

(2011) ILR (MP) 859 : (2011) 1 MPLJ 513

Madhya Pradesh High Court

Case No: W.A. No. 1315 of 2006

Municipal Corporation

APPELLANT

Vs

Madhu Pasreeja and
Others

RESPONDENT

Date of Decision: Nov. 19, 2010

Acts Referred:

- Madhya Pradesh Board of Secondary Education Regulations, 1965 - Regulation 2, 2(12), 2(13), 2(14), 2(6)
- Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 - Section 28(4), 3
- Madhya Pradesh Municipal Corporation Act, 1956 - Section 1(3), 2(1), 433, 58
- Madhya Pradesh Municipal Corporations (Appointment and Conditions of Services of Officers and Servants) Rules, 2000 - Rule 13, 13(1)
- Madhya Pradesh Municipalities Act, 1961 - Section 355, 95
- Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 - Section 2

Citation: (2011) ILR (MP) 859 : (2011) 1 MPLJ 513

Hon'ble Judges: S.R. Alam, C.J; Alok Aradhe, J

Bench: Division Bench

Judgement

S.R. Alam, C.J.

This intra-Court appeal is preferred u/s 2 of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 against the order of learned Single Judge dated 14-3-2006 in Writ Petition No. 2095/2002.

The relevant admitted facts briefly stated are that Respondents No. 1 and 2 were initially appointed as "Bal Mandir Shikshikas" by Gram Panchayat, Tikuri.

Respondent No. 1 was appointed on 1-1-1982 on fixed pay of Rs. 150/- per month whereas Respondent No. 2 was appointed vide order dated 1-12-1983 on a salary of Rs. 6/- per day. However, with the passage of time, Gram Panchayat, Tikuri became part of the Municipal Corporation, Kami, Appellant before us. After inclusion of the Gram Panchayat, Tikuri in Municipal Corporation, Katni (in short "Corporation"), Respondents No. 1 and 2 became employee of the Appellant-Corporation. However, when the services of Respondents No. 1 and 2 were not regularized, they filed W.P. No. 5055/1996 before this Court. In the said writ petition, the learned Single Judge in view of the fact that Respondents No. 1 and 2 have rendered their services for considerable period and also by taking into account the fact that the Appellant has already sent a requisition to the State Government to grant necessary sanction for creation of six extra posts, directed the State Government to pass an order within 30 days from the date of the order, on the requisition sent by the Corporation and; accordingly, disposed of the writ petition. It appears that the State Government thereafter sanctioned the posts and consequently the Appellant vide order dated 29-4-1998 regularized the services of Respondents No. 1 and 2 on the post of "Bal Mandir Shikshika" in the pay-scale of Rs. 950-25-1000-30-1210-40-1530/-. However, Respondents No. 1 and 2 being dissatisfied with the pay-scale given to them made representations claiming pay-scale of Rs. 1200-2040/- which is being paid to the Lower Division Teacher of the Government School. However, when no action was taken, Respondents No. 1 and 2 again approached this Court by filing W.P. No. 2095/2002 for issuance of direction commanding the Appellant to grant aforesaid pay-scale from the date of their regularization and to grant the corresponding pay-scale of Rs. 4000-6000/- from the date when it was made applicable including arrears of salary after proper fixation of their pay-scale with interest @ 18% per annum. In the said writ petition, the Appellant appeared and contested the same by filing return. The stand of the Appellant in the writ petition was that pursuant to the order of the State Government the services of the Respondents were regularized in the pay-scale of Rs. 950-1530/- vide order dated 29-4-1998, the corresponding pay-scale of which at present is Rs. 3050-4590/-. It was further stated by the Appellant in the return that no post of Teacher in the pay-scale of Rs. 1200-2040/- has been sanctioned by the State Government in the school where Respondents No. 1 and 2 are employed and, as such, they cannot claim higher pay-scale. It has further been averred in the return of the Appellant that the pay-scale of Rs. 1200-2040/- has been sanctioned by the State Government only in respect of those schools which are receiving grant-in-aid from the State Government; since the school where Respondents No. 1 and 2 are employed does not receive any grant-in-aid from the State Government and hence they cannot be given the pay-scale of Rs. 1200-2040/-.

The learned Single Judge vide order dated 14-3-2006 allowed the writ petition preferred by Respondent No. 1 and 2. It was, inter alia, held that admittedly two posts were sanctioned by the State Government in terms of Section 58 of M.P. Municipal Corporation Act, 1956 (in short "Act of 1956") pursuant to which services of Respondents No. 1 and 2 were regularized; and since the Appellant has sanctioned pay-scale of Rs. 1200-2040/-

which has been revised to Rs. 4000-6000/-, to the teachers employed in the school run by the Appellant and since no pay-scale has been prescribed in respect of the post held by Respondents No. 1 and 2 in Madhya Pradesh Municipal Corporations (Appointment and Conditions of Services of Officers and Servants) Rules, 2000 (in short "Rules of 2000") and the pay-scale of Rs. 950-1530/- is not provided in the Rules of 2000; the post held by Respondents No. 1 and 2 since have been sanctioned by the State Government in terms of Section 58 of the Act of 1956, they are entitled for the pay-scale of Rs. 1200-2040/- which has been revised to Rs. 4000-6000/- and; accordingly, the Appellant was directed to grant the said pay-scale to the Respondents from the date of their regularization.

The aggrieved Appellant therefore preferred an intra-Court appeal which was earlier decided by another Division Bench of this Court vide order dated 9th August, 2007. The Division Bench held that singular issue which arises for consideration is whether Respondents No. 1 and 2 are entitled to pay-scale as has been directed by the learned Single Judge in Regulation 73 of the Regulations framed by the Board of Secondary Education. The Division Bench while taking into account Regulation 73 of the Regulations framed by the Board of Secondary Education held that in case of educational institutions which are non-aided, there shall be one scale of pay, the minimum of which shall not be less than that in Government Educational Institutions. It was further held that there is no material on record to hold that the post on which Respondents No. 1 and 2 are working are not available in the schools run by the State Government. Accordingly, the Division Bench came to the conclusion that Part II of Regulation 73 would be applicable to the case of Respondents No. 1 and 2 and salary has to be paid to them accordingly. However, the direction for grant of interest on the amount of arrears of salary was set aside by the Division Bench. Accordingly, writ appeal preferred by the Appellant-Corporation was partly allowed.

Being aggrieved by the aforesaid order, Appellant-Corporation preferred SLP before the Supreme Court namely SLP(C) No. 21231/2009 which was decided by the Supreme Court vide order dated 17-11-2009. The Supreme Court held that Division Bench of this Court has passed the direction only on the basis of Regulation 73 of the Regulations framed by the Board of Secondary Education. It was further observed that this Court ought to have considered the provisions of M.P. Municipal Service (Scale of Pay & Allowance) Rules, 1967 (in short "Rules of 1967") which clearly prescribes the pay-scale of teachers of Municipal Corporation and particularly the Bal Mandir Shikshikas. Accordingly, the matter was remitted back to this Court for a fresh decision.

We have heard learned Counsel for the parties.

Learned Counsel for the Appellant submitted that Rules of 2000 do not provide for the post of Bal Mandir Shikshikas and, therefore, the pay-scale cannot be fixed under the said Rules. It was further contended that under the 1967 Rules, the post of Bal Mandir Shikshikas and Lower Division Teachers have been categorized distinctly and separate

pay-scales have been prescribed. It was further submitted that Regulation 73 of the Regulations framed by the Board of Secondary Education does not apply to the case of Respondents, as it applies to teachers who are employed in primary, middle and higher secondary schools. It was further contended that the burden was on the similar work which is being performed by assistant teachers in order to claim the benefit of principle of "equal pay for equal work". In support of his submissions, learned Counsel has placed reliance on the decisions of the Supreme Court in the case of [State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others](#), and [S.C. Chandra and Others Vs. State of Jharkhand and Others](#). Learned Counsel for the Appellant further contended that Respondents cannot claim parity in the matter of pay-scale with the teachers of Municipal Corporation, Jabalpur.

On the other hand, learned Counsel for Respondents No. 1 and 2 while opposing the submissions made on behalf of the Appellant-Corporation submitted that pursuant to the direction of this Court passed in W.P. No. 5055/1996 dated 6-11-1997, the services of Respondents No. 1 and 2 were regularized. Respondents No. 1 and 2 are employees of Appellant-Corporation and their service conditions are governed by the provisions of Madhya Pradesh Municipal Corporation (Appointment and Conditions of Service of Officers & Servants) Rules, 2000. Learned Counsel for the Respondents No. 1 and 2 further contended that if provisions of Section 58 of the Act of 1956 are read conjointly with Rule 13 of the 2000 Rules, it would be apparent that the service conditions of Respondents No. 1 and 2 are governed by 2000 Rules.

We have considered the submissions made on both sides. As per order of the Apex Court dated 17-11-2009, the issue which requires to be adjudicated in this appeal is as to whether the pay-scale of the Respondents are to be fixed in accordance with Regulation 73 of the Regulations framed by the State Government or under the provisions of Rules, 1967 which clearly prescribes the pay-scale of teachers of the Corporation particularly Bal Mandir Shikshikas with which we are concerned and was not considered in the earlier judgment of the Division Bench in this appeal.

Let us have look of the relevant provisions of the Act and the Rules. The Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 (Act No. 23 of 1965) (in short "Act of 1965") was enacted with a view to provide for the establishment of a Board to regulate Secondary Education in Madhya Pradesh and other matters ancillary thereto. u/s 3 of the Act of 1965, the Board of Secondary Education, Madhya Pradesh (in short "Board") was established. The Board in exercise of powers u/s 28(4) of the Act of 1965 framed the Regulations of Board of Secondary Education, Madhya Pradesh ("Board's Regulations").

Regulation 2(6) of the Board's Regulations defines the expression "College" to mean an educational institution preparing candidates for the Higher Secondary "B" courses. Teachers Training Certification Examination, Physical Training Teachers Examination or such other examination of the Board are recognized by the Board for such a purpose.

Regulation 2(12) of the Board's Regulations defines the expression "High School" to mean an educational institution which is not a college preparing candidates for the High School Examination of the Board and recognized by the board for such a purpose.

Regulation 2(13) of the Board's Regulations defines "Higher Secondary School" means an educational institution preparing candidate for a Higher Secondary School Certificate Examination of the Board and recognized by the Board for such a purpose.

Regulation 2(14) of the Board's Regulations defines "Multiple-purpose Higher Secondary School" means an educational institution preparing candidate for the Higher Secondary School Certificate Examination of the Board and recognized by the Board as a Multipurpose Higher Secondary School under its bye- laws.

Thus, from perusal of Regulation 2 of the Board's Regulations, it is apparent that it applies to High School, Higher Secondary School, Multi purpose Higher Secondary School which have been recognized by the Board. Chapter XII of the Board's Regulations deals with staff with private Educational Institutions. Regulation 70 of the Board's Regulations provides that regulation in Chapter XII shall apply to all non-Government educational institutions.

Regulation 73 of the Board's Regulations which is relevant for the purposes of controversy involved in the writ petition is extracted below:

The scales of pay of the staff, in educational institutions which are in receipt of Government grant, shall not be less than those sanctioned for the corresponding staff in Government institution.

In the case of educational institutions which are not aided, there shall be a scale of pay, the minimum of which shall not be less than that in Government educational institutions.

Clause 32 of Chapter III of Madhya Pradesh Education Code provides recognition is required to be taken in respect of schools where education in primary, middle and higher classes is imparted. Thus, from conjoint reading of the Regulations and M.P. Education Code, it is apparent that no permission or recognition is required either by the Board of Secondary Education or by the State Government to run Pre- Primary School/Classes.

It appears that Bal Mandir runs and maintains the institutions imparting pre-primary education and thus by no stretch of imagination it could be equated or compared with the schools which are called high schools, higher secondary schools or multipurpose schools which impart education of higher classes. Admittedly, the Respondents are employed as teachers to teach students of pre-primary classes in the institutions run by the Corporation. These pre-primary classes are known as Bal Mandirs. From a careful scrutiny of the regulation referred above, would reveal that it does not apply to the institutions imparting education in higher classes which are maintained or controlled by the Board and are squarely under the management and control of the Municipal

Corporations. Admittedly, the Respondents No. 1 and 2 are working in Bal Mandir as Shikshikas and teaching students of pre- primary level.

Admittedly, vide Notification dated 27-12-1980 in respect of the area comprised in Katni Township, Municipal Corporation was constituted with effect from 1-1-1981. Section 2(1) of the Act of 1956 provides that on the application of this Act to any city, the municipality of that city shall, save as hereinafter provided, be deemed to have been withdrawn from the operation of the Municipal Law. Section 2(1) of the Act of 1956 reads as under:

2. Repeal of Enactment.- (1) On the application of this Act to any city, the municipality of that city shall, save as hereinafter provided, be deemed to have been withdrawn from the operation of the Municipal Laws.

Provided that on the application of this Act to any city under Sub-section (3) of Section 1, the authority or any institution if performing the Municipal functions shall cease to perform such functions and all assets and liabilities of such authority or institution shall vest in the Municipal Corporation constituted under this Act.

Thus, the Rules of 1967 which framed in exercise of powers u/s 355 read with Section 95 of the Madhya Pradesh Municipal Corporation Act, 1961, do not apply in the case of Respondents No. 1 and 2 as they became employees of the Corporation with effect from 1-1-1981. However, the aforesaid aspect was not brought to the notice of the Supreme Court and on the other hand, it was contended before the Supreme Court that service conditions of Respondents No. 1 and 2 would be governed by the Rules of 1967. However, in view of Section 2(1) of the Act of 1956, the aforesaid rules do not apply in the case of Respondents No. 1 and 2. In exercise of powers conferred u/s 58 read with Section 433 of the Act of 1956, the State Government has framed the Rules of 2000 (supra). The post of Bal Mandir Shikshikas is not mentioned in the set up as provided in Schedule-I of the Rules of 2000. Rule 13(1) of the Rules of 2000 provides that Corporation shall be competent to prescribe the method/procedure under which decision is to be taken in respect of medical treatment, General Provident Fund and pension. The other conditions of service which have not been provided in these Rules or any other Rules made under Madhya Pradesh Municipal Corporation Act shall be dealt to be the same which are applicable to Government servants on the same post from time to time. Rule 13(1) of the Rules of 2000 reads as under:

13. Other conditions of service.- (1) The Corporation shall be competent to prescribe the method/procedure under which decision is to be taken in respect of medical treatment, General Provident Fund and Pension. The other conditions of service which have not been provided in these rules or any other rules made under the Act shall be deemed to be the same which are applicable to Government servants on the same post from time to time.

Thus, from perusal of Rules 13(1) of the Rules of 2000, it is clear that the conditions of service of the officers and servants in respect of which no provision has been made in the Rules, provisions applicable to Government servants shall apply. However, as referred above, since the post of Bal Mandir Shikshika is not mentioned in the set up, as provided in Schedule 1 of the Rules of 2000, therefore, the aforesaid Rules do not apply in the case of Respondents No. 1 and 2. For the aforementioned reasons, the contention of the learned Counsel for the Respondents No. 1 and 2 that in view of Rule 13 of the Rules of 2000, service conditions of Respondents No. 1 and 2 are governed by the Rules of 2000 cannot be accepted.

Thus the inevitable conclusion is that though Respondents No. 1 and 2 are employees of the Corporation, however, there are no statutory rules governing their service conditions. In the writ petition, the Respondents have sought a direction that they be granted the pay-scale/of Rs. 1200-2040/- which is payable to Lower Division Teachers. However, Respondents No. 1 and 2 even in the writ petition have failed to establish that their nature of duty is similar to that of Lower Division Teachers and, therefore, they are entitled to similar benefit in the matter of pay-scale. The averments that the Respondents are working on the post of Assistant Teachers have been denied by the Appellant-Corporation in the return in para 30. Perusal of paragraph 5.4 reveals that Respondents' case is that they are working on regular post of Assistant Teachers in the pay-scale of Rs. 950-1530/-, whereas from perusal of Annexure P/2, it is clear that services of Respondents No. 1 and 2 were regularized against the vacant and sanctioned post of "Bal Mandir Shikshikas" pursuant to the order passed by the State Government.

Thus, there is no material on record to hold that the nature of duties and functions of Bal Mandir Shikshikas and Lower Division Teachers are similar. Therefore, the claim of Respondents No. 1 and 2 for grant of pay-scale of Rs. 1200-2040/- which has been revised to Rs. 4000-6000/- cannot be accepted as Respondents No. 1 and 2 have failed to discharge the burden to show that they perform the same duties and functions which are performed by the Lower Division Teachers.

From perusal of affidavit filed on behalf of the Corporation, we find that Bal Mandirs which are being run by the Appellant-Corporation do not receive any grant-in-aid. Respondents No. 1 and 2 were initially appointed in the pay-scale of Rs.

950-25-1000-30-1210-40-1530/- and are currently being paid the pay as per the pay scale of Rs. 3050-4590/- which is corresponding revised pay-scale of Rs. 950-1530/-.

In view of the discussion made above, we have no hesitation in holding that Respondents No. 1 and 2 who are employed as "Bal Mandir Shikshikas" are entitled to get the monthly salary in the pay-scale of Rs. 3050-4590/- which is corresponding pay-scale of Rs. 950-1530/-. Accordingly, the direction of the learned Single Judge to fix the pay-scale of Respondents No. 1 and 2 in the pay-scale of Rs. 4000-6000/- which is corresponding pay-scale of Rs. 1200-2040/- is set aside. In the result, the appeal is partly allowed. However, there shall be no order as to costs.