those who are working on the substantive posts of professors being directly recruited and numbering approximately 250 in the entire State and therefore till the promotion exercise takes place as per amendment of 2015, upto that time only the direct recruitee professors are the substantive professors and are the professors in the feeder cadre to the post of Principals in Degree College. Those professors who were given time bound promotion as per the erstwhile Schedule-II of the Rules of 1990 which was applicable upto the year 2015 are not substantive professors in view of the judgment of Division Bench in the case of Nisha Tiwari (*supra*) and therefore, the gradation list of



substantive Professors be redrawn and they only be held to be in the feeder cadre of professors so that only such recruitee professors be considered for regular promotion as Principal or for being given the current charge of Principals because they alone are in the feeder cadre of being promoted to the post of Principal.

5. The learned senior counsel further argued that this Court in case of **Nisha Tiwari (supra)** considered the issues of *inter-se* seniority of direct recruitee and time bound promoted professors and inter-se eligibility for promotion to the post of Principal and held that only direct recruitee professors can hold the 915 sanctioned substantive posts and time bound promoted professors cannot be promoted as Principals of Degree colleges, nor can be permitted to march over directly recruited professors. It is vehemently argued that **Nisha Tiwari (supra)** draws the curtains over the controversy and now the State Government should do the consequential action and stop promotions of the promotee professors over the post of Principal and should not give any current charge to such promotee professors on the post of Principal as it would be violative of the decision of Division Bench in the case of **Nisha Tiwari (supra)**.

6. It is further contended that the subsequently another Division Bench of this Court has clarified the judgment in the case of **Nisha Tiwari (supra)** in the case of **Prantiya Shaskiya Mahavidyalayeen Pradhyapak Sangh and others Vs. The State of Madhya Pradesh and others (W.P. 1704/2009)** decided on 11.03.2010 and as clarified in R.P. No. 267/2010 vide order



dated 12.11.2010. It is contended that the clarification is based on Rule 12 of M.P. Civil Services (General Conditions of Service) Rules 1961 which is not applicable to Higher Education Department because Rule 12 of Rules of 1961 would apply only if there are two lawful modes of appointment i.e. direct recruitment and promotion but in Department of Higher Education before 2015, the only one lawful mode of appointment as substantive professor was direct recruitment and nothing else and therefore, the promotee professors could not rely on Rule 12 of 1961 Rules. Despite that, the State Government has been giving the charge of Principals to these promotee professors and have included these time bound promotee professors in the gradation list of substantive professors which is bad in law and the gradation list be redrawn and redrafted. Reliance was also placed on the judgement of the Hon'ble Apex Court in the case of Dr. *Rashmi Shrivastava Vs. Vikram University and Others, 1995 (3) SCC 653*, to contend that promotes promoted in violation of the rules would be ex-cadre promotees, and will fall outside the cadre.

7. *Per contra*, learned counsel for the State has stated that the State Government has not ended the probation of the petitioners and after ending of their probation, seniority list for direct recruitee professors shall be prepared. Therefore, the petition at this stage is premature. This reply is filed in the year 2014 as per the position existing at that time. The State further contended in the reply that in compliance of the judgment in the case of *Nisha Tiwari (supra)*, the State Government has given benefit of further promotion to direct recruitee professors to the further post of Principal



Degree College. It is contended that in W.P. 3396/2011, an interim order has been passed at Gwalior Bench of this Court to carry out promotion in accordance with the UGC Regulation of 2010 and State is acting to amend the Recruitment Rules.

8. A further reply is filed on 08.10.2014 in compliance of the order passed by this Court on 22.09.2014 and it is contended that the process of granting charge of incharge Principals is only a stop gap arrangement and does not prejudice rights of members of petitioner association in any manner and this tradition in the Colleges that senior most professors/ lecturers is given current charge of Principal, is only an stop gap arrangement.

9. The Association of Promotee Professors has filed intervention application. It is contended by the said association that in view of subsequent judgment in the case of **Prantiya Shaskiya Mahavidyalayeen Pradhyapak Sangh** (supra) decided on 11.03.2010 read with order dated 12.11.2010 passed in review, the judgment in the case of **Nisha Tiwari** (supra) has been watered down and now the provisions of M.P. Civil Services (General Conditions of Service) Rules 1961 would apply for reckoning the inter-se seniority and now a common seniority list is to be drawn and therefore, the petition is utterly misconceived as reliance on the case of **Nisha Tiwari** (supra) is now no longer relevant. So far as the judgment in case of **Dr. Rashmi Shrivastava** (supra) is concerned, it is argued that the said judgment is for the University teachers, appointed under a separate enactment and regulations. However, in view of subsequent judgment in case of **Prantiya Shaskiya Mahavidyalayeen Pradhyapak Sangh** (supra), the Division Bench



has drawn curtains and the promotee Professors are very much part of the cadre, and can claim inter-se seniority also.

10. Heard.

11. Initially, the State Government had framed M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1990 and as per the Schedule-I to the aforesaid Rules, it was provided that there would be 915 posts of Professors and 7426 posts of Assistant Professors. As per Schedule-II of the aforesaid Rules, the post of Professor was to be filled up 100% by direct recruitment. Clause (four) of Schedule II is in two parts. As per (four) (a), the posts of Professor and Deputy Director Higher Education i.e. 915 posts are 100% direct recruitment posts but as per Clause (four)(b) there would be further uncertain number of posts of Professors which will be filled up 100% by promotion. The aforesaid Clause (four)(b) provides that there would be two sources of Professor in the cadre. First will be definite 915 posts of direct recruitment and second would be indefinite posts for promotion. The note to Clause (four) (b) categorically mentions that these posts shall be filled up by conducting DPC and there would be no definite posts and all the Assistant Professors fulfilling the requirements of seniority and merit would be promoted as Professors and these posts would be changeable to Professors and Assistant Professors.

12. Therefore, it has been argued by promotee Professors that in terms of the provision of Schedule II of the Rules of 1990 initially framed in the year 1990, it is evident that the post of Professor has two sources, one by



promotion and one by direct recruitment and there is no provision that one is inferior to the other. The promotional posts were indefinite and all the Assistant Professors having the requisite experience/qualification and seniority were to be designated as Professors by promotion. Therefore, all Assistant Professors having requisite qualification and seniority were given a vested right to be promoted irrespective of number of posts of Professors.

13. The relevant schedule is as under:

SCHEDULE II
(See Rule 6)

Name of Department	Name of Service	Name of Post	Number of percentage of Duty post to be filled in				Remarks
			Duty post	By direct Recruitment	By promotion of substantive members of service	By transfers of person of other service	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Department of Higher Education	M.P. Educational (Gazetted) services	(i) Commissioner	1	An officer of Indian Administrative Services of Super time Scale on deputation	
		(ii) Principal P.G. College and Additional Director, Higher Education	77	...	100%	...	
		(iii) Principal, Degree, College, Joint Director, Higher Education and State Liaison Officer National Service Scheme	347	...	100%	State Liaison Officer shall be from amongst the degree, Principal Cadre, having seven years experience of National Service Scheme	
		(iv) (A) Professor and Dy. Director, Higher	915	100%	...	Direct Recruitment shall be made on total number	



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		Education				of substantive posts of professors sanctioned by Govt. in addition to this account of enforcement of new UGC pay scales from 1-1-86. Promotion to the post of professors shall be made on the basis of service record from amongst the assistant Professors of senior/selection grade-pay scale after completion of prescribed period of service and prescribed qualification under provisions mentioned in Schedule-IV. These posts shall be filled up through departmental promotion committee. No definite number of these posts of professors shall be and member of these posts will vary on the basis of member of assistant Professor having requisite seniority and qualification	
		(v) Asst. Professor	7426	100%			*By competitive examination. The successful candidates shall be interviewed as well.
		(vi) Sports Officer	324	90%	10%**		** Only for assistant librarian of dying cadre, those posts shall not be filled up by promotion in future after promotion of these officers.
		(vii) Librarian	384	90%	10%**		



14. There was subsequent amendment in the Rules of 1990 in the year 2015 and by way of amendment dated 27/08/2015, the posts of Professors were made definite to 704 posts and now a quota of direct recruitment and promotion has been carved out i.e. 25% by direct recruitment and 75% by promotion. Now the system of promotion irrespective of number of vacancies has been done away with, but those teachers who had acquired the right to be promoted from a date prior to amendment, have rightly been promoted even after the amendment from retrospective date.

15. The relevant Schedule as substituted by amendment of 2015 is as under:

SCHEDULE-II
(See rule 6)

S.No.	Name of the post	Method or recruitment		
		By direct recruitment	By promotion/s election/placement	By deputation from other services
(1)	(2)	(3)	(4)	(5)
1.	Principal, P.G. College/Additional director Higher Education	-	100%	-
2.	Principal, Degree College/Joint Director, Higher Education/State N.S.S. Officer	-	100%	-
3.	Professor	25%	75%	-
4.	Associate Professor/Deputy Director	-	100%	-
5.	(a) Assistant Professor (selection grade) (b) Assistant Professor (senior scale) (c) Assistant Professor	100%	100% 100%	-
6.	(a) Sports Officer (more than 3 years service in selection grade) (b) Sports Officer (selection grade) (c) Sports Officer (senior scale) (d) Sports Officer	- - 100%	100% 100% 100% -	
7.	(a) Librarian (more than 3 years service in selection grade) (b) Librarian (selection grade) (c) Librarian (senior scale) (d) Librarian	- - - 100%	100% 100% 100% -	



16. In the case of *Nisha Tiwari (supra)*, the Division Bench held that the promotee professors are outside the cadre of Professors and they can never be promoted as Principals, nor can claim march over the petitioners in seniority over the directly recruited Professors. The Division Bench held as under :-

“10. Every cadre has a definite number of posts in each category Schedule I fixes the number of posts. In the department of Higher Education, the cadre has got one Commissioner, 68 PG College Principals, 347 Degree Colleges Principals, 917 Professors, 7426 Assistant Professors and 8 Asst. Professor (Selection Grade). The uncertain number of time bound promoted Professors, do not, therefore, form part of the cadre as per Schedule I and II. It is thus evident from the Rules that the time bound promoted Professors are holders of posts of Professors outside the cadre, that is virtually supernumerary posts. The very fact that their number is uncertain and they are not part of the cadre in Schedule I demonstrates that they are not holders of cadre posts. When Schedule II clearly provides that the posts of Principal of Degree Colleges should be filled 100% by promotion of “substantive members of the service”, it means that it can be filled only by directly recruited Professors who are holding the substantive posts and not by time-bound promoted Professors who are the holders of supernumerary posts. The provision in Schedule IV for promotion of time bound promoted professors (who are outside the cadre and whose number varies from year to year) to the posts of 'Principal, Degree College', would be inconsistent with Schedule II which categorically provides that all the posts of Principal of Degree Colleges should be filled by promotion of substantive member of the service. Rule 6(2) makes it clear that the number of persons recruited by promotion as specified in Schedule IV shall not at any time exceed the percentage shown in Schedule II of the number of duly posts as specified in Schedule----. Therefore, time bound promoted Professors cannot be promoted as 'Principal, Degree Colleges, nor permitted to steal a march over directly recruited Professors.

12. Having regard to Schedule II which provides that post of Principal, Degree College can be filled only by promotion of substantive members of service and having regard to sub-rule (2) of Rule 6 which provides that promotion of persons shall be as shown in Schedule II read with Schedule I, time bound promoted Professors who hold posts outside the substantive strength of the service cannot obviously be promoted as Principals, Degree College. But entry (2) of Schedule IV contemplates and provides for filling the posts of Principal, Degree College from two feeder lines, one from the recognized feeder line of directly recruited professors and another from the non-recognized feeder line of Time bound promoted professors by equating them to directly recruited professors. This provision namely entry (2) of Schedule IV providing for promotion for Time bound promoted Professors as Principals, Degree College is violative of Rule 6(2)



and Schedule I & II of the Rules.

13. We are, however, conscious of the fact that hundreds of promotions of Time bound promoted Professors have taken place as Principals, Degree College over the period of last ten years during the pendency of this petition. We are hold that there have been further promotions as Principals, PG Colleges. We are also informed by the State that very few direct recruited Professors remain to be promoted. It is also stated that in view of the availability of large number of Time bound promoted Professors, there has been no direct recruitment of Professors, for some years now. We are, therefore, of the view that instead of interfering with the promotion of Time bound promoted Professors as Principals, interests of justice would be served by only directing that no time bound promoted Professors shall be placed above directly recruited Professors either, in the cadre of 'Professors' or 'Principal, Degree College', so long as Schedule I & II to the Rule continue in their present form providing that posts of Principals have to be filled hundred percent by promotion of the substantive members of service.

15 In view of the above we allow this petition in part and Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules 1990 are read down in such a manner that no Time bound promoted Professor shall have seniority above the directly recruited Professors and even in the promotion cadre of "Principals, Degree College, those promoted from the feeder line of directly recruited Professors shall be shown above the Principals promoted from the feeder line of Time bound Professors. The seniority list of Principals, Degree College and consequently, the seniority list of Principals, PG College shall be revised accordingly. The petitioners will also be entitled to all consequential benefits. Compliance within six months from the date of receipt of this order. Parties to bear their respective costs."

17. However, subsequently, the said judgment was put to interpretation by a subsequent Division Bench in case of **Prantiya Shaskiya Mahavidyalayeen Pradhyapak Sangh** (supra), and the Division Bench this time considered the judgment of the case of Nisha Tiwari (supra), and held that as per the M.P. Civil Services General Conditions of Service Rules 1961, there is a specific provision to adjudge the relative seniority of promotees vis-à-vis direct recruits. For ready reference, the provision as per Rule 12 (e), (f) and (g) is as under :-

(e) The relative seniority between direct recruits and promotees shall be determined according to the date of issue of appointment/promotion order



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Provided that if a person is appointed/promoted on the basis of roster earlier than his senior, seniority of such person shall be determined according to the merit/select/fit list prepared by the appropriate authority.

(f) If the period of probation of any direct recruit or the testing period of any promotee is extended, the appointing authority shall determine whether he should be assigned the same seniority as would have been assigned to him if he had completed the normal period of probation testing period successfully, or whether he -should be assigned a lower seniority.

(g) If orders of direct recruitment and promotion are issued on the same date, promotee persons enblock shall be treated as senior to the direct recruits.

18. In case of **Prantiya Shaskiya Mahavidyalayeen Pradhyapak Sangh** (supra), the Division Bench passed order in writ petition No. 1709/2009, as modified in review being RP No. 267/2010, and after modification in review, the operative para-5 reads as under –

“5. In this reference, we may herein refer Rule 12 of the M.P. General Conditions of Service Rules, 1961 which is very specific to the extent that directly recruited person in seniority would be above the promoted persons, if they are promoted in the same- selection. On that basis we only clarify earlier judgment to the extent that if in the same year posts are filled either by way of promotion or by way of direct recruitment to the post of Assistant Professors/Professors then the seniority of such promoted Assistant Professors/Professors shall be below the persons directly recruited in the same selection and accordingly the seniority list shall be recast by the respondents in terms of the directions passed in Nisha Tiwari's case (supra).”

19. Now, it is clear at the ratio of **Nisha Tiwari** has been watered down, and it can no longer be said to be holding that the promote Professors cannot be treated as Professors in the cadre of Professors, and can never be promoted as Principals. Nor it can now be inferred that the promotee Professors cannot claim any inter-se seniority against the direct recruit



Professors. Now the promotes shall be below the recruitees if they are products of the same selection in the same year, otherwise, the promotes shall be above the recruitees of the same year. Therefore, now as the Rules of 1961 have been applied with full force to the cadre of Professors, that escaped consideration of the Division Bench while deciding *Nisha Tiwari*, therefore, the later judgment of the Division Bench, passed to the contrary, but after considering the earlier judgment, will prevail.

20. The learned senior counsel for the petitioner had argued that the judgement in case of **Prantiya Shaskiya Mahavidyalayeen Pradhyapak Sangh** (*supra*), should be held *per-incuriam*, as the co-equal bench could not have taken a contrary view. The said argument is meritless because the later Division Bench in **Prantiya Shaskiya Mahavidyalayeen Pradhyapak Sangh** (*supra*) has duly taken note of the earlier judgment in case of *Nisha Tiwari* (*supra*), and has held that the Rules of 1961, that relate to fixation of inter-se seniority of promotes vis-à-vis direct recruits, will have to be followed, and struck a balance, that where *Nisha Tiwari* (*supra*) will follow. This Court is bound by the later view, as the later view in **Prantiya Shaskiya Mahavidyalayeen Pradhyapak Sangh** (*supra*) has been taken after considering the earlier view.

21. The upshot of the judgment of the later Division Bench is that it has been recognized as per initial Rules of 1990 and the position that stands even after amendment of 2015 that the post of Professor can be filled up by direct recruitment and promotion, i.e. both modes and there is no difference between the two sets of persons occupying the post of Professors and no one



set of Professors is inferior or superior to other.

22. So far as reliance on the case of Rashmi Shrivastava (*supra*) is concerned, the said judgment is for the University teachers, appointed under a separate enactment and regulations. In case of College teachers, there is specific judgment in case of *Prantiya Shaskiya Mahavidyalayeen Pradhyapak Sangh (supra)*, with which, this Court is bound.

23. Therefore, the petition fails, and is *dismissed*.

(VIVEK JAIN)
JUDGE

MISHRA