

**HIGH COURT OF MADHYA PRADESH : JABALPUR**

**W.P. No.10709/2017**

*Santosh Kumar Shrivastava*

**-Versus-**

*State of M.P. and others*

***and connected writ petitions***

W.P.No.10873/2017, W.P.No.10967/2017, W.P.No.12554/2017,  
W.P.No.12845/2017, W.P.No.17108/2018, W.P.No.17126/2018,  
W.P.No.17132/2018, W.P.No.17138/2018, W.P.No.17141/2018,  
W.P.No.17209/2018, W.P.No.17254/2018, W.P.No.17280/2018,  
W.P.No.17356/2018, W.P.No.17371/2018, W.P.No.17374/2018,  
W.P.No.17416/2018, W.P.No.17481/2018, W.P.No.17529/2018,  
W.P.No.17539/2018, W.P.No.17547/2018, W.P.No.17553/2018,  
W.P.No.17565/2018, W.P.No.17576/2018, W.P.No.17662/2018,  
W.P.No.17780/2018, W.P.No.17781/2018, W.P.No.17839/2018,  
W.P.No.17933/2018, W.P.No.18110/2018, W.P.No.18208/2018,  
W.P.No.18409/2018, W.P.No.18460/2018, W.P.No.18736/2018,  
W.P.No.19348/2018, W.P.No.19551/2018, W.P.No.19983/2018,  
W.P.No.20175/2018, W.P.No.20863/2018, W.P.No.20872/2018,  
W.P.No.22026/2018, W.P.No.22208/2018, W.P.No.22390/2018,  
W.P.No.26382/2018, W.P.No.27507/2018.

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**Appearances:**

*Shri Prashant Singh, Senior Advocate assisted by Ms. Vineeta Sharma, Shri K. C. Ghildiyal, Shri Neeraj K. Tiwari, Shri K. S. Thakur, Ms. Jayalakshmi Iyer, Shri Vikas Sharma, Shri Jitendra Arya, Shri Vinod K. Mishra, Shri Anshul Tiwari, Shri Jitendra K. Tiwari, Shri R. K. Tiwari, Smt. Sudha Gautam, Shri R. K. Tripathi, Dr. Anil Kumar Pare, Shri Alok Kumar, Shri S. K. Mishra, Shri R. P. Dubey, Shri L. P. Mishra, Shri R. K. Chand, Shri V. D. S. Chauhan, Ms. Ranjana Sisodiya, Shri Satyendra Jyotshi, Shri Sanjeev Tuli, Shri Sanjay K. Singh, Shri A. D.*

*Mishra, Shri V. P.S. Parihar and Shri Shailesh Tiwari, Counsel for the petitioners.*

*Shri Girish Kekre, Government Advocate for the respondents/ State.*

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**Single Bench:**

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

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<b><i>Whether approved for reporting ?</i></b>	Yes.
<b><i>Law laid down</i></b>	<p>* The subsequent circulars issued for the purpose of posting by counselling prescribing qualifications as per the National Council for Teacher Education Act, 1993; the Right of Children to Free and Compulsory Education Act, 2009; and the M.P. School Education Service (Teaching Cadre), Service Conditions and Recruitment Rules, 2018 would not amount to change of rule of game, as it does not relate to selection for appointment.</p> <p>* Judicial review in policy matter which is wisdom of the policy, cannot be judicially scrutinised, though the Court can consider whether the policy is arbitrary or violative of law.</p>
<b><i>Significant paragraph Nos.</i></b>	Paras 16 and 27.

**ORDER**  
**(Jabalpur, dtd.25.01.2019)**

All these writ petitions involve a common issue, therefore, they are being heard analogously and decided concomitantly by a common order.

2. These petitions have been preferred by the petitioners who are working as Lecturers, Upper Division Teachers (UDT),

Varishtha Adhyapaks and Adhayapaks [hereinafter referred to as “the candidates”] in Government Model Schools and Schools of Excellence [for short “the SOE”] challenging the legality and propriety of the Circulars/Instructions issued by the respondents, dated 3-7-2017, 12-7-2017, 24-7-2018 and the communication dated 27-8-2018, whereby the respondents are conducting Online Examination of the teachers of the respective cadre deployed in the Model Schools/SOE, in order to enhance the quality of education in the aforesaid educational institutions by selecting eligible and competent teachers working in the School Education Department.

3. For the sake of clarity and convenience, and in order to avoid repetition, the facts adumbrated in **W.P. No.17138/2018 [Shailesh Pathak and others vs. State of M.P. and others]** are noted. The petitioners contend that they have been working in the Model Schools/SOE after their selection by the Selection Committee which was conducted in the year 2010. Since they have been producing excellent results, therefore, they cannot be compelled to participate again in the Online selection process, as they have already undergone selection process and thereafter they have been selected in the year 2012 as well. It is submitted that no syllabus was prescribed for the Online Examination being conducted by the respondents. It is strenuously urged that though they are producing

excellent results but, they are being asked to compete along with the teachers working in the lower cadres, viz. Shiksha Karmis or contract teachers. In some of the petitions a challenge has also been made to the Instruction, dated 24-7-2018 issued by the respondents after the Online Examination, wherein it has been provided that the candidates who have qualified the Online Examination, would be given postings in Model Schools/SOE. In the previous Circular/Instructions dated 3-7-2017, such candidates were required to give choice of 20 Model Schools/SOE wherein they wished to get them posted, but by the communication, dated 24-7-2018 the same has been changed and it is stipulated that they have to give choice for posting in the Model Schools/SOE within the same districts where they are recently posted. It is urged with vehemence that by changing the criteria of selection, the respondents have changed the Rule of Game.

4. On the bedrock of these contentions, it is submitted that the impugned Circulars/Instructions issued by the Government, are arbitrary and violative of Articles 14 and 16 of the Constitution of India and change of selection criteria after commencement of the selection, is contrary to the law laid down by the Apex Court in the judgments rendered in the cases of **Maharashtra State Road Transport Corporation and others vs. Rajendra Bhimrao**

**Mandve and others, (2001) 10 SCC 51 and Tamil Nadu Computer Science B.Ed. Graduate Teachers Welfare Society (1) vs. Higher Secondary School Computer Teachers Association and others, (2009) 14 SCC 517.** Learned counsel for the petitioners also referred the order passed by a Co-ordinate Bench of this Court in the case of **Abhishek Shrivastava vs. State of M.P. and another, [W.P. No.17591/2018, dated 12-9-2018].**

5. Per contra, learned counsel for the respondents-State submitted that the State Government has taken a policy-decision with regard to posting of eligible teachers (candidates) in the Model Schools/SOE in order to provide excellent environment and quality education in the school education keeping in view the provisions enshrined in the Right of Children to Free and Compulsory Education Act, 2009 [hereafter referred to as “the Act”], the School Education Department has established, Model Schools at the District level and Schools of Excellence (SOE) in the Block level. The School Education Department has upgraded the schools and is running 235 Schools of Excellence and 201 Model Schools in the State. Earlier, monitoring of Model Schools was being done by the Central Government and now the same is being done by the State Government through School Education Department.

6. On clarification of the query being made by this Court regarding admission in the Model Schools and the SOE, learned counsel for the respondents submitted that the admission to these schools for 41 District level Schools of Excellence and 201 Block level Model Schools in 9<sup>th</sup> Class for academic session 2019-2020 is done by conducting admission test. He produced a copy of the communication dated 7-01-2019, issued by the Commissioner, Public Instructions, M.P. addressed to the Director, M.P. Open School Education Council. He also produced a copy of the Circular dated 28-7-2018 issued by the Commissioner, Public Instructions clarifying that candidates having B.Ed. qualification be selected for posting in Model Schools and SOE. In sum and substance, the argument is that it was a policy decision of the State to improve the quality of education in these identified educational institutions and, therefore, a decision was taken by the respondents to introduce an Online Examination for postings of teachers (candidates) in the Model Schools and SOE, to be selected on merits. He argued that the Instructions issued after the Online Examination dated 28-7-2018 does not amount to change of the Game of Rules. It deals with the procedure for counselling and the condition of Bachelor of Education (B.Ed.) qualification in addition to the Postgraduate (PG) qualification which was introduced keeping in view the provisions of the RTE Act and NCTE notification. It is further submitted that

the State Government has framed rules for appointment of teachers in the School Education Department working on different posts viz. Adhyapak, Varishtha Adhyapak, Shiksha Karmis, Class-I and contract teachers etc., namely, Madhya Pradesh School Education Service (Teaching Cadre), Service Conditions and Recruitment Rules, 2018 [hereinafter referred to as “the Rules 2018”]. Under the said Rules the said cadre has been made a District level cadre and the qualification of B.Ed. has been made an essential qualification. Keeping in view the provisions envisaged in the Act, a decision was taken to select candidates having qualification of B.Ed. for posting in Model Schools and SOE.

7. Counsel for the respondents-State, in order to substantiate his contentions referred the orders dated 31-10-2017 passed by a Co-ordinate Bench of this Court in **W. P. No.4406/2017 [Ganesh Kalmodiya vs. School Education Department]; W.P. No.10549/2017 [Narmada Prasad Mishra and others vs. State of M.P. and others], dated 21-11-2017; and W.P. No.17000/2018 [Suresh Singh Sikarwar vs. School Education Department] dated 30-7-2018**. He also submitted that since the matter pertains to policy of the State Government, therefore, no interference is warranted in the writ jurisdiction. To bolster his submission, learned counsel for the State referred to the judgments rendered in the cases

of **Tamil Nadu Education Department Ministerial and General Subordinate Services Association and others vs. State of Tamil Nadu and others, (1980) 3 SCC 97; State of Punjab and others vs. Ram Lubhaya Bagga and others, (1998) 4 SCC 117; State of Himachal Pradesh and others vs. Himachal Pradesh Nizi Vyavsayik Prashikshan Kendra Sangh, (2011) 6 SCC 597; and State of Jharkhand and others vs. Ashok Kumar Dangi and others, (2011) 13 SCC 383.**

8. Regard being had to the similitude in the present batch of writ petitions and the arguments advanced on behalf of the parties, the cases which have cropped up for consideration, can be summarised in three categories :

*I. The teachers who are working in the Model Schools and SOE by virtue of their posting in these schools but, have never undergone any selection process.*

*II. The teachers/candidates who are posted in the Model Schools and SOE after their selection by the Selection Committee at District level in pursuant to the previous instructions, therefore they need not to undergo a fresh selection process, as they have produced excellent results and the object of the policy of the Government is already achieved.*



*III. The writ petitioners - candidates who have participated Online selection process introduced by the impugned Instruction dated 3-7-2017, are aggrieved with the Circular or Instructions dated 24-7-2018 and 28-7-2018 whereby option for posting in Model Schools and SOE was changed to give option for their posting in Model Schools and SOE situated in the same District where they are posted at present and qualification of B.Ed. was prescribed for posting by counselling in addition to PG qualification keeping in view the provisions of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009; NCTE Notification; and M.P. School Education Service (Teaching Cadre) Service Conditions & Recruitment Rules, 2018.*

9. In regard to the first category of cases, where the candidates are posted in the Model Schools and SOE without undergoing any kind of selection process, the learned Senior Counsel for the petitioners submitted that the petitioners are possessing the educational qualifications of PG and B.Ed., and while their postings in the Model Schools/SOE they have produced excellent results as well. He also referred to various documents to prove that the result produced by these teachers was in-between 90% to 100%. Since the Government has already achieved the optimum level of education by posting of these teachers, therefore,

they cannot be compelled to undergo any further selection process. It is also contended that the Government has introduced the policy without any exercise, preparation and spadework. It is vehemently urged that some of the petitioners are at the verge of retirement and at this stage, shifting of these teachers to other schools may be prejudicial to the interest of the students and the Schools as well.

**10.** In the second category of the writ petitions, the candidates-teachers who have already undergone the selection by the District Level Committee before their postings in the Model Schools/SOE, the learned Senior Counsel appearing for the petitioners submits that since they had already undergone selection process, thereof, they cannot be compelled to undergo a fresh Online selection/examination for their posting. In this batch of writ petitions the results produced by teachers in these schools is also referred. Learned senior counsel for the petitioners vehemently canvassed that by holding an Online examination by the respondents, no objective would be achieved, as the optimum level of education, is already achieved by the Government.

**11.** In the third category of the writ petitions, the teachers-candidates have already participated in the Online Examination in pursuance of the Circulars dated 3-7-2017, 12-7-2017 and 24-7-

2017, are aggrieved with the Instructions dated 24-7-2018 and 28-7-2018, whereby the condition regarding submissions of 20 options for postings of their choice in the schools was changed, by confining it to give their choice for posting in the Model Schools/SOE, situated within the districts where they are posted at present. Though the Circular/Letter dated 28-7-2018 is not challenged in the present writ petitions but they argued that prescription of B.Ed. qualification in addition to P.G. qualification for posting in the Model Schools/SOE is arbitrary, as it amounts to changing rule of game. The Circular dated 28-7-2018 was produced by the learned counsel for the State.

**12.** Learned counsels appearing for the petitioners argued that the Instruction dated 24-7-2018 amounts to change of the rule of game. It is putforth that their choice could not have been restricted to the district itself and, therefore, they should have been permitted to give option for 20 schools – Model Schools/SOE in the entire State. The curtailment of submission of choice is arbitrary and violative of the Article 14 of the Constitution of India and, therefore, the impugned circulars/instructions are illegal, arbitrary and capricious.

**13.** I do not find any force in the aforesaid contentions portrayed on behalf of the petitioners. The substantive posts of the writ petitioner are Lecturers, Shiksha Karmi, Grade-I, Varishtha Adhyapak, Pradhan Adhyapak, Samvida Shiksha Varg – I, Shikshak (UDT) and Adhyapak. The respondents have specifically pleaded that by posting of these teachers/writ petitioners in the Model Schools/ SOE, no special right is created in their favour and such teachers who are appointed in the Model Schools/SOE, will not get any special allowance or incentives. It is also submitted that the questioned Online examination will not affect the service conditions and avenue of promotion etc. of the teachers. The relevant part of the Circular, dated 3-7-2017 reads as under:

“ऐसे शिक्षक जिनकी आयु 30 जून 2017 को 60 वर्ष या उससे अधिक है, तथा संविदा शाला वर्ग 3, सहायक शिक्षक, शिक्षाकर्मी वर्ग 3, सहायक अध्यापक को इस परीक्षा में सम्मिलित होने की आवश्यकता नहीं है जो शिक्षक वर्तमान में इन 436 शालाओं में अध्यापन कार्य कर रहे हैं, उनका भी इस परीक्षा में सम्मिलित होना अपेक्षित है। यहां यह भी स्पष्ट किया जाता है कि यह परीक्षा केवल इन उत्कृष्ट शालाओं में अध्यापन कार्य हेतु योग्य शिक्षकों के चयन के लिए आयोजित की जा रही है, इसके परिणाम से शिक्षकों की सेवा शर्तों एवं पदोन्नति इत्यादि पर कोई प्रभाव नहीं पड़ेगा।”

**14.** Learned counsel for the State also submitted that in some posting orders the word “on deputation” has been used, which is nothing but wrong dispel of the word “posting”, as teachers are

not on deputation in the Model Schools/ SOE. He putforth that the State Government has issued a policy on 31<sup>st</sup> March 2002 regarding identification of the Schools of Excellence. Initially, monitoring of the Model Schools was being done by the Government of India, later the same is entrusted to the State Government. The schools have been upgraded as Schools of Excellence (SOE) and Model Schools in the State to cater the needs for better performing of the students, who are admitted in these Schools through a test, therefore, there is ardent need to post suitable teachers in order to impart quality education. They are not conferred any special benefits of allowance, incentives and promotion and their service conditions and promotional avenues remain intact. They are initially posted for two years and it is extendable for further one year, subject to recommendation of the Screening Committee and if a teacher further wishes to continue in such schools, he will have to participate in the Online Examination.

**15.** The writ petitions were filed at different stages of the Online Examination. In some petitions interim order was passed allowing the writ petitioners to appear in the Online Examination, however, the same was made subject to final outcome of the petitions. The respondents have stated that 10380 candidates had appeared in the examination and out of the existing 3744 teachers

1526 teachers who are already working in these schools, appeared in the Online Examination. Thus, the Online Examination, pursuant to the Circular dated 3-7-2017, has already taken place. In some places posting orders could not be issued because of the interim orders.

**16.** Coming back to the challenge of the Circulars dated 3-7-2017, 12-7-2017 and 24-7-2018, it is luminescent that the teachers/candidates are required to appear in the Online Examination for their postings in the Model Schools/SOE. The said procedure does not contemplate any procedure for recruitment or appointment. The petitioners are already in-service and they are imparting education. The petitioners have failed to establish their any right to remain posted in the Model Schools/SOE. The transfer and posting of an employee is in the absolute domain of the employer. It is a pure administrative matter. It is settled law that transfer and posting is an incident of service and the courts cannot interfere with the transfer or posting, unless the same is in violation of any statutory rules. The Supreme Court in the case of **State of U.P. and another vs. Siya Ram and another, (2004) 7 SCC 405** held that an employee should be posted where it has to be decided by the employer and an employee has no right to claim posting at a particular place. The relevant extract reads as under:-

“5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of *mala fide* exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan*, (2001) 8 SCC 574.”

17. The law relating to scope of interference in the transfer/posting matter is no longer *res integra*, as held by the Supreme Court in the cases of **Gujrat Electricity Board and another vs. Atmaram Sungomal Poshani**, (1989) 2 SCC 602; **Union of India and others vs. S.L. Abbas**, AIR 1993 SC 2444 and the judgment passed by a Division Bench of this Court in the case of **R.S. Choudhary vs. State of M.P. and others**, 2007 (2) ILR MP Series 1329, the transfer is an incidence of service and the transfer order can only be interfered by the Courts of law if the transfer is

issued in violation of the statutory rules or the order suffers from *malafide* exercise of power.

**18.** In regard to prescription of B.Ed. qualification in the counselling for posting, it is condign to refer the Madhya Pradesh School Education Service (Teaching Cadre), Service Conditions and Recruitment Rules, 2018 [hereinafter referred to as 'the Rules 2018] which prescribe eligibility conditions fixed as per Schedule III of the said Rules. The educational qualification as per Schedule III appended to the Rules is Master's Degree in the relevant subject with second division and Bachelor of Education (B.Ed.) or its equivalent. The relevant extracts of the Rules read as under:

**“8. Conditions of eligibility for direct recruitment.** - In order to be eligible for participating in the Teacher Eligibility Examination, a candidate must fulfil the following conditions, namely :-

(1) **Age -**

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(2) **Educational qualifications** :  
Educational qualifications shall be as per column 5 of Schedule III.

Provided that, -

(a) Barring the provisions for educational qualifications under the Right of Children to Free and Compulsory Education Act, 2009, the Government, in exceptional cases may treat a candidate as qualified who, though not possessing the qualifications prescribed in these rules,



has passed the examinations conducted by other institutions by a standard which, in the opinion of Government, justifies the consideration of the candidate for selection.

(b) The Government on its own discretion, may consider the cases of those candidates who are otherwise qualified but have received degree from a foreign University which is not designated as a University recognized by the Government.

**(3) Teacher Eligibility Examination.** - For direct recruitment on the post of teachers, it shall be mandatory to pass the Teachers Eligibility Examination with the percentage as prescribed in sub-rule (5) of Rule 11.

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Schedule – III  
(See Rule 8)

Sr. No.	Name of posts	Minimum age limit	Maximum age limit	Educational qualification	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
I.	Ucch Madhyamik Shikshak	21 years	As per instructions of General Administration Department	Masters Degree in the relevant subject with second division and Bachelor of Education (B.Ed.) or its equivalent	1. Passed Teacher Eligibility Examination with the percentage as prescribed in sub rule (5) of rule 11 2. The minimum qualification for Ucch Madhyamik Shikshak (Sanskrit) of Sanskrit school shall be Acharya degree in second division in Sanskrit literature/grammar etc. from a recognized institution/University.”

**19.** The aforesaid qualification has been prescribed in reference to the qualifications prescribed by the National Council for Teacher Education, which is published in the Gazette of India,

dated 12-11-2014. It contemplates that a candidate must possess such minimum qualifications as laid down by the Academic Authority authorised by the Central Government by publishing a notification in that behalf. Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 [hereinafter referred to as “the Act”] and the relevant extracts from the Notification read thus:

“23. Qualifications for appointment and terms and conditions of service of teachers.-  
 (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017.

(3) The salary and allowances payable to, and the terms and conditions of service of, teacher shall be such as may be prescribed.”

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First Schedule

{See Sub-regulation (2) of Regulation (4)}

The National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, SeniorSecondary or Intermediate Schools or Colleges) Regulations, 2014

LEVEL	MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATION
...	...
4. Secondary/High School (For Classes IX-X)	(a) Graduate/Post Graduate from recognized University with at least 50% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution.  ***                      ***                      ***

**20.** The National Council for Teacher Education, an academic authority authorised by the Central Government, vide Notification dated 12-11-2014 prescribed the professional qualification for Secondary/High School (For Class IX-X) as Graduate/Post Graduate from recognized University with at least 50% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution.

**21.** The National Council for Teacher Education Act, 1993 provides that the B.Ed. qualification is an essential qualification for the teachers. Thus, if the respondents have decided to post the teachers who are having B.Ed. degree in addition to PG Degree, in the Model Schools/SOE, the same cannot be held to be arbitrary, as it is in consonance with the provisions of the Act and the Rules 2018. Change of option can also not be held to be arbitrary, as the post of teacher has been made a district cadre post as per Rules 2018.

**22.** Thus, the respondents decided to select the candidates having B.Ed. qualification for posting in Model Schools and SOE in view of the qualifications prescribed under the Recruitment Rules, 2018 and the Right to Children Free and Compulsory Education Act, 2009, which cannot be held to be illegal or arbitrary.

**23.** The contention of the petitioners that issuance of the impugned Instruction dated 24-7-2018 for the first and second round of counselling, issued by the Commissioner, Public Instructions, M.P., Bhopal, amounts to change of Game of Rules, can also not be appreciated. The entire exercise is being done by the respondents by issuance of the policy for posting of teachers in the Model Schools

and SOE which does not relate to any selection, therefore, the same cannot be construed to change of Game of Rule. As already held, transfer and posting of an employee is within the domain of the employer and, therefore, if the respondents have issued the Instructions, dated 24-7-2018 curtailing the choice/option from the 20 educational institutions to the schools in the District, their posting cannot be held to be arbitrary. A Co-ordinate Bench of this Court in the case of **Suresh Singh Sikarwar (supra)**, decided on 30-7-2018 examined the Circular dated 24-7-2018 dismissed the writ petition *in limine* and held that there was no condition that the options were required to be given for the entire State and confining it to the District, was found to be valid as in the Rules 2018, the teacher is a District Cadre post.

24. The petitioners have relied on the judgment passed by a Co-ordinate Bench of this Court in the case of **Abhishek Shrivastava (supra)**. The said judgment has been distinguished by another Co-ordinate Bench of this Court at Gwalior in the case of **Vinod Singh Chauhan and another vs. State of M.P and others [W.P. No.21104/2018, dated 03-10-2018]** holding that the said judgment is *per incuriam*. The relevant paras of the judgment read thus:

“5. The stark distinguishing feature in the present case is that it does not involve any process of recruitment. The policy vide Annexure-P/2 neither involves direct recruitment nor promotion. The service conditions/benefits presently available to the Adhyapak/Varishtha Adhyapak shall not undergo any change on their posting at Model Schools of Excellence after being subjected to the process of Online test and counselling.

5.1 The Model Schools of Excellence are created in every district to serve as harbinger of excellence in the field of school thereby becoming an example for other government schools in the district with ultimate objective of enhancing the quality education.

5.2 The policy vide Annexure-P/2 dated 24-7-2018 conducts the process of Online test and counselling merely to hand-pick the most talented amongst the Varishtha Adhyapaks/Adhyapaks to man the Model School of Excellence in each district to take the campaign of excellence in school education to new heights.

6. From the above discussion, this Court has no manner of doubt that the policy vide Annexure-P/2 or P/1 is undoubtedly a policy of “posting” with no element of recruitment involved and therefore the reliance placed by the Co-ordinate Bench in W.P. No.17591/2018 upon the judgment of Apex Court in **K. Manjusree Vs. State of Andhra Pradesh and aother, (2008) 3SCC 512 and Anil Bhatt and others Vs. State of M.P. and others, 2012 (2) MPLJ 82** is misplaced.

7. Accordingly, this Court with utmost humility at its command is compelled to hold that judgment of the Co-ordinate Bench passed on 12-9-2018 is rendered by misreading the law laid down by Apex Court in **K. Manjusree Vs. State of Andhra Pradesh and another, (2008) 3 SCC 512** and is thus *per incuriam* and therefore, is denuded of its presidential value thereby relieving this Court of its obligation to follow the same.

8. Consequently, present petition deserves to be and is therefore dismissed at the very outset.”

25. In the case of **Suresh Singh Sikarwar (supra)** a Co-ordinate Bench of this Court considering the Instructions dated 24-7-2018 held that the said Instructions are not arbitrary, as the post of Teacher is a district cadre and, therefore, the respondents have rightly curtailed the choice of posting to the district where the candidate is already posted. In view of the aforesaid provisions, this Court does not find any illegality or arbitrariness in giving preference to the candidates, who are having B.Ed. qualification in addition to Post Graduation.

26. In regard to interference in policy matters, the Apex Court in the case of **Tamil Nadu Education Department Ministerial and General Subordinate Services Association and others (supra)** ruled that in the matter of policy-decisions regarding servicing conditions, the Courts cannot adopt mathematical precision in administrative actions not being possible and cannot analyse minute administrative details.

27. In the case of **Ram Lubhaya Bagga and others (supra)** the Supreme Court has held that judicial review in policy matter which is wisdom of the policy, cannot be judicially scrutinised, though the Court can consider whether the policy is arbitrary or violative of law. Same view has been reiterated in the

cases of **Himachal Pradesh Nizi Vyavsayik Prashikshan Kendra Sangh (supra)** and **Ashok Kumar Dangi and others (supra)**.

**28.** In view of the aforesaid submissions, I do not find any illegality or impropriety in the impugned Circulars/Instructions issued by the State Government from time to time regarding Online examination for posting of teachers in the Model Schools/SOE, for the following reasons :

*(i) The petitioners do not have any rights to continue their postings in the Model Schools/SOE, as they have failed to establish any statutory right for being posted in the aforesaid Schools.*

*(ii) The substantive post of the petitioners is teacher under different nomenclatures and they are engaged for imparting education in the schools. There is no conditions either in the appointment letter or in the Service Rules for their postings in the Model Schools or SOE only. Therefore, there is no infringement of any fundamental rights or statutory rights.*

*(iii) Service conditions of the petitioners are not adversely affected by their non-selection in the Online examination, as it is clarified in the Instructions dated 3-7-2017 itself and no special allowance or incentives are attached to the said postings. Therefore, their contention that non-selection and transfer from the Model Schools/ SOE would be detrimental to their*



*interest, has no force. Further, the decision cannot be construed as punitive or stigmatic.*

*(iv) Contention of the learned counsel appearing for the petitioners that they are being equated with the teachers working in the lower cadres and with the unequals can also not be appreciated, as by the Online examination, the selection is made only for the purpose of posting and not for any appointment or promotion. Transfer and posting are administrative matters and are purely within the domain of the employer.*

*(v) Contention of the learned counsel for the petitioners that Rule of Game has been changed after commencement of the Online Examination, can also not be appreciated, as the respondents have taken a policy-decision in order to introduce the Online Examination only for the purpose of selection for posting in the Model Schools/SOE, which does not consist any process of recruitment or selection.*

*(vi) Requirement of B.Ed. qualification for posting in Model Schools and SOE at the time of counselling, is in consonance with the provisions enshrined in the National Council for Teacher Education Act, 1993; The Right of Children to Free and Compulsory Education Act, 2009; and the Madhya Pradesh School Education Service (Teaching Cadre), Service Conditions and Recruitment Rules, 2018.*

*(vii) In addition to the aforesaid, the scope of interference of the Court in the policy-decisions of the Government, is very limited and the petitioners could not establish any arbitrariness or malifide.*

**29.** *Ex-consequenti*, the writ petitions being sans merits, are **dismissed**. There shall be no order as to costs.

**(Vijay Kumar Shukla)**  
**Judge**

*ac.*