

THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH,  
AT JABALPUR  
(DIVISION BENCH)

WA No. 288 of 2016

RITA GUPTA

.....Appellant

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....Respondents

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**Coram :**

**Hon'ble Shri Justice Ravi Malimath, Chief Justice**

**Hon'ble Shri Justice Vijay Kumar Shukla**

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**Presence:**

*Mr. Saket Agrawal, Advocate for the appellant/writ petitioner.*

*Mr. Ashish Anand Barnad, Deputy Advocate General for the  
respondent/State.*

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**ORDER (Oral)**  
**(08-12-2021)**

**Per: Ravi Malimath, Chief Justice**

The appellant and respondent No.5 applied to the post of Guruji before respondent No.4. The petitioner was appointed in the year 2002. The appointment was challenged by the respondent and the appointment was set aside in the same year itself. Thereafter, the petitioner challenged the same before the Commissioner. The Commissioner allowed the appeal and set aside the order of termination. The respondent filed W.P. No.6383 of 2007. By the order dated 13.04.2015, the matter was remanded to the Collector for a fresh consideration. Thereafter, the Collector passed an order upholding the order of termination. The same was challenged before the Commissioner who dismissed the appeal, Hence, the instant writ petition.

The learned Single Judge who considered the plea of the parties, dismissed the writ petition. The learned Single Judge came to the conclusion that the petitioner was less meritorious than the respondent. The appointment order was bad in law. Questioning the same, the instant appeal is filed.

Learned counsel for the appellant contends that the order passed by the learned Single Judge as well as the other authorities are bad in law and

liable to be set aside. That the petitioner was appointed as Samvidha Shala Shikshak Grade-III by the order dated 04.07.2015. That order has not been challenged and hence, she deserves to be continued on the said post.

On considering the contentions, we do not find any merit in this appeal. Consistently, all the authorities have held that the appointment of the petitioner is bad in law. The reason assigned is that the petitioner as well as respondent No.5 applied to the post of Guruji. The marks obtained in the 10+2 exam was 52.3% by the petitioner and 53.5% by the respondent No.5. On that day itself respondent could have been appointed. However, the petitioner was appointed even though she was less meritorious. Thereafter, the litigations have gone on from 2002 till today.

Admittedly the petitioner has continued to work only on the basis of interim orders. When the initial appointment was cancelled on the very year in which it was made, the petitioner continued by virtue of the interim orders passed by the authorities. Therefore, the petitioner cannot claim equity with regard to the same. So far as the conditions of the appointment order dated 04.07.2015 as a Samvidha Shala Shikshak is concerned, the same is also under a cloud.

She was said to have been appointed as Samvidha Shala Shikshak by virtue of her holding the post of a Guruji. Therefore, the post of the Guruji were regularized to the post of Samvidha Shala Shikshak. However, the petitioner was not holding a valid post of a Guruji as on the date of appointment as Samvidha Shala Shikshak. The post held by her as a Guruji was only on the basis of an interim order. The interim order is always subject to the final orders to be passed. Since the final order is to the effect of dismissing her from the service, she holding the post temporarily cannot give her any right for an appointment as the Samvidha Shala Shikshak. Therefore, the appointment as a Samvidha Shala Shikshak also is subject to the result of the validity of her appointment as Guruji. Since, her appointment as Guruji has been set aside, consequently, her appointment as a Samvidha Shala

Shikshak also would not survive for consideration.

Under these circumstances, we do not find any ground to interfere in this appeal. It is dismissed.

**(RAVI MALIMATH)**  
**CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)**  
**JUDGE**

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