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WP-28487-2019

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 20th OF NOVEMBER, 2025

WRIT PETITION No. 28487 of 2019

SIDDHARTH MISHRA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Khalid Noor Fakhruddin - Advocate for the petitioner.

Shri Praveen Namdeo - Govt. Advocate for the respondents/State.

.....
WITH

WRIT PETITION No. 26508 of 2019

SHAILENDRA MISHRA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

*Shri K.C. Ghildiyal, Senior Advocate with Shri Kapil Sharma -
Advocate for the petitioner.*

Shri Praveen Namdeo - Govt. Advocate for the respondents/State.

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WRIT PETITION No. 3858 of 2020

SMT. SUSHMA PANIKA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

*Shri K.C. Ghildiyal, Senior Advocate with Shri Kapil Sharma -
Advocate for the petitioner.*

Shri Praveen Namdeo - Govt. Advocate for the



respondents/State.

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ORDER

With the consent of the parties, the matter is heard finally.

The present petitions under Article 226 of the Constitution of India have been filed by the petitioners seeking following reliefs :-

"(i) A writ order or direction in the nature of certiorari thereby quashing the impugned order dated 30.11.2019 issued by respondent no.2 (Annexure-P/9) and order dated 30.11.2019 issued by respondent no.3 (Annexure-P/10).

(ii) A writ order or direction in the nature of mandamus thereby directing the respondents to permit the petitioner to continue in service till he attains the age of retirement i.e. 31.08.2029.

(iii) Any other appropriate writ order or direction which this Hon'ble Court may deem just and proper in the nature and circumstances of the case including cost of the litigation."

2 . Regard being had to similitude of the facts of all cases, they are heard analogously and being decided by a common order. For the purpose of deciding the present case, short facts of W.P. No.26508/2019 are reproduced here under. In W.P. No.28487/2019 and W.P. No.26508/2019, the petitioners who are Middle School Teachers (Madhyamik Shikshak) have been compulsory retired by the impugned order dated 30.11.2019 Annexure-P/1 and Annexure-P/9 respectively. However, the said orders have not been filed along with the petition but the same have been brought on record by the State Government by calling the record. The impugned orders have been passed by taking aid of Rule 42(1) of the Madhya Pradesh Civil Services



(Pension) Rules, 1976, holding compulsory retirement of the petitioners is in public interest. The petitioners are retired by giving three months advance salary.

3. It is the case of the petitioner in WP No.28487/2019 that he was initially appointed as Upper Division Teacher. The petitioner in WP No.26508/2019 was initially appointed as Samvida Shala Shikshak. It is submitted that the petitioner was earlier working in the Government Higher Secondary School, Khedi, District Khandwa. The result of Class 10th examination was from 58% to 98%. The petitioner was transferred to District Rewa on 31.01.2019 and just thereafter, the Board examination of 2019 had commenced and the petitioner did not have much time to impart education to students at Rewa. It is submitted that the respondent, on being found that the result of Class-10th was not satisfactory, had issued a letter dated 01.06.2019 (Annexure-P/3), directing the petitioner to appear in the examination organized for evaluation of the efficiency of the teachers, who imparted education to Class-10th students and secured less than 30% of the result. In the letter Annexure-P/3 and P/4, it is mentioned that the purpose of conducting the examination is not to humiliate or fail the teachers but to advance training and education to those teachers so that they can fetch higher percentage of the result. It is the case of the petitioner that first examination was held on 12.06.2019, when he could not appear but in the examination held on 15.6.2019, he appeared but failed. Thereafter, he did not appear in the examination held on 14.10.2019 and 23.10.2019. The petitioner has submitted the representation that his earlier record was found to be satisfactory and the class to which he has



imparted education secured good results. The petitioner could not take class of higher school after his transfer as immediately after his joining, the Board examination of Class -10th had commenced. It is submitted that the petitioner has been communicated that he has been compulsorily retired from the post of Madhyamik Shikshak vide impugned order dated 30.11.2019.

4. It has been contended by learned senior counsel for the petitioner that initially, the petitioner was appointed at Samvida Shala Shiksha and then absorbed as Adhyapak in the Adhyapak Samvarg. After coming into force of rules of Madhya Pradesh School Education Service (Teaching Cadre), Service, Condition and Recruitment Rules, 2018 (hereinafter referred to as the 'Rules of 2018'), the petitioner has been appointed as a Middle School Teacher. It is submitted that as per the said Rule, the minimum requisite qualification to hold the post of Middle School Teacher is prescribed in the Schedule -III of Rule 8 appended to the Rules. It is submitted that the petitioners are supposed to impart education to the middle school students. The petitioner is not expected to impart education to Class-10th according to their qualification prescribed in the said schedule. It is further submitted that the State Government had issued a policy vide circular dated 01.06.2019 by which the State Government has decided to give training to those teachers whose school could not secure good results or secured results below 30%. According to the said circular, those who could not perform well and fetch good results of the school, for them training program would be created. However, under the garb of the said circular, the petitioners were asked to appear in the examination. The object of the circular is not to take examination but to impart training to teachers who could not secure good



results but vide letter dated 11.06.2019 (Annexure-P/5), the respondent has formed an opinion to take examination from such teachers and accordingly, the petitioner was asked to appear in the examination and vide letter dated 14.06.2019, it has been directed that in case, the petitioner does not participate in the examination, action under the disciplinary rules shall be taken against him. It is further submitted that instead of taking any disciplinary action, the petitioner has been compulsory retired vide order dated 30.11.2019 (Annexure-P/9). The petitioner has submitted representation but of no avail.

5. *Per contra*, learned counsel for the State has justified the action of the State Government on issuance of impugned order (Annexure-P/9). It has been submitted that the order of compulsory retirement is not a punishment or it does not cast any stigma. The principle of natural justice has got no role to play in the order of compulsory retirement. It is submitted that the Scrutiny Committee has evaluated the case of the petitioner in its meeting dated 18.11.2019 wherein, the case of the petitioner as well as 15 other teachers were considered by the said Committee. It has been observed by the Committee that the petitioner had appeared in the competency test. However, the petitioner obtained only 16 marks which comes to be 20% and thereafter, the petitioner was given chance to reappear in the examination but the petitioner did not appear. Accordingly, it was found by the Scrutiny Committee that as the petitioner had already completed 50 years of age and despite of training program imparted to the petitioner by the State Government, no improvement has been found and on the said basis, the recommendation has been made to retire the petitioner compulsorily taking



aid of Rule 42(1) of the Rules of 2018. During the course of arguments, learned counsel for the respondents has placed the minutes of the meeting of the Scrutiny Committee and the evaluation chart. Learned counsel for the respondents, on the basis of aforesaid submissions, prayed for dismissal of the petitions.

6. Heard the learned counsel for the parties and perused the record.

7. Learned senior counsel for the petitioner has submitted that the co-ordinate Bench of this Court in the case of **W.P. No.1512/2020 (*Ram Prasad Chikwa vs. The State of Madhya Pradesh and Others*)**, vide order dated 31.07.2024, has decided exactly identical issue of the teacher who was also compulsorily retired on the basis of the minutes of recommendation of the Committee. From the perusal of the record submitted by the learned counsel for the respondents, it is found that there were about 16 teachers against whom the action of compulsory retirement has been taken. In one of the matter, the coordinate Bench of this Court, found that as the Scrutiny Committee has not considered the entire service record/condition of service of that petitioner and also not considered the medical condition of that petitioner because of which he could not participate in the examination, has quashed the order by which the said petitioner has been compulsory retired. It is submitted that the case of the petitioner is exactly identical to the said case.

8. It is further submitted by the learned senior counsel for the petitioner that the Hon'ble Apex Court in the case of ***State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and Others* (2015) 1 SCC 347**, has held that when a particular set of employees is given relief by Court, all other



identically situated persons need to be treated alike by extending the same benefit. It is further submitted that the Hon'ble Apex Court, in the case of *Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada and another* (1992) 2 SCC 299, has laid down the principle on the point of compulsory retirement according to which, it is a subjective satisfaction of the government on considering the entire record of service. It is submitted that in the present case in hand, the petitioner's entire service condition and record has not been considered and only on the basis of one test, opinion has been formed which is illegal and not in consonance with the principle laid down by the Hon'ble Apex Court.

9. Further, reliance has been placed on the order dated 22.08.2022 passed by the co-ordinate Bench of this Court in W.P. No. 21358/2018 (*Ramesh and Ors. vs. The State of Madhya Pradesh and Ors.*) wherein, the Court, relying on the judgment of the Hon'ble Apex Court in the case of *Baikuntha Nath Das (supra)* has quashed the order of compulsory retirement.

10. When the cases of the petitioners have been tested on the anvil of the principles laid down by the Hon'ble Apex Court in the case of *Baikuntha Nath Das (supra)* as well as by the coordinate Bench of this Court in the cases referred herein above, it is found by this Court that the cases are identical to the case of *Ramprasad Chikwa (supra)* passed in W.P. No.1512/2020.

11. The Hon'ble Apex Court, in para -34 of the case of *Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada and another* (1992) 2 SCC 299, has held as under :-

"34. The following principles emerge from the above



discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(i) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(ii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself



cannot be a basis for interference."

12. Further, in the case of *Union of India vs. Dulal Dutt* (1993) 2 SCC 179, the Hon'ble Apex Court, in paragraph- 18, has held as under :-

"18. It will be noticed that the Tribunal completely erred in assuming, in the circumstances of the case, that there ought to have been a speaking order for compulsory retirement. This Court, has been repeatedly emphasising right from the case of R.L. Butail v. Union of India (1970) 2 SCC 876 and Union of India v. J.N. Sinha (1970) 2 SCC 458 that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order."

13. W.P. No.3858/2020, is filed by the widow of the teacher who has been compulsory retired by the impugned order. It is submitted that the husband of the petitioner namely Late Shri Yagyasen Shyamale was suffering from kidney ailment for which documents have been submitted to the department but holding that the husband of the petitioner did not participate in the examination, decision for retiring him compulsory has been taken. On going through the pleadings of the petition and annexures, this Court is of the opinion that the case of Late Shri Yagyasen Shyamale is exactly identical to the case of *Ramprasad Chikwa (supra)* whose case has been considered by the coordinate Bench of this Court vide order dated 31.07.2024 in W.P. No.1512/2020. Thus, in the opinion of this Court, the petitioner of W.P. No.3858/2020, is also entitled for the same relief as granted in the case of *Ramprasad Chikwa (supra)*.



14. In other two matters, i.e., in W.P. No.28487/2019 and W.P. No.26508/2019, it is found by this Court that despite of giving opportunity to the petitioners to appear in the examination, they did not appear. However, when the case of these petitioners have been considered on the basis of the principle laid down by the Hon'ble Apex Court in the case of *Baikuntha Nath Das (supra)*, it is found by this Court that the entire service record of the petitioners have not been scrutinized. The Scrutiny Committee, only on the basis of the test result, has made an opinion of retiring the petitioners compulsorily. It is submitted by the learned counsel for the petitioner that the earlier record of teachers/petitioners was extraordinary for which the documents to show their result in the earlier school is filed as Annexure-P/2. In the opinion of this Court, the Scrutiny Committee ought to have considered the past record for evaluation of the entire service record of the petitioners. From perusal of the minutes of meeting submitted before this Court, this Court has found that no doubt the work of teacher is in the interest of public at large which is to be considered for taking any action but as discussed hereinabove, the petitioners were appointed on the post of Middle School Teachers (Madhyamik Shikshak) for which the qualification is prescribed in the Schedule which is not akin to the qualification of Uchch Madhyamik Shiksha to impart education to students of Class-10th and above in the Higher Secondary Schools.

15. Admittedly, the petitioners were subjected to test of the question papers of Class-10th. Therefore, it is not expected from Middle school teachers to know subjects of Class-10th. Teachers/petitioners were supposed to educate



the students of Class-8th or below. Thus, in the considered opinion of this Court, mere one test of such petitioners cannot be made sole basis to determine their efficiency. In fact, as per the law laid down by the Hon'ble Apex Court, their entire service record was required to be scrutinized before passing such an order as it is clear from the record submitted by the learned counsel for the State, the Scrutiny Committee has not evaluated the entire service record of the petitioners. This Court finds that the decision taken by the Scrutiny Committee to retire the petitioners prematurely is not sustainable in the eye of law and deserves to be quashed.

16. Learned counsel for the petitioners has submitted that the petitioners are also entitled for the back-wages and has placed reliance on the judgment of the Hon'ble Apex Court in the case of *Union of India vs. K. V. Jankiraman and Others* (1991) 4 SCC 109, to state that the normal rule of 'No Work No Pay' is not applicable to cases where the employee although willing to work has been kept away from work by the authorities and hence, prayed for back-wages for the period wherein, the petitioners have not been allowed to work because of the impugned order.

17. The decision of compulsory retirement has been taken by the authority on the basis of the recommendation of the Scrutiny Committee which evaluated the efficiency of the petitioners on the basis of the test which the petitioners could not succeed. However, it is found by this Court that the Committee has not scrutinized the entire service record of the petitioners. The impugned order has been passed considering the conduct of the petitioners that despite of giving opportunity they did not appear in the test. Therefore, in the considered opinion of this Court, the petitioners of W.P.



No.28487/2019 and W.P. No.26508/2019 are not entitled for 100% back-wages. Considering the conduct of the petitioners in not participating in the examination and as the petitioners are on the verge of retirement and are entitled for National Pension Scheme, it is observed that these petitioners are entitled for 50% of the back-wages. However, the petitioner of W.P. No.3858/2020 whose husband could not appear in the examination because of his ailment and later on expired, considering the case of *Arvind Kumar Srivastav (supra)* and identical relief which has been granted by the coordinate Bench of this Court in the case of *Ram Prasad Chikwa (supra)*, is entitled for entire consequential benefit.

18. Thus, on the basis of aforesaid analysis, the petitions filed by the petitioners are **allowed and disposed of** in the above terms. The impugned order dated 30.11.2019 (Annexure-P/1 and Annexure-P/9) are hereby quashed. The respondents are directed to reinstate the petitioners forthwith. The petitioners of W.P. No.28487/2019 and W.P. No.26508/2019 are entitled of 50% of the back-wages with all notional benefits of the service and the petitioner who is widow of deceased teacher in W.P. No.3858/2020 is entitled for 100% of the back-wages with all notional benefits.

19. The record of the scrutiny Committee is returned back to the counsel for the State on board.

No order as to cost(s).

(DEEPAK KHOT)
JUDGE

