

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

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

ON THE 20th OF MARCH, 2024

WRIT PETITION No. 26590 of 2018

BETWEEN:-

SURESH KUMAR MISHRA S/O SHRI RAMMILAN MISHRA, AGED ABOUT 45 YEARS, OCCUPATION: VARISTHA ADHYAPAK GOVT. BOYS HIGHER SECONDARY SCHOOL WAIDHAN R/O HOUSE NO. 198 WAIDHAN, DISTT. SINGRAULI (MADHYA PRADESH)

.....PETITIONER

(BY SHRI K.C. GHILDIYAL - SR. ADVOCATE ASSISTED BY SHRI ADITYA VEER SINGH - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. COLLECTOR, SINGRAULI DISTT. SINGRAULI (MADHYA PRADESH)**
- 3. COMMISSIONER MUNICIPAL CORPORATION, SINGRAULI, DISTT. SINGRAULI M.P. (MADHYA PRADESH)**
- 4. DISTRICT EDUCATION OFFICER SINGRAULI (MADHYA PRADESH)**
- 5. RAMAKANT SHUKLA S/O LATE SHRI GOPIKA PRASAD SHUKLA R/O VILLAGE KACHANI POST KACHANI, DISTT. SINGRAULI (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MANAS MANI VERMA - GOVT. ADVOCATE FOR RESPONDENTS NO.1, 2 AND 4)

(BY SHRI MAHESH PRASAD SHUKLA - ADVOCATE FOR RESPONDENT NO.3)

(BY SHRI RAHUL DIWAKAR - ADVOCATE FOR RESPONDENT NO.5)

WRIT PETITION No. 1418 of 2019**BETWEEN:-**

**SMT. PRAMILA DUBEY W/O DINESH KUMAR DUBEY,
AGED ABOUT 36 YEARS, OCCUPATION: VARISHTHA
ADHYAPAK R/O VILLAGE KUSMAHRA, POST PACHUR
DISTT SINGRAULI (MADHYA PRADESH)**

.....PETITIONER

**(BY SHRI K.C. GHILDIYAL - SR. ADVOCATE ASSISTED BY SHRI ADITYA
VEER SING - ADVOCATE)**

AND

1. **THE STATE OF MADHYA PRADESH THR.
PRINCIPAL SECRETARY VALLABH BHAWAN
BHOPAL (MADHYA PRADESH)**
2. **THE COLLECTOR COLLECTOR, TAH. & DISTT.
SINGROLI (MADHYA PRADESH)**
3. **THE DISTRICT EDUCATION EDUCATION
OFFICER, SINGRAULI, TAH. & DISTT. SINGRAULI
(MADHYA PRADESH)**
4. **COMMISSIONER THE MUNICIPAL
CORPORATION, SINGRAULI, TAH. & DISTT.
SINGRAULI (MADHYA PRADESH)**
5. **COMMISSIONER LOK SHIKSHAN SANCHANLAYA
MANTRALAYA BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI MANAS MANI VERMA - GOVT. ADVOCATE FOR RESPONDENTS
NO.1, 2, 3 AND 5)**

**(BY SHRI MAHESH PRASAD SHUKLA - ADVOCATE FOR RESPONDENT
NO.4)**

WRIT PETITION No. 18388 of 2020**BETWEEN:-**

**RAMAKANT SHUKLA S/O LATE GOPIKA PRASAD
SHUKLA, AGED ABOUT 50 YEARS, OCCUPATION:
TEACHER R/O VILLAGE KACHANI, POST KACHANI,
DISTRICT SINGRAULI (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI RAHUL DIWAKAR - ADVOCATE)

AND

1. THE STATE OF M.P. THROUGH THE PRINCIPAL SECRETARY, SCHOOL EDUCATION DEPARTMENT, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. THE COLLECTOR, DISTT. SINGRAULI (MADHYA PRADESH)
3. MUNICIPAL CORPORATION THROUGH COMMISSIONER MUNICIPAL CORPORATION SINGRAULI (MADHYA PRADESH)
4. DISTRICT EDUCATION OFFICER SINGRAULI DISTT.SINGRAULI (MADHYA PRADESH)
5. SHRI SURESH KUMAR MISHRA WORKING AS ADHYAPAK GOVT.HIGHER SECONDARY SCHOOL GOVT.HIGHER SECONDARY SCHOOL GIRLS BAIDHAN DISTT.SINGRAULI (MADHYA PRADESH)
6. SMT.PRAMILA DUBEY WORKING AS ADHYAPAK GOVT.HIGHER SECONDARY SCHOOL VINDHYANAGAR DISTT.SINGRAULI (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI MANAS MANI VERMA - GOVT. ADVOCATE FOR RESPONDENTS NO.1, 2 AND 4)

(BY SHRI MAHESH PRASAD SHUKLA - ADVOCATE FOR RESPONDENT NO.3)

(BY SHRI K.C. GHILDIYAL - SR. ADVOCATE ASSISTED BY SHRI ADITYA VEER SINGH - ADVOCATE FOR RESPONDENTS NO.5 AND 6)

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

ORDER

Writ petition No.26590/2018 & W.P.No.1418/2019 are filed respectively by a male Adhyapak and a female Adhyapak who were admittedly appointed as Samvida Shala Shikshak Grade II by the Janpad Panchayat, Waidhan and later on they were absorbed on the post of Adhyapak in the Janpad Panchayat and subsequently were transferred to Municipal Corporation, Singrauli and

thereafter series of litigations started. W.P. No.18388/2020 is filed seeking cancellation of absorption/transfer of the petitioners under Municipality being *dehors* the Rules of 2008.

2. In the second round of litigation, order of repatriation and cancellation of promotion is under challenge in W.P. No.26590/2018 and W.P. No.1418/2019.

3. For the sake of convenience and with the consent of parties, petition namely W.P. No.1418/2019 (Smt. Pramila Dubey Vs. The State of M.P. and others) is taken as a lead case and facts of that case will be viewed as the facts applicable to other matters. However, wherever distinction is required, it will be drawn at appropriate stage.

4. Smt. Pramila Dubey was appointed as Samvida Shala Shikshak Grade-II on 08/08/2006 vide Annexure-P/2 by Janpad Panchayat, Waidhan. Vide order dated 16/09/2010 (Annexure-P/4) she was absorbed on the post of Adhyapak in terms of the provisions contained in M.P. Panchayat Adhyapak Samvarg (Employment and Conditions of Service) Rules, 2008. Thereafter vide order dated 06/06/2011 (Annexure-P/5) petitioner was transferred/absorbed from Janpad Panchayat, Waidhan to Municipal Corporation, Singrauli and her name is mentioned at serial No.4.

5. One Shri Ramakant Shukla filed Writ Petition No.5722/2015 to challenge the transfer/absorption of the petitioner and vide order Annexure-P/8 dated 28/06/2018 the said writ petition was disposed of.

6. Shri K.C. Ghildiyal, learned senior counsel, submits that in W.P. No.57222/2015 petitioner-Ramakant Shukla, at whose instance, litigation was initiated, had claimed several reliefs including challenge to the absorption of the

present petitioners in the Nagreeya Nikay and also the fact that present petitioners were given promotion as Varishth Adhyapak in preference to the said petitioner namely Ramakant Shukla and under such facts and circumstances, Coordinate Bench of this Court vide its order dated 28/06/2018 disposed of the petition i.e. W.P. No.5722/2015 mentioning in para-14 as under :

"Accordingly, in light of the judgment passed in the case of *Munna Lal Karosiya (supra)*, the said writ petition is allowed in terms of following directions :-

1. The impugned order dated 15/04/2015 is hereby quashed.
2. Respondents are directed to prepare and publish a seniority list as on 01/04/2014 and placed the petitioner at proper place in the seniority list.
3. The respondents are further directed to consider the case of the petitioner for promotion to the post of Varishtha Adhyapak Mathematics and Physics by constituting the review DPC and if the petitioner is found fit, then he be promoted from the post of Varishtha Adhyapak w.e.f. the date on which the other persons have been promoted along with all consequential benefits."

Thus, Shri K.C. Ghildiyal, learned senior counsel, submits that petitioners' absorption order dated 06/06/2011 was not set aside and that fact has been confirmed by Hon'ble Division Bench in W.A. No.1603/2018 (Smt. Pramila Dubey Vs. The State of Madhya Pradesh and others) and W.A. No.1754/2018 (Suresh Kumar Mishra and another Vs. State of M.P. and others)

vide its order dated 04/03/2020 wherein it has noted that -

"Learned Single Judge did not interfere with the absorption order dated 03/07/2010 and 06/06/2011. Only the order dated 15/04/2015 has been quashed with the direction to prepare fresh seniority list as on 01/04/2014 and to consider the case of the petitioner for promotion to the post of Varishtha Adhyapak Mathematics and Physics by constituting the review DPC and if he is found fit, grant him promotion with consequential benefits."

Hon'ble Division Bench has further noted in para-8 as under :

"8. Since the status of these appellants in the Municipal Corporation on their absorption has not been interfered, we do not perceive any error in directing the Corporation to consider the case of the petitioner- Ramakant Shukla."

7. Thus, it is submitted that Hon'ble Division Bench has also not interfered with the aspect of absorption of the petitioners herein namely Suresh Kumar Mishra and Smt.Pramila Dubey, therefore, the impugned order Annexure-P/9 cancelling the absorption could not have been passed by the Commissioner, Municipal Corporation, Singrauli.

8. Shri K.C. Ghildiyal, learned senior counsel, places reliance on School Education Department Circular No.F-1-10/2005/20-1 dated 08/11/2005 and reading from Clause-1, submits that a decision was taken in regard to absorption of Shiksha Karmies wherein it is provided that women Shiksha Karmies and those Shiksha Karmies suffering 40% or more disability can make an application on their own for transfer from one local body to another local body and their absorption can be made.

9. It is submitted that on the basis of this provision as far as Smt. Pramila Dubey is concerned, she was covered with Clause-1 of the said circular (Annexure-P/1), therefore, consent was given by the State Government for her absorption in an urban body and similarly though petitioner-Suresh Kumar Mishra is not covered under the provisions of this clause contained in Government Circular dated 08/11/2005, but he was absorbed with the permission of the State Government, therefore, issue of absorption having attained finality does not call for any interference.

10. It is further submitted that petitioner-Ramakant Shukla is guilty of suppression of a fact that as per the provisions contained in the M.P. Nagreeya Nikay Adhyapak Samvarg (Employment and Conditions of Services) Rules, 2008, minimum requirement for appointment as Varishth Adhyapak is to have put in seven years of service in the cadre of Adhyapak. Referring to this provision, it is submitted that in fact Shri Ramakant Shukla was appointed as Shiksha Karmi Grade-III on 19/08/1998. His services were absorbed in terms of the Rules of 2008 on the post of Sahayak Adhyapak. Thereafter he was promoted as Adhyapak vide order dated 08/08/2011 i.e. after absorption of the petitioners and since that promotion was made on 08/08/2011 in the cadre of Adhyapak, therefore, Ramakant Shukla was not entitled to be promoted as Varishth Adhyapak till 2018 in terms of the stipulations contained in the Rules of 2008.

11. It is also submitted that since the issue of absorption has attained finality, therefore, no further indulgence is required. It is also submitted that Ramakant Shukla is guilty of suppression of order of 1st November, 2018 passed by the Commissioner, Municipal Corporation, Singrauli rejecting his case for promotion on the post of Varishth Adhyapak on the touchstone of not

completing the requisite years of experience on the post of Adhyapak when the DPC had met in the year 2015.

12. Shri K.C.Ghildiyal, learned senior counsel, also submits that the law laid down in the case of **Munna Lal Karosiya Vs. State of M.P. and others, 2009(3) MPL J697** is on a different aspect. It is submitted that a person from one Municipality to another could not have been appointed on absorption by the State Government especially when the post was not equivalent. It is held that if the post is not equal, then the State Government cannot exercise right of promotion and then allowing absorption on the promoted post as it is not within the domain of the State Government in terms of the provisions contained in Rule 94 of the M.P. Municipal Employees (Recruitment and Conditions of Service) Rules, 1968.

13. Shri Manas Mani Verma, learned Government Advocate, in his turn, submits that neither in the Rules of 2008 namely M.P. Nagreeya Nikay Adhyapak Samvarg (Employment and Conditions of Services) Rules, 2008 nor in the M.P. Panchayat Adhyapak Samvarg (Employment and Conditions of Services) Rules, 2008, there is any provision for transfer of the employees from Panchayat Nikay to Nagreeya Nikay.

14. Shri Rahul Diwakar, learned counsel, in his turn, submits that allegation of suppression is incorrect inasmuch as present set of petitioners along with other had filed R.P. No.1248/2018 questioning the order passed in W.P. No.5722/2017 decided on 28/6/2018 and in that order all the facts have been considered and, thus, it cannot be said that petitioner-Ramakant Shukla is guilty of any suppression.

15. Shri Mahesh Prasad Shukla, learned counsel for respondent No.3-

Municipal Corporation, Singrauli, supports the impugned order.

16. After hearing learned counsel for the parties and going through the record as far as M.P. Nagreeya Nikay Adhyapak Samvarg (Employment and Conditions of Services) Rules, 2008 (which will be referred to as 'Nagreeya Nikay Adhyapak Rules , 2008'), are concerned, Rule 5 of the said Rules deals with selection and method of appointment. Similarly, M.P. Panchayat Adhyapak Samvarg (Employment and Conditions of Services) Rules, 2008 (hereinafter referred to as 'Panchayat Adhyapak Rules, 2008'), in Rule 5 deals with selection and method of appointment. What is interesting and important and the basic distinction is that though Shri K.C. Ghildiyal, learned senior counsel, submits that both the rules are *pari materia* and identical in their wording that Rule 5 (1) of the Nagreeya Nikay Adhyapak Rules, 2008 provides for merger of the Shiksha Karmies appointed under the Madhya Pradesh Municipality Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1998, it does not provide for migration for Panchayat Shiksha Karmies to the Municipality Shiksha Karmies cadre. Similarly, Rule 5 (1) of the Panchayat Adhyapak Rules of 2008 provides appointment by merger of the Shiksha Karmies appointed under the Madhya Pradesh Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1997.

17. Thus, two sets of Rules though made in 2008 namely Panchayat Adhyapak Rules, 2008 and Nagreeya Nikay Adhyapak Rules, 2008 were brought into force simultaneously, but, they provide for distinct categories of employees who can be appointed under each of them. Therefore, there being no provision for migration from Panchayat to Municipality and Municipality to Panchayat, in these rules and when considered in terms of the provisions contained in Rule 9 of both the Rules which deals with power of State

Government to prescribe and reads that *the power to prescribe provided under these rules shall be exercised by the State Government by issuing executive orders*. Thus, it is evident that the executive power can be exercised only within the domain of the rules, be it Panchayat Adhyapak Rules, 2008 or Nagreeya Nikay Adhyapak Rules, 2008. It cannot be exercised by the State Government to club two provisions and permit migration from one set of Nikay to another set of Nikay. There appears to be a justification though not mentioned in the rules that a person claiming appointment in a less sought after area i.e. Panchayat Nikay or for the sake of understanding in under represented areas like Tribal areas after getting appointment having either failed to compete in the Nagreeya Nikay which presumes a higher level of competition may seek migration from Panchayat Nikay to Nagreeya Nikay will frustrate the basic scheme of providing education in the Panchayat Nikay where the people are usually shy of rendering their services for various socio-cultural reasons which are not required to be detailed out in the present case.

18. Thus, when framing of the rules is understood in the correct perspective, then nothing prevented the rule makers to provide power to the State Government to issue executive orders permitting interchanging and permeation of employes from one set of establishment to another set of establishment. But, that being not so and Rule 9 which deals with the power of State Government to issue executive orders under the specific rules and not superseding those rules, any executive order issued in excess of the power given under Rule 9 of the Rules be it the Panchayat Adhyapak Rules, 2008 or Nagreeya Nikay Adhyapak Rules, 2008 could not have been exercised by the State Government.

19. Therefore, once petitioners have failed to make out that there was any provision in the rules authorising the State Authorities to issue executive orders for their absorption or appointment and migration from one set of establishment to another set of establishment, then those executive orders being not in consonance with the power conferred on the State Government under Rule 9 could not have been exercised by any authorities and to that extent since the matter was not tested and not decided by the Coordinate Bench in W.P. No.5722/2015 though on the analogy of the law laid down by Coordinate Bench in **Munna Lal Karosiya (supra)**, it has observed in paras-10 and 13 that the absorption could not have been made but now with the justification and there being a need for speaking order so to clear the clouds hovering over the horizon in regard to the absorption of Panchayat Karmies in the Municipalities/Municipal Corporations and vice-versa needs to be cleared, therefore, cloud can be cleared with reference to the Rule 5 and Rule 9 of the respective Rules. Thus, this Court holds that the migration is not permissible under the rules and unless the rules are amended, such migration cannot be permitted by issuance of executive orders. To this extent, the order Annexure-P/9 whereby repatriation of the petitioners to the Janpad Panchayat is made, deserves no interference, therefore, this Court refuses to interfere in the said order as far as it concerns the repatriation of the petitioners from Municipal establishment to the Panchayat establishment.

20. As far as third petition filed at the behest of Ramakant Shukla is concerned, in view of the provisions contained in Schedule-IV of Madhya Pradesh Nagreeya Nikay Adhyapak Samvarg (Employment and Conditions of Services) Rules, 2008 wherein it is categorically provided that for promotion to the post of Varishth Adhyapak, seven years of experience on the post held is

necessary besides other qualifications and, admittedly, that qualification was not possessed by the petitioner-Ramakant Shukla as has been decided by the Commissioner, Municipal Corporation, Singrauli vide order dated 1st November, 2018, petitioner-Ramakant Shukla being not eligible for promotion from the date when the respondents-Smt.Pramila Dubey and Suresh Kumar Mishra were considered, has no case for showing indulgence.

21. As far as relief of cancellation of absorption of petitioners-Suresh Kumar Mishra and Smt. Pramila Dubey as claimed by Ramakant Shukla is concerned, no indulgence is required at the instance of Ramakant Shukla because the authority of Commissioner, Municipal Corporation, Singrauli has already passed an order of repatriation holding absorption of the said petitioners in the Municipal Corporation, Singrauli to be illegal and that order has been upheld by this Court for the reasons mentioned above, therefore, petition filed by Ramakant Shukla seeking indulgence in the matter of cancellation of absorption is not required to be given any further consideration, therefore, W.P. No.18388/2020 fails and is hereby dismissed.

22. Accordingly, all these petitions are dismissed.

(VIVEK AGARWAL)
JUDGE