

## Jagdish Singh Gujar Vs State of Madhya Pradesh and Others

**Court:** Madhya Pradesh High Court (Gwalior Bench)

**Date of Decision:** July 30, 2005

**Citation:** (2005) 4 MPHT 48 : (2006) 1 MPJR 213 : (2005) 4 MPLJ 417

**Hon'ble Judges:** Subhash Samvatsar, J

**Bench:** Single Bench

**Advocate:** R.D. Jain and S.K. Jain, for the Appellant; Vivek Khedkar, Government Advocate, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

Subhash Samvatsar, J.

This order shall govern disposal of the present petition as well as other connection writ petitions, i.e., W.P. No. 7760/2003, Brij Raj Singh

Chouhan v. State of M.P. and Ors., W.P. No. 1803/2000, Smt. Nirupama Jain v. State of M.P. and Ors., W.P. No. 86/2003, Narendra Singh

Chouhan v. State of M.P. and Ors., W.P. No. 155/2003, Pradeep Kumar Mudgal v. State of M.P. and Ors., W.P. No. 266 of 2003, Ramraj

Singh Tomar v. State of M.P. and Ors., W.P. No. 903/2003, Ramkumar Gaud v. State of M.P. and Ors., W.P. No. 819/2003 Mahesh Singh

Kushwaha v. State of M.P. and Ors., W.P. No. 912/2003, Vikram Singh Tomar v. State of M.P. and Ors., W.P. No. 4534/2003, Suresh

Chandra Mishra v. State of M.P. and Ors., W.P. No. 4727/2003, Kuldeep Kumar and Anr. v. State of M.P. and Ors., W.P. No. 7106/2003,

Uday Vir Singh v. State of M.P. and Ors., W.P. No. 7115/2003, Shiv Nath Singh Sikarwar v. State of M.P. and Ors., W.P. No. 7304/2003,

Manmohan Singh v. State of M.P. and Ors., W.P. No. 7310/2003, Yadvendra Singh Choudhary v. State of M.P. and Ors., W.P. No.

7342/2003, Arvind Singh v. State of M.P. and Ors., W.P. No. 7548/2003, Archana Tiwari v. State of M.P. and Ors., W.P. No. 8095/2003

Smt. Sarita Jadon v. State of M.P. and Ors., W.P. No. 8096/2003, Udai Bhan Singh v. State of M.P. and Ors. and W.P. No. 8100/2003,

Virendra Singh v. State of M.P. and Ors...

The brief facts of the case are that the petitioners in all these twenty writ petitions were employees of a school namely Shri Hazareashwar Higher

Secondary School, Sheopur, which is a private school. This school is being run by a society namely Shri Hazareashwar Zila Shiksha Prasara Samiti,

Sheopur. The school was recognised by the State Government for imparting education from Classes I to XII.

According to the petitioners in the year 1995 there were 7248 students studying in the school in various classes. Annexure P-5 is the report of the

Principal of Government Higher Secondary School, Jagga Ka Pura, Sheopur in that regard. A proposal was sent for taking over of the said school

by the Government. In that regard correspondence went on for a number of years and ultimately the school was taken over by the State

Government on 29-6-1995 by order Annexure P-6. At the time of taking over of the school there were as many as 191 teachers in the school.

Initially the Government created 131 posts of teachers vide Annexure P-7 and absorbed those 131 teachers in the Government service. However,

remaining 60 employees were not absorbed in the Government service, hence present petitions have been filed.

The contention raised by the Counsel for the petitioners is that as per the agreement and the policy, Annexure P-5, it was agreed that a Screening

Committee will be constituted for absorbing the staff of the said school but in spite of the said decision the employees were arbitrarily absorbed.

Learned Counsel for the petitioners invited attention of this Court to Annexure P-11 which is an agreement entered into at the time of taking over

of the school by the State Government. Copy of the policy for taking over the management is filed as Annexure R-5.

The first contention raised by the Counsel for the petitioners is that the employees were absorbed without considering their seniority, merits and

length of service. Counsel for the petitioners urged that in Annexure P-5 it was decided to constitute a committee consisting of Joint Director of the

Division ; Principal of a Government School situated at the head quarter of the Education Division and Headmaster/Principal of the school to be

taken over. The contention of the Counsel for the petitioners is that the Screening Committee submitted its report after screening which is on

record as Annexure R-2. Learned Counsel submits that though as per the policy a three members committee was to be constituted. The

proceedings of the Screening Committee shows that as many as six persons have participated in the screening process and as these three out

siders have influenced the committee process the entire proceedings are vitiated.

In reply to the arguments of the petitioners learned Counsel for the State submitted that the Screening Committee was properly constituted.

According to him sixty employees which were shown on the register of the school were due to fake appointments by the school authorities.

According to the State Government Annexure R-1 shows that in the year 1995-96 there were as many as 5137 students in the school. This figure

has jumped to 7248 only because the institution wanted to favour some persons and wanted to give them appointments in the school before taking

over of the school so that they may be absorbed in to Government service. Learned Counsel for the respondents also submitted that in two years

the number of classes were increased by more than thirty and all this exercise was done to help the petitioners who were not eligible for

absorption.

Counsel for the respondents also pointed out that few days before absorption a number of employees were given appointments/promotions and

these persons are petitioners in Writ Petitions No. 1803/00, 86/03, 266/03, 819/03, 839/03, 7115/03, 7304/03, 8095/03, 8096/03. All these

petitioners were appointed/promoted by the school in March, 1995 when process for taking over of the school was at its fag end. Counsel for the

respondents also pointed out that petitioner in Writ Petition No. 7760/03 was appointed as Assistant Principal when there was no such post in the

institution. Thus, according to the Counsel for respondents these persons were either appointed or promoted with a view to extend the benefit of

absorption. Increase of thirty three classes in one year also indicates the same thing. Counsel for the respondents also urged that it is true that some

of the senior employees were excluded from being absorbed while the employees who were joined the service subsequently were absorbed but all

this was happened due to non-availability of teachers in different subjects. Thus, according to him there is no discrimination or illegality in

absorption.

Learned Counsel for the respondents also submitted that in spite of three members is provided in the policy for the Screening Committee there

were six persons have participated in the screening process but that itself has not caused any prejudice to any one. Counsel for the respondents

has also urged that there is nothing on record to show that these persons had influenced the mind of the Screening Committee.

Learned Counsel for the petitioner invited attention of this Court to the judgment of Apex Court in the case of Union of India and Others Vs. O.

Chakradhar, and judgment of this Court in the case of Salam Mani Singh (Dr.) v. Lakshmi Bai National Institute of Physical Education and Ors.

2002 (2) JLJ 391, wherein this Court has quashed the selection made by Selection Committee which was constituted against the Rules. The

Calcutta High Court in case of Manorama Sanyal v. District Inspector of School (1990) 3 SLR 771 has held that the selection made by a

committee, formation of which is contrary to rules directions, is void.

In the present case a three member committee was constituted by the Government under the Policy, Annexure R-5, when the proceedings of the

said committee show that six persons have signed the proceedings and as such participated in the Screening process. It is true that there is nothing

on record to show to prove the extent of influence by three outsiders but none the less there are chances that these persons may have influenced

the mind of the screening committee. Though, it can not be found that to what extent they have influenced the mind of screening committee still the

influence by these persons can not be totally ruled out.

The Bombay High Court in case of (Dr.) Gorakh Nath Misra v. Goa University (1989) 2 SLR 67, has held that if an unauthorized persons has

participated in the selection committee then the entire selection is vitiated. In that case the Registrar of the University had participated in the

selection committee, though he was not the member of the selection committee and the High Court quashed the proceedings holding that it is amply

proved that the person not authorised to act as a member of the selection committee had acted and as such participated in decision making

process and, therefore, the selection made by the committee is vitiated in law. It is settled principle of law that the justice should not only be done

but should manifestly be seen to be done. In such circumstances, it can be said that the screening process was influenced by extraneous

consideration and that itself vitiate the entire screening process. In such circumstances this Court need not go into other questions raised by the

parties and, therefore, it is held that the entire screening process is vitiated.

The Apex Court in the case of Union Territory of Chandigarh Vs. Dilbagh Singh and others, , held that in cases where the entire selection process

is under challenge then it is not necessary to implead all the selected persons. In such circumstances the entire selection process deserves to be

quashed and is hereby quashed and it is directed that a fresh Selection Committee be constituted in accordance with the policy, Annexure P-5

framed by the State Government. Said selection committee shall consider whether increase in the strength of the students and the staff was with a

view to extend the benefit to some persons who were appointed or promoted in the month of March, 1995 and in nearby period. The Screening

Committee shall also decide the total approved posts required for the actual strength of the students in the school. The Screening Committee in

view the seniority and subject wise requirement of the teachers and the merits of the candidates will select persons for absorption. Till then the

persons who are already selected can continue as they are in service since 1995. The process of Screening Committee shall be completed within a

period of four months from today.

With the above observations and directions these petitions stand disposed of with no orders as to costs.