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

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 5th OF APRIL, 2023

WRIT PETITION No. 9730 of 2019

BETWEEN:-

1. **DR. RAVINDRA KUMAR YADAV S/O LATE C.S. YADAV, AGED ABOUT 63 YEARS, OCCUPATION: PROFESSOR, DEPARTMENT OF PHYSICAL EDUCATION, R.D.V.V. JABALPUR R/O NGC RAJ KUMARI BHAVAN, SOUTH CIVIL LINES JABALPUR (MADHYA PRADESH)**
2. **DR. VISHAL BANNE S/O SHRI O.N. BANNE, AGED ABOUT 45 YEARS, OCCUPATION: ASSISTANT PROFESSOR, DEPARTMENT OF PHYSICAL EDUCATION, RDVV JABALPUR, R/O 74 A, MODEL TOWN, BILAHRI, JABALPUR (MADHYA PRADESH)**

....PETITIONERS

(BY SHRI ANSHUMAN SINGH - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THR. THE PRINCIPAL SECRETARY DEPARTMENT OF HIGHER EDUCATION VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
2. **THE ADDITIONAL SECRETARY, DEPARTMENT OF HIGHER EDUCATION, GOVERNMENT OF MADHYA PRADESH VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
3. **RANI DURGAWATI VISHWA VIDAYALAYA THROUGH ITS REGISTRAR RDVV, ADMINISTRATIVE BLOCK, PACHPEDHI, JABALPUR (MADHYA PRADESH)**
4. **DR. RAMESH PRASAD SHUKLA, SPORTS OFFICER, GOVERNMENT MODAL SCIENCE COLLEGE, CIVIL LINES, JABALPUR (MADHYA PRADESH)**

....RESPONDENTS

(BY SHRI MANAS MANI VERMA - GOVT. ADVOCATE FOR RESPONDENTS NO.1 AND 2)

(BY SHRI NIKHIL BHATT - ADVOCATE FOR RESPONDENT NO.3)

(BY SHRI L.C. PATNE - ADVOCATE FOR RESPONDENT NO.4)

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This petition coming on for admission this day, the court passed the following:

ORDER

This petition is filed by the petitioners being aggrieved of order dated 09/03/2019 (Annexure-P/6) whereby private respondent No.4-Dr. Ramesh Prasad Shukla was given posting as Director (Sports) at Rani Durgawati Vishwavidyalaya, Jabalpur on deputation. His names appears at serial No.47 in the impugned order (Annexure-P/6).

Petitioners' contention is that they are working as Professor and Assistant Professor in the Department of Physical Education in RDVV, Jabalpur. The posts are to be filled by the university in terms of the provisions contained in Section 18 of the M.P. Vishwavidyalaya Adhinyam, 1973 (hereinafter referred to as 'the Adhinyam of 1973'). It is submitted that since the post of Sport Officer will fall in the definition of 'other Officers' provided in Section 18 of the Adhinyam of 1973, therefore, it is to be filled in terms of the provisions contained under Section 49(2) of the Adhinyam of 1973 by constituting a committee as prescribed in the said provision i.e. Section 49(2) of the Adhinyam of 1973. Thus, the order (Annexure-P/6) as far as it relates to private respondent No.6 is bad in law.

Shri Manas Mani Verma, learned Govt. Advocate, submits that State Government has passed the said order and has posted private respondent to the university which does not suffer from any infirmity.

Shri L.C. Patne, learned counsel for respondent no.4, has drawn attention of this Court to the Business (Allocation) Rules framed by the State of Madhya

Pradesh in exercise of powers conferred by Clauses (2) and (3) of Article 166 of the Constitution of India. He submits that higher education is dealt with in Chapter -XXXVIII. Under Chapter -XXXVIII (A)-11. Universities and all incidental matters including development programmes, opening of faculties and grants from UGC is covered. It is submitted that as per entry-17, all matters relating to the service with which the department is concerned (other than matters allotted to the Finance Department and the General Administration Department) e.g. appointments, posting, transfers, pay, leave, pension, promotions, provident funds, deputation, punishments and memorials are within the domain of Higher Education Department, therefore, when this is read with F.R. 110 of the Fundamental Rules which authorises Government to transfer a Government servant to foreign service, it is transfer by deputation, therefore, no indulgence is required in the hands of the Court and the impugned order be sustained without any interference.

Shri Manas Mani Verma, learned Government Advocate, as per the directions of this Court, has produced photocopy of the proposal which was mooted by the Government. This appears to be a file from the Office of the Commissioner, Higher Education, Madhya Pradesh, Bhopal bearing No.255/Shakha 02/19. Heading is *Shekshanik Samvarg Antargat Sthanantaran Prastav*. Vide this proposal persons whose names are mentioned in column No.2 working on different posts of Assistant Professor/Professor/Associate Professor have been transferred from various Government Colleges mentioned in column No.3 to various Government Colleges mentioned in column No.4.

Name of private respondent No.4 appears in this proposal at serial No.27 wherein he is shown as Sports Officer working at Government Model Science

College, Jabalpur from whom a proposal was made to transfer him as Director (Sports), Rani Durgawati Vishwavidyalaya, Jabalpur. Name of private respondent appears at serial No.27. There is no mention of transferring the private respondent on deputation as is mentioned in the impugned order (Annexure-P/6) at serial No.47. Thus, it is evident that words 'on deputation' have been inserted in the transfer order (Annexure-P/6) though there was no such proposal as has been brought on record by Shri Manas Mani Verma, learned Govt. Advocate.

This proposal was forwarded by the Additional Commissioner, Higher Education, it was signed by the Commissioner, Higher Education and thereafter there is a mention of the fact that apart from the aforesaid, five proposals were made by the Hon'ble Minister (Shri P.C. Sharma) and (Shri Pradyumn Tomar Ji) on telephone. They are mentioned in the flag. After approval, those proposal will be sent in coordination for approval. Thereafter note sheets were sent to the Minister who signed it by making a note as proposed.

Thereafter Minister Jitu Patwari had made a note in regard to three persons saying that their names be included in the proposal, then it is mentioned that one Prerana Thakur be transferred to M.L.B., Indore.

There is no concurrence of the borrowing university. Thus, two facts emerge from the note sheet produced for perusal of this Court which Shri Manas Mani Verma, learned Govt. Advocate, submits that this photocopy is sufficient and he is not producing the original file because that will be of no help to this Court. Therefore, these documents which are paged upto 04 and thereafter six pages are unnumbered out of which last page is blank, are taken on record.

After hearing learned counsel for the parties and going through the record, it is evident that as per the M.P. Vishwavidyalaya Adhiniyam, 1973, Section 12 defines 'Kuladhipati and his powers'. Section 4 (xx) defines 'teachers of the university' means Professors, Readers, Lecturers and such other persons as may be appointed for imparting instructions or conducting research with the approval of the Academic Council in the University or the College of Institution maintained or recognised by the University. Thus, it is evident that term 'teachers of the university' include other persons as may be appointed for imparting instructions or conducting research. Thus, when this definition is taken into consideration, it is a comprehensive definition and includes the post of Director (Sports) which bears responsibility to impart instructions in the physical education. Thus, in the opinion of this Court, teachers of the universities though include Director (Sports) but even for the sake of the convenience and with a view to respect the submissions made by learned counsel for respondent No.4 that Director (Sports) is not a teaching post and it is not here to impart any instructions, then Director of Sports will be covered under Section 18 of the Adhiniyam of 1973 which deals with other officers and provides that appointment of other officers of the University referred to in Section 12, shall be made in such manner and the conditions of their service and powers and duties shall be such as may be prescribed by the Statutes, Ordinance or Regulations.

Section 49(2) prescribes constitution of a committee for selection. Thus, any appointment of an officer covered under Section 4 (xx) or under Section 18 of the Adhiniyam of 1973 is to be made in terms of the provisions contained in Section 49(2) of the Adhiniyam of 1973.

Statute-20 makes a mention of post of Director of Physical Education. It

specifically provides that in addition to the officers mentioned in clauses- (i) to (v) of Section 11 of the Adhiniyam of 1973, the following shall be the officers of the university :- (v)- Director of Physical Education. This Statute-20, itself, provides that in case of appointment to the following posts, the selection committee shall be constituted in accordance with provisions contained under Section 49(2) of the Adhiniyam of 1973. The post of Director, Physical Education is included and, thus, it is evident that Statute-20 clearly provides for filling up of the post of Director, Physical Education by following a provision contained in Section 49(2) of the Adhiniyam of 1973 and in view of this matter, it is evident that respondents No.1, 2 and 3 could not have filled the post of Director, Physical Education, by transfer on deputation without following the procedure prescribed under Section 49(2) of the Adhiniyam, 1973 and in any case even if the submissions made by Shri L.C. Patne, learned counsel for private respondent no.4, is taken into consideration, then a cogent reading of the delegation of powers under the Business (Allocation) Rules makes its abundantly clear that, that will not transgress into the matters which are specifically covered by the M.P. Vishwavidyalya Adhiniyam, 1973 or by the Statutes framed specifically for the purposes of regulating the matters pertaining to the university.

Therefore, in absence of any material to show that Business (Allocation) Rules framed by His Excellency Hon'ble the Governor in exercise of powers conferred on him under Article 166 of the Constitution of India can transgress the Act which is statutory in nature, cannot be tampered by the State Government in the name of Business (Allocation) Rules. In view of such facts, once Statute cannot be greased by respondents authorities in the name of

Business (Allocation) Rules and when there is flagrant violation of Section 49(2) of the Adhiniyam of 1973 and Statute-20 framed in this behalf, then the action of the respondent/State in favouring private respondent no.4 and appointing him as Director, Physical Education without consent of the university and without there being any requisition from the university for appointment of such Director, Physical Education from an outside agency namely the employee of State Government, the order of deputation being arbitrary and cryptic cannot be given seal of approval.

Therefore, the impugned order having been passed in violation of the principles of statutory provisions contained in Section 49(2) of the Adhiniyam of 1973 which are to be followed as per the terms contained in Statute-20, requires to be quashed and is hereby quashed. University will be free to appoint an appropriate person after following the due process as prescribed under the Act and the Statute framed thereunder.

Accordingly, this writ petition is allowed and disposed of to extent indicated herein above.

(VIVEK AGARWAL)
JUDGE