

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 31ST OF AUGUST, 2024

WRIT PETITION NO. 29871 of 2022 (S)

KISHORE KUMAR NAGAR AND ANR.

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Devraj Vishwakarma – Advocate for the petitioner.

Shri Anshuman Swamy – Govt. Advocate for the respondents / State.

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WITH

WRIT PETITION No. 9229 of 2018 (S)

GOVIND TANWAR AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Ms. Sudha Gautam – Advocate for the petitioners.

Shri Yash Soni – Dy. Advocate General for the respondents / State.

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WITH

REVIEW PETITION No. 01502 of 2018

THE STATE OF MADHYA PRADESH AND OTHERS

Versus

ANIL GUPTA AND OTHERS

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Appearance:

Shri Yash Soni – Dy. Advocate General for the petitioner / State.

Ms. Sudha Gautam – Advocate for the respondents.

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WITH

WRIT PETITION No. 14815 of 2018 (S)

JAWAHAR LAL GOLHANI AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Ms. Sudha Gautam – Advocate for the petitioners.

Shri Yash Soni – Dy. Advocate General for the respondents / State.

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WITH

WRIT PETITION No. 21293 of 2018 (S)

LAKHAN LAL VISHWAKARMA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Ms. Sudha Gautam – Advocate for the petitioners.

Shri Yash Soni – Dy. Advocate General for the respondents / State.

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WITH

WRIT PETITION No. 24496 of 2018 (S)

DEEMAK CHAND SANODIYA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Ms. Sudha Gautam – Advocate for the petitioners.

Shri Yash Soni – Dy. Advocate General for the respondents / State.

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WITH

WRIT PETITION No. 28742 of 2018 (S)

DURGARAM BASOR AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Ms. Sudha Gautam – Advocate for the petitioners.

Shri Yash Soni – Dy. Advocate General for the respondents / State.

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WITH

WRIT PETITION No. 6146 of 2022 (S)

LAXMAN PRASAD CHOURASIA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Devendra Kumar Tripathi – Advocate for the petitioner.

Shri Yash Soni – Dy. Advocate General for the respondents / State.

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ORDER

Since the present petitions involved identical facts and there is similitude of grounds, they are being decided by this common order. For the sake of convenience facts are taken from WP No. 29871 of 2022.

2. WP No.29871 of 2022 has been filed seeking the relief of appointment on the post of Samvida Shala Shikshak Grade-III and challenging the order (Annexure P-3) denying the claim of the petitioner on the ground of an amendment in the rules carried out vide Gazette notification dated 21.03.2018 and made effective from 01.01.2008.

3. The contention of the petitioners is that the petitioners had appeared in the recruitment test conducted for Gurjis and instructors working in non-formal education guarantee centres for absorption to the post of Samvida Shala Sikshak Grade-III and they qualified the test. The similarly situated employees approached this Court and this Court in the case of **Anil Kumar Bhatt Vs. State of M.P. (WP No. 91/2011)** decided on 21.02.2012 so also in the case of **Manmohan Mathur and Ors. Vs. State of M.P. & Ors. (WP No. 1102/2010)** had passed a detailed direction in the matter of similarly situated employees. However, when the cases of petitioners were put to consideration in the terms of the said judgment the State rejected their cases on the ground of subsequent amendment in the Rules which is enforced from retrospective effect i.e. 01.01.2008.

4. The learned counsel for the petitioners relied on the recent judgment passed by the Supreme Court in **SLP (Civil) No. 23966-23968 of 2022 (Smita Shrivastava Vs. The State of M.P. & Ors.)** passed in 03.05.2024 wherein the Supreme Court taking note of the dispute being decided from time to time before the High Court and also took note of the subsequent amendment dated 21.03.2018 made retrospectively effective from 01.01.2008 has heavily criticized the action of the State Government in issuing the said amendment and held that the said amendment is a malafide action in an attempt to circumvent the order passed by the High Court by hook or by crook so as to prevent the appellants and their counterparts

therein of their lawful claims of their appointment. The Supreme Court has held as under:-

“8. It is a glaring case wherein the adamant, arbitrary, mala fide and high-handed approach of the State Government and its officials has driven the appellant to a series of prolonged litigations which were evidently not out of her choice. In spite of having passed the selection exam held for the post of Samvida Shala Shikshak Grade-III way back on 31st August, 2008, the appellant did not reap the fruits of her success. The State Government took the shield of an amended rule i.e. Rule 7-A, issued on 29th July, 2009 for denying relief to the appellant herein, even when the said rule had no retrospective application. Not only this, in spite of the High Court having struck down the said rule and passing repeated orders in favour of the appellant, another notification dated 21st March, 2018 was issued making the amended rule effective from 1st January, 2008 i.e. prior to the date of recruitment. This was clearly a mala fide action in an attempt to circumvent the orders passed by the High Court by hook or by crook so as to prevent the appellant and her peers of their lawful claim to appointment which stood crystalized long back. However, despite recognising all the unjustified orders faced by the appellant, the Division Bench of High Court of Madhya Pradesh failed to provide restitutive relief to the appellant even after holding that she was illegally deprived of her lawful entitlement.”

5. The learned counsel for the State has only raised an objection that whether the petitioners are similarly situated needs to be examined.

6. Evidently the cases of the petitioners have been rejected by the State authorities by order (Annexure P-3) on the ground that on the ground of subsequent amendment dated 21.03.2018 with effect from 01.01.2008. The Supreme Court has already held the said amendment to be a malafide action and an attempt to circumvent the order passed by the High Court and

granted relief to the employees who are before the Supreme Court. The petitioner is certainly entitled to the same benefit.

7. Resultantly, this petition is disposed of directing the respondents to consider the cases of petitioners afresh ignoring the amendment notification dated 21.03.2018 which has been held to be unlawful by the Supreme Court and also examine the parity of the petitioners with the case of **Smita Shrivastava (supra)** who was petitioner before the Supreme Court and if the petitioners are found to be at par then exactly similar benefits shall be allowed to the petitioners without any discrimination whatsoever. The impugned order (Annexure P-3) is set aside. Let this exercise be completed within a period of two months from the date of production of certified copy of this order.

8. Consequently, the WP No. 9229 of 2018, WP No. 14815 of 2018, WP No. 21293 of 2018, WP No. 24496 of 2018, WP No. 28742 of 2018 and WP No. 6146 of 2022 are **allowed** in above terms by quashing orders impugned therein and R.P. No. 1502 of 2018 is **dismissed**.

(VIVEK JAIN)
JUDGE