



2024 INSC 378

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). _____ OF 2024
(Arising out of SLP(C) NO(S). 23966-23968 OF 2022)

SMITA SHRIVASTAVA

....APPELLANT(S)

VERSUS

**THE STATE OF MADHYA PRADESH
& ORS. ETC.**

...RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Leave granted.
2. The appellant has approached this Court by way of filing present appeals seeking to assail the impugned judgments dated 7th May, 2022 and 3rd August, 2022, passed by the High Court of Madhya Pradesh, Indore Bench in Writ Appeal Nos.1972 of 2019 and 799 of 2021 and Review Petition No.707 of 2022 respectively whereby, while allowing the writ appeal preferred by the respondent herein, the High Court refused to grant the relief of appointment to the appellant on the post of Samvida Shala Shikshak Grade-III in spite of holding that denial of such appointment was grossly illegal and arbitrary. The review petition

filed against order dated 7th May, 2022, too was dismissed vide judgment dated 3rd August, 2022.

3. Detailed facts can be gathered from the impugned judgments and thus, the same need not be reiterated in detail. However, in nutshell, the controversy can be summarized in the following manner.

4. The appellant herein was appointed as an Instructor in the Non-Formal Educational Centre established by the State Government in the year 1990. She worked on the said post till 1st September, 1993. Later on, the State Government decided to abolish the post of Instructors. The State Government exercising powers conferred upon it by sub-Section(1) of Section 95 read with sub-Section(2) of Section 70 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 promulgated recruitment rules for the services of the Samvida Shala Shikshak Grade-I, II and III in the name of the Madhya Pradesh Panchayat Samvida Shala Shikshak(Employment and Conditions of Contract) Rules, 2005(for short 'Rules of 2005').

5. The State Government conducted an examination for the selection of Samvida Shala Shikshak Grade-III on 31st August, 2008. The appellant herein was permitted to participate in the

examination and was declared passed. However, no appointment order was forthcoming in her favour, whereupon she served a legal notice to the concerned authority but to no avail. The Rules of 2005 were amended on 29th July, 2009 by a Gazette Notification whereby, sub Rule(2) was inserted in Rule 7-A to the effect that the candidates who were working on the post of Instructors in the Non-Formal Educational Centres were eligible to get appointment. The aforesaid amendment made the appellant ineligible to be appointed for the post of Samvida Shala Shikshak Grade-III as she had been discontinued from the job of Instructor with effect from 1st September, 1993 and accordingly, in view of the aforesaid amendment, the State Government denied appointment to the appellant herein which compelled her to institute litigation along with similarly situated ex-Instructors. The Writ Petition No. 91 of 2011 filed by the appellant was allowed on 21st February, 2012 whereby the notification dated 29th July, 2009 was quashed and a direction was given to the State Government to consider the case of the appellant for appointment on the post of Samvida Shala Shikshak Grade-III, in view of unamended criteria. Another Writ Petition No. 1578 of 2011 filed by the appellant was also allowed on 1st February, 2013. In spite thereof, the District Education

Officer, Indore rejected the claim of the appellant for appointment which led to further litigation. Finally, the matter came up for consideration before the Division Bench of the High Court of Madhya Pradesh at Indore in Writ Appeal Nos.1972 of 2019 and 799 of 2021 which came to be disposed of with the following directions: -

“After the order passed in contempt petition, again the appellants rejected the claim of the writ petitioner on 22.01.2014. The Writ Petitioner has filed Writ Petition No.3698/2014 placing the order passed by the Gwalior Bench of this High Court in the case of Manmohan Mathur Vs. State of M.P (W.P. No.1102/2010 (s) allowed on 30.7.2012). The Writ Petitioner has also filed an order of Writ Appeal No.185/2013 whereby the Division Bench has dismissed the Writ Appeal filed by the appellants. The Special Leave Petition No.16115/2015 had also been dismissed and after the dismissal of SLP all the Instructors similarly placed writ petitioner have been appointed vide order dated 13.03.2018. Thereafter vide order dated 29.11.2018, six more Instructors were appointed. In view of the aforesaid order, again writ petition was disposed of with a direction to consider the claim of the writ petitioner but unfortunately, Collector, Indore vide order dated 21.10.2019, has rejected the representation of the writ petitioner again, relying on Rule 7-A.

Since the State Government has no option but to appoint the writ petitioner and other Instructors, therefore, vide notification dated 21.03.2018, the provision of 7-A has been made effective w.e.f. 01.01.2008 i.e. prior to the date of recruitment in order to deny the legitimate claim of the writ petitioner. Despite the aforesaid amendment, the Writ Court has allowed the writ petition with a direction to the appellants to consider the case of the writ petitioner on the post of Samvida Shala Shishak Grade-III.

This case is a glaring example of the adamant attitude of the State Government. Mighty State Government has made all possible efforts to deny the appointment of the writ petitioner on the post of Samvida Shala Shishak Grade-III. The writ petitioner is fighting for her right since 2008 fulfilling all the educational qualifications for the post of Samvida Shala Shishak Grade-III. The writ petitioner is fighting against State

for her modest claim for appointment to the post of Samvida Shala Shishak Grade-III. She had approached four times before this Court by filing the writ petitions and contempt petition and in order to deny her claim, twice State Government has amended the Rules and thereafter when they did not succeed, they have given it retrospective effect. By doing this, the State /the appellants have passed more than 14 years and made the writ petitioner overage (56 years) for the appointment. Every time, despite a clear cut finding that the amended rule would not apply in the case of the writ petitioner, the appellants have every time rejected her legitimate claim by relying on the amended rule. This is a fit case for proceeding with contempt against the erring officer of the State Government.

Now post of Samvida Shala Shishak Grade-III has already been abolished and all the Shisha Karmis' have been made Assistant Teachers after qualifying for the examination. The Writ Petition has not challenged the validity of the notification dated 21.03.2018, by which the provision of 7-A has been made effective w.e.f. 01.01.2008. Therefore, in view of this subsequent development, now the petitioner is no more eligible to get an appointment hence the Writ Appeal is allowed. But looking at the conduct of the State as discussed above the Writ Petitioner is liable to be compensated by payment of Rs. 1,00,000/- (Rupees One Lakh) payable by the State.”

6. Being aggrieved by the denial of relief despite having succeeded in protracted litigations and the highly arbitrary, adamant and *mala fide* approach of the State authorities, the appellant herein filed a Review Petition No.707 of 2022 against the order dated 7th May, 2022 which too was dismissed by the order dated 3rd August, 2022. The above said orders are assailed in the present set of appeals.

7. We have heard and considered the submissions advanced by learned counsel for the parties and have gone through the material placed on record.

8. It is a glaring case wherein the adamant, arbitrary, *mala fide* and high-handed approach of the State Government and its officials has driven the appellant to a series of prolonged litigations which were evidently not out of her choice. In spite of having passed the selection exam held for the post of Samvida Shala Shikshak Grade-III way back on 31st August, 2008, the appellant did not reap the fruits of her success. The State Government took the shield of an amended rule i.e. Rule 7-A, issued on 29th July, 2009 for denying relief to the appellant herein, even when the said rule had no retrospective application. Not only this, in spite of the High Court having struck down the said rule and passing repeated orders in favour of the appellant, another notification dated 21st March, 2018 was issued making the amended rule effective from 1st January, 2008 i.e. prior to the date of recruitment. This was clearly a *mala fide* action in an attempt to circumvent the orders passed by the High Court by hook or by crook so as to prevent the appellant and her peers of their lawful claim to appointment which stood crystalized long back. However, despite recognising all the unjustified orders faced by the appellant, the Division Bench of High Court of Madhya Pradesh failed to provide restitutive relief to

the appellant even after holding that she was illegally deprived of her lawful entitlement.

9. Learned counsel for the appellant has drawn our attention to the judgment of this Court in the case of ***Manoj Kumar v. Union of India and Others***¹. The relevant extracts of which are quoted hereinbelow for the sake of ready reference: -

“19. Within the realm of judicial review in common law jurisdictions, it is established that constitutional courts are entrusted with the responsibility of ensuring the lawfulness of executive decisions, rather than substituting their own judgment to decide the rights of the parties, which they would exercise in civil jurisdiction. It has been held that the primary purpose of quashing any action is to preserve order in the legal system by preventing excess and abuse of power or to set aside arbitrary actions. Wade on Administrative Law states that the purpose of quashing is not the final determination of private rights, for a private party must separately contest his own rights before the administrative authority. Such private party is also not entitled to compensation merely because the administrative action is illegal. A further case of tort, misfeasance, negligence, or breach of statutory duty must be established for such person to receive compensation.

20. We are of the opinion that while the primary duty of constitutional courts remains the control of power, including setting aside of administrative actions that may be illegal or arbitrary, it must be acknowledged that such measures may not singularly address repercussions of abuse of power. It is equally incumbent upon the courts, as a secondary measure, to address the injurious consequences arising from arbitrary and illegal actions. This concomitant duty to take reasonable measures to restitute the injured is our overarching constitutional purpose. This is how we have read our constitutional text, and this is how we have built our precedents on the basis of our preambular objective to secure justice. [The Preambular goals are to secure Justice, Liberty, Equality, and Fraternity for all citizens.]

¹ (2024) 3 SCC 563

21. In public law proceedings, when it is realised that the prayer in the writ petition is unattainable due to passage of time, constitutional courts may not dismiss the writ proceedings on the ground of their perceived futility. In the life of litigation, passage of time can stand both as an ally and adversary. Our duty is to transcend the constraints of time and perform the primary duty of a constitutional court to control and regulate the exercise of power or arbitrary action. By taking the first step, the primary purpose and object of public law proceedings will be subserved.

22. The second step relates to restitution. This operates in a different dimension. Identification and application of appropriate remedial measures poses a significant challenge to constitutional courts, largely attributable to the dual variables of time and limited resources.

23. The temporal gap between the impugned illegal or arbitrary action and their subsequent adjudication by the courts introduces complexities in the provision of restitution. As time elapses, the status of persons, possession, and promises undergoes transformation, directly influencing the nature of relief that may be formulated and granted.”

10. The situation at hand is clearly covered by the aforesaid observations made by this Court in the case of **Manoj Kumar**(*supra*). There is no dispute that the appellant is presently of 59 years of age and can hold the post of Samvida Shala Shikshak Grade-III till the age of 62 years. The High Court took note of the fact that despite a clear-cut finding that the amended rule would not apply in the case of the appellant, the State Government has rejected her legitimate claim by relying on the amended rule. The High Court, on the one hand, thought it fit to proceed with contempt action against the erring officers of the State Government, but at the same time, denied relief to the

appellant on the basis of notification dated 21st March, 2018 which makes the amended rule i.e. Rule 7-A effective retrospectively i.e., with effect from 1st January, 2008. This observation of the High Court is in sheer contravention of the findings and conclusions recorded earlier.

11. As a consequence, we are of the firm view that the appellant deserves a direction for restitutive relief along with compensation for the misery piled upon her owing to the arbitrary and high-handed action of the State Government and its officials. Accordingly, the following directions are issued:-

- (i) The appellant shall forthwith be appointed to the post of Samvida Shala Shikshak Grade-III or an equivalent post within a period of 60(sixty) days from today.
- (ii) The appointment order will be effective from the date on which the first appointment order pursuant to the selection process dated 31st August, 2008 came to be issued.
- (iii) The appellant shall be entitled to continuity in service. However, she shall not be entitled to back wages. However, she is granted exemplary cost quantified at Rs.10,00,000/- (Rupees Ten Lakhs only). The above amount shall be paid to the appellant by the State of Madhya Pradesh within 60 days.

(iv) The State Government shall hold an enquiry and recover the said amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) from the officer(s) who were responsible of taking deliberate, illegal, *mala fide* actions for denying relief to the appellant.

12. The above directions are being given without prejudice to the proceedings of contempt contemplated by the High Court in the order dated 7th May, 2022.

13. The appeals are allowed in these terms.

14. Pending application(s), if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(SANDEEP MEHTA)

**New Delhi;
May 03, 2024**