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WA-2358-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 22nd OF OCTOBER, 2024WRIT APPEAL No. 2358 of 2024

*NAGAR PALIKA PARISHAD THROUGH ITS CHIEF MUNICIPAL
OFFICER SHRI SUDHIR KUMAR*

*Versus**KUNDAN SANKHALA AND OTHERS*

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Appearance:

Shri Kamlesh Mandloi - Advocate for the petitioners.

*Shri Sudeep Bhargava - Dy. Advocate General for the
respondent/State.*

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ORDER

Per. Justice Vivek Rusia

The appellant / Nagar Palika Parishad, Mandsaur has filed the present writ appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005 challenging the order dated 04.12.2023 passed by the Writ Court, whereby W.P. No.1753 of 2013 has been allowed.

02. Facts of the case are that respondents No.1 to 3 / writ petitioners were appointed to the post of Shikshakarmi, Grade - I by an order dated 08.09.1998 and 24.02.1999 issued by the Chief Municipal Officer, Nagar Palika Parishad, Mandsaur. At that time, the appointment and service



condition of the writ petitioners were governed under the provisions of Madhya Pradesh Nagarpalik Shiksha Karmi (Bharti Tatha Seva Sharten) Niyam, 1998 (in short 'the Rules of 1998').

03. Initially, the writ petitioners were appointed in the pay-scale of Rs.1000-30-1600 and after completion of three years of probation period, they were regularized and appointed in the regular pay-scale of Nagarpalika (Municipality), as per Rule 7 of the Rules of 1998. By order dated 12.12.2001 and 29.07.2002, Nagarpalika regularized the services of the writ petitioners. The grievance of the writ petitioners was that despite completing 12 years of service, they were not given the regular pay-scale of the post applicable to the Nagarpalika Teacher. With effect from 01.04.2007, the writ petitioners were given the pay-scale of Rs.4000-8000, but they claimed the pay-scale of Rs.5000-8500 under Rule 7 of the Rules of 1998.

04. According to the writ petitioners, the Nagarpalika has denied the benefits of FPF, PPF, House Rent Allowance, Employees Insurance Scheme, Medical Facilities and other benefits at par available with the employees of Nagarpalika. The writ petitioners were compelled to become member of Contributory Pension Plan which came into force in the year 2005, but the writ petitioners have been working since 1998/1999 and are entitled to get the benefit of regular pension under the Madhya Pradesh Civil Services (Pension) Rules, 1976.

05. The writ petitioners approached this Court by way of W.P. Nos.4365 of 2011(s), 4367 of 2011(s) and 4368 of 2011(s) which were disposed of with a direction to the respondents to consider the representation.



Vide order dated 17.10.2012, the respondent / Nagarpalika rejected the representation denying the benefit of service of the Municipalities at par with its employees. The writ petitioners again approached this Court by way of W.P. No.1753 of 2013(s) seeking following reliefs.

- (1) That the Hon'ble Court may kindly be pleased to issue Writ of Certiorari and quash the order dated 17-10-12 (Annexure P-11), issued by respondent no.4 and direct the respondent, to allow the Pay Scale applicable to employees of the Nagar Palika i.e. 50500-8000 to the petitioner from the date of their entitlement as per the terms of the appointment order, and pay the arrears of salary with interest to them;
- (2) That Hon'ble Court pleased to further direct to the respondent, to allow all the service benefit applicable to the employees of the Nagar Palika to the Petitioners, like benefit of GPF, PPF, House Rent Allowance, benefit of Employees Insurance Scheme, etc. and also the benefit of the Madhya Pradesh Nagar Palika (Pension) Rules, 1980;
- (3) The Hon'ble Court may kindly be pleased to direct the respondent No.5, not to deduct any amount from the salary of the petitioners towards the Contributory Pension Plan, and refund all the amount deducted from the salary under the said plan with interest;
- (4) To allow this writ petition with cost;
- (5) To pass such other writ or order which this Hon'ble Court deems fit in the facts and circumstances of the case to grant in favour of the petitioners.

06. During the pendency of the writ petitions, the State Government framed a Rule know as "Nagreeya Nikay Adhyapak Samvarg (Employee & Service Conditions) Rules, 2008 (in short 'the Rules of 2008) and came into



force w.e.f. 17.09.2008. The Shikshakarmis appointed by the Municipal Corporation and Municipal Council under the Rules of 1998 were absorbed under the Rules of 2008 on the post of Varishth Adhyapak, Adhyapak and Sahayak Adhyapak as the case may be.

07. The respondents filed a reply in the writ petition denying the benefit claimed by the writ petitioners.

08. Vide order dated 04.12.2023, the Writ Court has allowed the writ petition, hence, the present writ appeal is filed before this Court.

09. Shri Kamlesh Mandloi, learned counsel for the appellant submits that the benefits under the Rules of 1998 have already been given to the writ petitioners. The Writ Court did not consider the applicability of Rules of 2008. The writ petitioners are not the regular employee of the Municipality. Under the Rules of 2008, in fact they are an employee of the State Government. In support of the aforesaid contentions, learned counsel has placed reliance upon a judgment delivered by the Apex Court in the case of *Dr. K.M. Sharma & Others v/s The State of Chhatisgarh & Others (Civil Appeal No.3030 of 2022) reported in (2022) 11 SCC 436*, in which the Apex Court has held that Municipal Teachers and Shikshakarmis are appointed under different rules having different methods of selection and recruitment, Shikshakarmis cannot claim parity in pay-scale with Municipal Teachers on the principle of equal pay and equal work. Shikshakarmis appointed under the Rules of 1998 are entitled to pay-scale under the Rules of 1998 only. Therefore, the order passed by the Writ Court may kindly be set aside.

Heard.



10. It is not in dispute that the writ petitioners were appointed by the Chief Municipal Officer, Nagarpalika Parishad, Mandsaur under the provision of the Rules of 1998. Definition 2(b) of the Rules of 1998 is reproduced below:-

"2(b). "Appointing Authority" in relation to "Adhyapak Samvarg" means Appointing Authority as specified under Section 58 of the Madhya Pradesh Municipal Corporation Act, 1956 in case of Municipal Corporation and under Section 94 of the Madhya Pradesh Municipalities Act, 1961 in case of Municipality and Nagar Panchayat (Schedule)."

11. It is clear from the aforesaid provision of law that the Appointing Authority means the Appointing Authority as specified under Section 58 of the Madhya Pradesh Municipal Corporation, Act, 1956 and under Section 94 of the Madhya Pradesh Municipalities Act, 1961 in case of Municipality and Nagar Pahchayat.

12. Section 94 of the Municipalities Act, 1961 is reproduced below:-

"94. Appointment of staff.

(1) Every Council having an annual income of five lakhs of rupees or more shall, subject to rules framed under Section 95, appoint a Revenue Officer and an Accounts Officer and may appoint such other officers and servants as may be necessary' and proper for the efficient discharge of its duties.

(2) Every Council not falling under sub-section (1) shall, subject to rules framed under Section 95, appoints a Sanitary Inspector, a Sub-Engineer, a Revenue Inspector and an Accountant and may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties :

Provided that such Council may appoint a part time Health Officer or an Engineer on such terms and conditions as the State Government may approve in this behalf.] *[Substituted by M.P. Act No. 15 of 1979.]*

(3) The State Government may-

(i) in case of any Council, relax the provisions of sub-section (1) or



sub-section (2) as the case may be, subject to such conditions as it may think fit to impose; or

(ii) grant permission to any Council to appoint whether temporarily or otherwise one person to discharge the duties of any two or all such officers.

(4) The appointment of Revenue Officer, Accounts Officer, Sanitary' Inspector [Sub-Engineer] [*Substituted by M.P. Act No. 31 of 1973.*], Revenue Inspector and Accountant shall be subject to confirmation by the State Government and no such post or the post of any other officer or servant as may be specified by the State Government in this behalf shall be created or abolished and no alteration in the emoluments thereof shall be made without the previous approval of the State Government, and every appointment to, and dismissal from such post, shall be subject to a like approval.

(5) No order of suspension for a period exceeding one month shall be passed against any officer mentioned in or specified under sub-section (1) and no resignation tendered by any such officer shall be accepted without previous approval of the State Government.

(6) Unless the State Government otherwise directs the power of appointing Municipal Officers and servants other than those mentioned in or specified under sub-section (4) shall vest in the President-in-Council.

(7) The State Government may transfer any officer or servant of a Council mentioned in sub-sections (1) and (2) and in receipt of total emoluments exceeding one hundred rupees to any other Council.] [*Substituted by M.P. Act No. 32 of 1967.*]

(8) The State Government may prescribe the classes or grades of officers and servants who shall have the right to appeal from any decision of the Chief Municipal Officer, the [President-in-Council] [*Substituted by M.P. Act No. 20 of 1998.*], the prescribed authority or any other authority empowered in his behalf, inflicting any departmental punishment other than censure.

(9) The authority hearing an appeal made under sub-section (8) shall have power to set-aside or reduce the punishment against which the appeal is preferred."

13. Under the aforesaid section, every Council shall, subject to the rules framed under Section 95 and in addition to the appointment of members of the Municipal Services of the State under sub-section (1) of section 86, appoint such other officers and servants as the case may be for



the efficient discharge of the duties.

14. Under Section 95 of the Municipalities Act, the State Government is having power to make rules in respect of qualification recruitment, appointment, leave, scale of pay, all allowances by whatever name called, loan, pension, gratuity, compassionate fund, provident fund, annuity, dismissal, removal, conduct and other departmental punishment and appeal and service conditions for Municipal employees other than a member of the Municipal Service.

15. So far as the Shikshakarmis working in the Municipal Corporation is concerned, the similar provision is there under Section 58 of the Municipal Corporation Act which says that subject to the rules made by the State Government in respect of Set-up, Strength, Recruitment, Appointment, Pay-scales, Allowance and other conditions of service, the Corporation shall appoint such officers and servants as the case may be necessary for the efficient performance of the functions of the Corporation.

16. Therefore, the definition of the 'Appointing Authority' under Section 58 of the Municipal Corporation Act and under Section 94 of the Municipalities Act is the same with the definition given in the Rules of 1998 & 2008. As per Rule 3 of the Rules of 1998, these rules shall apply to the Shikshakarmis appointed by the Municipal Corporation and the Municipality under these rules. The method of selection is the same as applicable to the regular employees i.e. by direct recruitment by the selection and by the promotion. Therefore, there is no different procedure for appointment and service conditions for the employees of Municipal Council as well as the



Shikshakarimis appointed under the Rules of 1998.

17. The State Government came up with a rules of 1998 on which the appellant has placed heavy reliance. Under this Rule, the cadre Adhyapak Samvarg has been classified as Adhyapak Samvarg is Varishth Adhyapak, Adhyapak and Sahayak Adhyapak. Rule 5 of the Rules of 2008 provides for selection and method of appointment. As per sub-rule (1) of Rule 5 by merger of Shikshakarmis appointed under the Rules of 1998 is one of the method of appointment. As per Rules 8, the person employed under these rules shall discharge the duties under the administrative and disciplinary control of Nagreeya Nikay and as per Note, a person employed or merged under these rules shall be entitled for leave similar to the regular teacher in the School Education Department. A person employee under these rules shall be governed by the Nagreeya Nikay Rules. Their retirement age shall be 62 years. Therefore, in all respect, they are the regular employees of Nagreeya Nikay and entitled for all the benefits which are payable to the regular employees of the Nagariya Nikay.

18. Now the State Government has come up with a new rule known as "Madhya Pradesh School Education Service (Teaching Cadre) Service Conditions and Recruitment Rules, 2018". Under Rule 2(a) of this Rule, the Appointing Authority in respect of the service means the authority as shown in Column No.6 of Schedule 1 i.e. Commissioner of Public Instructions, Joint Director, Public Instructions and District Education Officer in respect of Uchcha Madhyamik Shikshak, Madhyamik Shikshak and Prathmik Shikshak respectively.



19. The State Government has framed these rules relating to service conditions and recruitment of Teaching Cadre in the Madhya Pradesh School Education Service. All the persons appointed by or under the control of local bodies under the Rules of 2008 i.e. Adhyapak Samvarg have been merged into the Teaching Cadre under the rules of 2018. All the rules and service conditions applicable to the Government employee have been made applicable to the persons working in teaching cadre. Now virtually all teachers have become State Government employees and their services are liable to be counted from the date of their initial appointment, hence, they entitled for pensionary benefits also as claimed in the writ petition. Now they are under the absolute control of the School Education Department at par with the Government teacher. Hence, no interference is called for in the impugned order dated 04.12.2023 passed by the Writ Court.

20. In view of the foregoing discussion, Writ Appeal stands dismissed.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE