IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 11147 of 2025

SMT. CHETNA PATLE

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Rajesh Prasad Dubey – Advocate for the petitioner.

Shri Mohan Sausarkar – Government Advocate for the respondent – State.

ORDER

(Reserved on : 24.06.2025)

(Pronounced on : 01.07.2025)

The present petitioner has been filed challenging the order Annexure P-8 whereby the seniority of the petitioner has been modified and prayer is made to restore the earlier seniority list Annexure P-5. As a consequence of down gradation of seniority of the petitioner vide Annexure P-8, the promotion order issued to the petitioner vide Annexure P-6 dated 17.08.2024 has not been given effect to and further prayer is made to give effect to the said promotion order Annexure P-6 also.

2. The factual matrix of the case is not in dispute and the reason for down gradation of seniority of the petitioner is also not vexed with complexities and is for a singular reason, which arises for determination before this Court.

3. The petitioner was initially appointed as Samvida Shala Shikshak at High School Khamariya Bazar under Chief Executive Officer, Janpad

Panchayat, Ghansour, District Seoni. The petitioner continued to serve at the said institution. However, thereafter the petitioner submitted an application for absorption in urban local body and accordingly, vide order Annexure P-3 dated 02.05.2012 the petitioner was absorbed under Municipal Council, Seoni.

4. Earlier the Samvida Shala Shikshak and Adhyapaks under Adhyapak cadre in terms of Rules of 2008 were employees of respective local bodies. Thereafter, the State Government framed statutory rules and gave option to such teachers to be absorbed under the Department of School Education by framing Rules known as M.P. State Education Service Teaching Cadre Service Conditions and Recruitment Rules, 2018. Initially, the petitioner was granted seniority by reckoning her services from the date of initial appointment in Janpad Panchayat, Ghansour, District Seoni, but now by Annexure P-8 her seniority has been redrafted from the day she was absorbed in Municipal Council, Seoni.

5. Therefore, the issue that arises for determination is whether the seniority of the petitioner has to be reckoned from the date of her initial appointment in Janpad Panchayat, Ghansour with effect from 2003 or from absorption in urban local body, i.e. Municipal Council, Seoni in 2012. It was a change of local body under which the petitioner was working and the question therefore is whether the petitioner would count her entire seniority from the date of initial appointment or the length of service from 2003 to 2012 prior to change of local body would not be taken into account for the purpose of seniority.

6. Learned counsel for the petitioner has vehemently argued that a Co-ordinate Bench of this Court in W.P. No.1450/2024 has decided the said issue and directed that seniority has been reckoned from the date of initial appointment and change of local body would not lead to loss of seniority once all the teachers have come under the fold of State Government directly under the Department of School Education and now are not under any local body. It is

argued that by interpreting Rule 17(5) of Rules of 2018 the Co-ordinate Bench in W.P. No.1450/2024 has allowed the case of similarly situated employees and the petitioner stands at equal footing and is entitled to similar treatment.

7. *Per contra*, the petition is vehemently opposed by learned Government Advocate for the State.

8. Heard.

9. Initially, the teachers were appointed in the School Education Department of the State Government but in the year 1997, the State Government came out with rules to appoint Shiksha Karmis and different rules were framed for appointing Shiksha Karmis and placing their services under urban local bodies and under panchayats. It was a very interesting system because the schools were run by the School Education Department under the control of authority of School Education Department and under Sarva Shiksha Abhiyaan, which is also a project of School Education Department but the teachers working therein were by a legal fiction, employees of Panchayats or Urban Local Bodies. For Panchayats, the Shiksha Karmis were appointed in accordance with M.P. Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1997 and corresponding rules for Urban Local Bodies. Thereafter, for schools in rural areas where the teachers were under Panchayats, the said rules were succeeded by M.P. Panchayat Samvida Shala Shikshak (Appointment and Conditions of Service) Rules, 2001 and in the year 2005, these rules were further superseded by M.P. Panchayat Samvida Shala Shikshak (Employment and Conditions of Service) Rules, 2005. For urban areas, separate corresponding rules were framed, one of which was Madhya Pradesh Nagreeya Nikay Samvida Shala Shikshak (Employment and conditions of contract) Rules, 2005. By the said Rules of 2001 and 2005, the teachers continued to be appointed in the Panchayats and Urban Local Bodies by framing separate set of rules for the purpose and they were now converted into contractual employees

and all the appointments made after the year 2001 were made on the posts of Samvida Shala Shikshak Grade-I (for Higher Secondary/High School), Grade-II (for Middle) and Grade-III (for Primary). The said system continued upto 2008 and in the year 2008, the State Government came out with Rules to absorb such Shiksha Karmis and Samvida Shala Shikshaks in regular cadre known as Adhyapak cadre. For Panchayats, Rules were framed known as M.P. Panchayat Adhyapak Samvarg (Employment and Conditions of Service) Rules, 2008 and for urban local bodies, the rules were framed known as M.P. Nagriya Nikay Adhyapak Samvarg (Employment and Conditions of Service) Rules, 2008.

10. Thereafter, in the year 2018 the State Government came out with the Rules of 2018 and as per Rule 18(2) of the said Rules the teachers working in Panchayats and Urban local bodies were given an option to migrate to the service of the State Government in Department of School Education. The petitioner opted to migrate to the service of State Government and initially her seniority was reckoned in the cadre under Rules of 2018 by giving effect to her seniority from the year 2003, when she was initially appointed under Janpad Panchayat, Gansour. Now her seniority has been downgraded and she has been given seniority by reckoning her services from 2012, i.e. the date when she got absorbed in Municipal Council, Seoni.

11. It is not in dispute that prior to 2018 either under the system of Samvida Shala Shikshak or under Adhyapak cadre constituted in the year 2008, there used to be separate cadres in urban local bodies and Panchayats. Separate rules were framed by the State, which have been narrated above, and concurrently operated for Urban local bodies and in Panchayats. The petitioner was undisputedly appointed in Janpad Panchayat and there was no provision for migration of a person appointed under Panchayat to Urban local body. When the petitioner applied for such absorption in Urban local body, which was subjected to different rules, then the same was allowed by the State vide

Annexure P-3 by incorporating condition No.6 to the effect that her seniority in the absorbed local body would be at the bottom. The aforesaid clause 6 was as under :-

> ''6. संविलियन किये जा रहे तालिका क्र. 2 में वर्णित वरिष्ठ अध्यापक, अध्यापक, सहायक अध्यापक की वरिष्ठता क्र.7 में वर्णित संविलियन निकाय के वरिष्ठ अध्यापक, अध्यापक, सहायक अध्यापक की वरिष्ठता सूची के कर्मचारियों में सबसे नीचे मान्य होगी ।''

12. Learned counsel for the petitioner has vehemently relied on the judgment of the Co-ordinate Bench in W.P. No.1450/2024, which in turn takes into account earlier judgment of Division Bench in the case of ***Smt. Sushma Pandey vs. State of M.P. & others reported in ILR 2013 MP 58*** and by taking into account the policy issued on the subject i.e. regarding transfer from one Janpad Panchayat to another Janpad Panchayat. This Court has held as under:-

> *"6. it is contended by learned Deputy Government Advocate that the policy was further circulated on 08.11.2005 (Annexure-P11) wherein it was specifically provided that in case a Siksha Karmis services are absorbed in the cadre of Adhyapak Samvarg who is transferred from one institution to another, his seniority will be put at the bottom of the employees working in the transferred institution. Thus, it is contended that if the seniority of the petitioner was fixed according to this guideline also, the same cannot be said to be bad. Such contention cannot be accepted as again by making the rules in 2008, it is deemed that such an instruction of the State Government is watered down in as much as the prescription of counting of seniority is already made in the rules. The Rules have force of law and always supersede the administrative instructions. The administrative instructions cannot at any rate supersede the provisions of the rules. Thus such contentions of the respondents cannot be accepted at all.*
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> *7. Consequently it has to be held that the petitioner was entitled to grant of seniority form the date of initial appointment. Now an objection is raised by the respondents that those who are going to be affected by fixation of seniority of the petitioner over and above them, have not been impleaded as party in the present petition. This objection is also to be turned down only because the mistake was committed by the respondents themselves. They have not fixed the provisions of the rules and*

have acted on such instructions or guidelines or circulars which are not attracted at all in the case of petitioner."

It was in the light of the aforesaid judgment that the Co-ordinate Bench in W.P. No.1450/2024 has allowed the petition. The State counsel informs that Review Petition filed by the State is pending against the said order. Be that as it may be.

13. In the case of ***Sushma Pandey (supra)*** the Rules of 2018 was not in issue and what was in issue was some executive instruction framed by the State, which was contrary to statutory rules and therefore, this Court held that the seniority has to be reckoned in terms of statutory rules and not in terms of administrative instructions.

14. The Co-ordinate Bench in W.P. No.1450/2024 has not taken Rule 17(3) of the Rules of 2018 in consideration. The Rule 17 of the Rules of 2018 is as under:-

"17. "Determination of Seniority.-
(1) The cadre of Prathmik Shikshak shall be at District level. The fixation of seniority of the members appointed in this cadre under sub-rule (1), (2) and (3) of rule-5 shall be done at the district level on the basis of a reference list prepared according to their date of appointment and seniority in selection list. If there are more than one person at the same seniority level then whosoever is older in age shall be considered senior and the persons junior in age shall be kept below him. In case the date of recruitment, serial number in the selection list and date of birth are the same, the seniority shall be determined, after preparing a reference list, in accordance with the order of their names written in the English alphabet for each appointing authority.
(2) The provisional seniority list of each cadre shall be published by their respective Appointing Authority. Claims and objections shall be invited within a period of fifteen days and then the seniority list shall be published in its final form as per rules.
(3) The seniority of teachers of a local body who have been absorbed in another local body shall be fixed from the date of their joining in the concerned new local body.

> *(4) The seniority list of each cadre shall be published for the first time within a period of three months after the commencement of these rules and thereafter on 1st April very year.*
> *(5) The cadre of Madhyamik Shikshak shall be at Divisional Level. Their seniority shall be fixed at divisional level according to sub-rule (1) of rule 17.*
> *(6) The cadre of Ucch Madhyamik Shikshak shall be at State level and their seniority shall be fixed at Directorate level according to sub-rule (1) of these rules.*
> *(7) A committee constituted by the Government shall resolve the issues relating to the fixation of seniority."*
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> **(Emphasis supplied)**

15. The aforesaid Rule 17(3) categorically provides that seniority of teachers of a local body, who have been absorbed in another local body shall be fixed from the date of their joining in the concerned new local body. This Rule 17(3) has not been considered by the Co-ordinate Bench of this Court in W.P. No.1450/2024.

16. The term "local body" is also defined in the Rules of 2018 in Clause 2(l) as under:-

> "2(l). Local Bodies" means District Panchayat under the Panchayat and Rural Development Department and Municipal Corporation, Municipality. Municipal Council under the Urban Administration and Development Department;"

17. This Court has to consider that to what extent it is bound with the decision rendered in WP 1450/2024. Being a Bench of co-equal strength, this Court is bound to observe and respect the earlier precedent on the well established principle of *stare decisis*.

18. In the case of ***A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602**, a seven-judges Constitution Bench considered the principle of *per incuriam* as under in majority view :-

> ***47.*** *In our opinion, we are not debarred from re-opening this question and giving proper directions and correcting the error*

> *in the present appeal,* ***when the said directions on 16-2-1984, were violative of the limits of jurisdiction and the directions have resulted in deprivation of the fundamental rights of the appellant, guaranteed by Articles 14 and 21 of the Constitution****. The appellant has been treated differently from other offenders, accused of a similar offence in view of the provisions of the Act of 1952 and the High Court was not a court competent to try the offence. It was directed to try the appellant under the directions of this Court, which was in derogation of Article 21 of the Constitution. The directions have been issued without observing the principle of audi alteram partem. It is true that Shri Jethmalani has shown us the prayers made before the High Court which are at page 121 of the paper-book. He argued that since the transfers have been made under Section 407, the procedure would be that given in Section 407(8) of the Code. These directions, Shri Jethmalani sought to urge before us, have been given in the presence of the parties and the clarificatory order of 5-4-1985 which was made in the presence of the appellant and his counsel as well as the counsel of the State Government of Maharashtra, expressly recorded that no such submission was made in connection with the prayer for grant of clarification. We are of the opinion that Shri Jethmalani is not right when he said that the decision was not made per incuriam as submitted by the appellant.* ***It is a settled rule that if a decision has been given per incuriam the court can ignore it****. It is also true that the decision of this Court in the case of Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661 : (1955) 2 SCR 603, 623] was not regarding an order which had become conclusive inter partes. The court was examining in that case only the doctrine of precedents and determining the extent to which it could take a different view from one previously taken in a different case between different parties.*
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> **(Emphasis supplied)**

19. Even the minority view recognized that when a statutory provision is ignored, the judgment will become per-incuriam, but it will continue to have binding effect on atleast that case between those parties, though may not have value as precedent for other cases. The minority view was as under :-

> ***"182.*** *It is asserted that the impugned directions issued by the Five-Judge Bench was per incuriam as it ignored the statute and the earlier Chadha case [AIR 1966 SC 1418 : (1966) 2 SCR 678 : 1966 Cri LJ 1071] .*

> ***183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A co-ordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned****. In this context the word 'decision' means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. Even if a previous decision is overruled by a larger Bench, the efficacy and binding nature, of the adjudication expressed in the operative order remains undisturbed inter partes. Even if the earlier decision of the Five-Judge Bench is per incuriam the operative part of the order cannot be interfered within the manner now sought to be done. That apart the Five-Judge Bench gave its reason. The reason, in our opinion, may or may not be sufficient. There is advertence to Section 7(1) of the 1952 Act and to the exclusive jurisdiction created thereunder. There is also reference to Section 407 of the Criminal Procedure Code. Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point: (para 105)*
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> *"Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench."*
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> ***(Emphasis supplied)***

20. In the case of **Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court, (1990) 3 SCC 682**, a 5-judges Constitutional bench held as under :-

> ***44.*** *An analysis of judicial precedent, ratio decidendi and the ambit of earlier and later decisions is to be found in the House of Lords' decision in F.A. & A.B. Ltd. v. Lupton (Inspector of Taxes) [1972 AC 634 : (1971) 3 All ER 948] , Lord Simon concerned with the decisions in Griffiths v. J.P. Harrison (Watford) Ltd. [1963 AC 1 : (1962) 1 All ER 909] and Finsbury Securities Ltd. v. Inland Revenue Commissioner [(1966) 1 WLR 1402 : (1966) 3 All ER 105] with their interrelationship and with the question whether Lupton's case [1972 AC 634 : (1971)*

> *3 All ER 948] fell with-in the precedent established by the one or the other case, said: (AC p. 658)*
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> *"...what constitutes binding precedent is the ratio decidendi of a case, and this is almost always to be ascertained by an analysis of the material facts of the case—that is, generally, those facts which the tribunal whose decision is in question itself holds, expressly or implicitly, to be material."*

21. In **Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC** it was held as under :-

> ***19.*** *It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty.* ***A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench****; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.*
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> **(Emphasis supplied)**

22. In **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680**, the Constitutional Bench considered and affirmed the judgement of **Sundeep Kumar Bafna (supra)**, and while recognizing that the general principle is to follow the ratio of co-equal bench, held as under :-

> ***28.*** *In this context, we may also refer to Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of*

> *great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty.* ***A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in Rajesh case [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] was delivered on a later date, it had not apprised itself of the law stated in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] but had been guided by Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167]. We have no hesitation that it is not a binding precedent on the co-equal Bench***.
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> **(Emphasis supplied)**

23. In ***Shah Faesal v. Union of India*****, (2020) 4 SCC 1**, another Constitution Bench held as under :-

> ***29.*** *In this context of the precedential value of a judgment rendered per incuriam, the opinion of Venkatachaliah, J., in the seven-Judge Bench decision of A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] assumes great relevance : (SCC p. 716, para 183)*
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> *"183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A coordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word "decision" means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. ... Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point : (para 105)*
>
> *'Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the*

precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench.'"

31. *Therefore, the pertinent question before us is regarding the application of the rule of per incuriam. This Court while deciding Pranay Sethi case [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , referred to an earlier decision rendered by a two-Judge Bench in Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , wherein this Court emphasised upon the relevance and the applicability of the aforesaid rule : (Sundeep Kumar Bafna case [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , SCC p. 642, para 19)*

> *"19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta."*

24. I have already noted above that the coordinate Bench only relied on an earlier judgement in case of **Sushma Pandey (supra)** which was rendered when the Rules of 2018 were not in existence. Further, the provision of Rule 17 (3) of Rules of 2018 escaped attention of the Coordinate Bench. The material provision having escaped the kind consideration of the earlier Bench, I am of considered opinion, that the aforesaid judgement of the coordinate Bench in WP 1450/2024 is *per incuriam.*

25. It is evident that migration from Panchayat to Urban local body would mean migration from one local body to another in terms with Rule 2(l) read with Rule 17(3) of Rules of 2018.

26. The petitioner having migrated from one local body to another in the year 2012 with loss of seniority, therefore is entitled to count her seniority for the purpose of fixation of inter-se seniority of absorbed employees from the date of joining in the concerned new local body. This, apart from Rule 17 (3), is also in accordance with Clause 6 of the absorption order Annexure P-3, whereby the petitioner had migrated from one local body to another, and was never put to challenge by the petitioner.

27. The Co-ordinate Bench has not taken note of Rule 17(3) nor taken note of Rule 2(l) of Rules of 2018. Therefore, the down grading of seniority vide Annexure P-8 cannot be faulted with as it is in accordance with Rule 17(3) of Rules of 2018. The petition therefore, deserves to be and is hereby **dismissed**.

28. However, it is observed that this judgment is only be for the purpose of counting of inter-se seniority of absorbed employees, relevant only for the purpose of promotion. In no manner this judgment would affect the services rendered between 2003 to 2012 towards length of service for purpose of increments, retiral benefits, time-bound upgradation, etc. It is made clear that the said period between 2003 to 2012 shall ensure good for all other purposes, except *inter-se* seniority for purpose of promotion.

29. With the aforesaid observations, petition is **dismissed**.

(VIVEK JAIN)
JUDGE

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