

Dy. ADVOCATE GENERAL



Phone { Office : 2678740
2678185
Fax : 2621216

D O No

OFFICE OF THE ADVOCATE GENERAL
MADHYA PRADESH, JABALPUR
JABALPUR

MADHYA PRADESH

OPINION

Dated 04/01/2016

1. Principal Secretary, Department of Women and Child Development Govt. of MP, Mantralaya, Vallabh Bhawan Bhopal (MP).
2. The Commissioner Women and Child Development Dept. Directorate Govt. of M.P. Satpuda Bhawan, Bhopal (MP).
3. The Dy. Director Dept. of Panchayat and Social Welfare Bhopal (MP).

Sub :- Opinion in respect of Writ Petition No.1381/2014 (Smt. Durga Jaiswal Vs State of MP & Others), writ Petition No.7045/2015 (Smt. Madhurima Singh Vs State of MP & Others), Writ Petition No.4030/2009 (Shri Yougalkishore Sharma Vs State of MP & Others), Writ Petition No.759/2015(Smt. Shameem Bano Vs State of MP) & Writ Petition No.9259/2014 (Shri Siyaram Sahu Vs State of MP)

Please find herewith copy of the aforesaid orders assed by the Hon'ble High Court. The aforesaid matters have been referred for my opinion, the brief facts of which are that the petitioners in the aforesaid writ petition were working as Assistant Instructors in the Women Weaving Centre in the respondent department and the impugned orders were issued superannuating then from the service at the age of 60 years. The first petition in this regard was Writ Petition No.4030/2009 (Yugal Kishore Sharma Vs State of MP & Others), which was finally decided by the Hon'ble Single Judge vide order dated 02.01.2013 holding that Instructors should be treated as Teachers and having equated them as such it was directed that the petitioners should be continued up to the age of 62 Years. Keeping in view Section 2 of the Madhya Pradesh Shashkiya Ardhwarshkiya Ayou 1967 and the Fundamental Rules (ILR-2013-MP-791).

It is pertinent to mention that said order was challenged in Writ Appeal No.682/2013 and the same was remanded before the Hon'ble Single Judge for

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का. (मु.)
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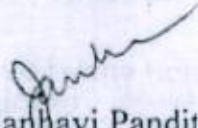
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MADHYA PRADESH

reconsideration. Thereafter to the best of my knowledge the petition again stood allowed. This fact is subject to confirmation.

All the other writ petitions as aforesaid were disposed of by the Hon'ble Single Bench of the Hon'ble Court relying upon the decision passed in case of Yugal Kishore Sharma (Supra), therefore, I opine that the order passed by the Hon'ble Single Judge, in case of Yugal Kishore Sharma passed in Writ Petition No.4030/2009 may be challenged by filing writ appeal mainly on the ground infelalia that the instructors in Women Weaving Centre can not be equated to the post of teachers working in the Government Educational Institution.

Thus it is opined accordingly.


(Janhavi Pandit)
Dy. Govt. Advocate

Dated :- 04.01.2016

(5)

IN THE HIGH COURT OF M.P. PRINCIPAL SEAT AT JABALPUR.

11542
W.P. NO. 1381 OF 2014
copy of order sheets

Petitioner.

::

Smt. Durga Jaiswal

wife of Shri B.N. Jaiswal aged about 60
years, Assisatnat Trainer Mahila

Shashaktikaran Directorate Bhopal M.P.

Vs.

Respondents.

1) The State of M.P.

Through the Secretary Dept. of Women
and Child Development Govt. of M.P.
Mantralaya Vallabh Bhawan Bhopal M.P.

2) The Commissioner, Women and Child
Development Dept. Directorate Govt. of M.P.
Satpuda Bhawan Bhopal M.P.

3) The Dy. Director Dept. of Panchayat and
Social Welfare Bhopal M.P.



PETITION UNDER ARTICLE 226 OF CONSTITUTION OF INDIA.

1) PARTICULARS OF THE ORDER AGAINST WHICH THE PETITION IS MADE:-

- i). Order No. M.S/Estt/2013/5381
- ii) Order dt. 30.12.13





HIGH COURT OF MADHYA PRAD

ORDER SHEET

CASE No.

201

Vs.

DATE OF THE
ORDER

ORDER

3.2.2014

W.P. No. 1381/2014

Shri Y.K. Gupta, learned counsel for the petitioner.
Shri S. Verma, learned Government Advocate for respondents/State.

With consent, the matter is heard finally.

Petitioner, an Assistant Trainer Mahila Shashaktikaran Directorate, Bhopal under Directorate of Women Empowerment, Madhya Pradesh, being aggrieved by the action of respondents in retiring her at the age of 60 years has approached this Court vide present Writ Petition seeking direction that since she is engaged in teaching since the date of her initial appointment she is entitled to service till 62 years which is the normal age of superannuation of a teacher in the State Government service. Decision in Ku. Chandra Kakker vs. State of Madhya Pradesh : Transfer Application No. 747/1988 decided on 14.11.1991 and Yugal Kishore Sharma vs. State of Madhya Pradesh and ors; Writ Petition No. 4030/2009 decided on 2.1.2013; I.L.R. (2013) M.P., 791 has been relied on to reinforce the contentions that the Instructor in Women Weaving Centre is held as teacher.

In Yugal Kishore Sharma (supra), it has been held in respect of Instructor in Women Weaving Centre:

"9.....If a Scheme is started by the State Government for the purposes of economic upliftment of the weaker section and the vocational trainings are prescribed in the said institution whether such an institution can be termed as educational institution or not? This particular aspect is required to be seen in view of the law laid down by the Apex

ORDER SHEET

CASE No.

201

Vs.

ORDER

Court in the aforementioned cases. The Apex Court in various cases though has specifically dealt with the admissions, the systems of regularating the fees, but has normally dealt with all such cases in respect of the educational institutions like schools and colleges and has not considered whether a vocational training institute started by the State Government under the Scheme of prescribing education to the weaker section can be termed as an educational institution or not. However, from the narration of the fact and the provisions of the Constitution of India specially the responsibility of the State to make Schemes for upliftment of the weaker section, if a vocational training centre is opened prescribing vocational training to the members of the weaker section so as to make them self sufficient to make earning, it has to be held that the said institution or centres started by the State Government are covered as educational institutions. Prescribing training or providing such elementary information to make a member of the society to become self sufficient is in fact a part of imparting education. It is more so important looking to the growth of population in the country and, therefore, all such institutions established by the State Government for prescribing the training are to be treated as educational institutions. One more reason of giving such a finding is that in the amending Act, the State Government itself has included the institution established for the purposes of providing technical education. All industrial training institutions are to be treated as educational institutions. Similarly, the training centres started by the respondents under the Women and Child Development Department are also to be treated as educational institutions.

10. This Court has already held that



याचिका कंमाक 1381/2014 की संक्षेपिका

अवर सचिव विधि एवं विधायी कार्य विभाग की टीप दिनांक 28.01.16 के संदर्भ में प्रकरण संबंधी संक्षेपिका/ शासकीय अधिवक्ता का अभिमत/ अपील के आधार निम्नानुसार प्रस्तुत है :-

प्रकरण :-

श्रीमती दुर्गा जायसवाल, महिला एवं बाल विकास विभाग में सहायक सिलाई निर्देशिका, के पद पर कार्यरत हैं। संबंधित द्वारा दिनांक 29.11.2013 को आवेदन प्रस्तुत कर सेवा निवृत्ति 62 वर्ष की आयु में किये जाने हेतु निवेदन किया गया। उक्त आवेदन विचारोपरांत संचा. के प. क. 5390 दि. 31.12.2013 द्वारा पत्र अमान्य किया गया।

संबंधित द्वारा पुनः दिनांक 06.01.2014 को आवेदन प्रस्तुत कर सेवानिवृत्ति अवधि 62 वर्ष किये जाने बाबत आवेदन पत्र प्रस्तुत किया। उक्त आवेदन पर विचार करते हुए संचालनालय महिला सशक्तिकरण म.प्र. के पत्र कंमाक 5852 भोपाल दिनांक 03.02.2014 द्वारा अवगत कराया गया कि म.प्र. शासन, महिला एवं बाल विकास के अंतर्गत संचालित संस्थाएँ शैक्षणिक संस्थान न होने के कारण 62 वर्ष आयु पर सेवानिवृत्ति मान्य नहीं है, अतः आवेदन अमान्य किया जाता है।

संचालनालय महिला सशक्तिकरण के आदेश क. 5299 दिनांक 12.12.2013 द्वारा संबंधित की अधिवार्षिकी आयु 60 वर्ष पूर्ण होने पर दिनांक 28.02.2014 को सेवा निवृत्त किया गया। इस आदेश के विरुद्ध श्रीमती दुर्गा जायसवाल, सहायक निर्देशिका ने 60 वर्ष में की गई सेवानिवृत्ति को मान. न्यायालय में इस आधार पर चुनौती दी गई कि वह शिक्षक हैं और राज्य शासन द्वारा शिक्षक को 62 वर्ष की आयु में सेवानिवृत्त करने के आदेश दिये गये हैं।

श्रीमती दुर्गा जायसवाल द्वारा दि. 11.02.14 को याचिका कंमाक 1381/2014 में मान. उच्च न्यायालय के निर्णय के प्रति के साथ आवेदन प्रस्तुत कर कार्य अवधि दो वर्ष बढ़ाने हेतु अनुरोध किया गया। मान. उच्च न्यायालय का निर्णय निम्नानुसार है :-

"Learned government Advocate appearing on behalf of the state of M.P. does not dispute that decision in Ku. Chandra Kakker and Yugal Kishore Sharma (supra) has been implemented.

In view whereof, since the Instructor in the Women Weaving Centre has already been held to be a teacher entitled for an extended age of superannuation of 62 years, the petitioner can not be discriminated.

(2)

In the result, it is held that the petitioner being a teacher, has a right to serve till 62 years being the age superannuation.

Petition is allowed to the extent above. No costs."

शासकीय अधिवक्ता का मत:—

शासकीय अधिवक्ता द्वारा दिनांक 04.01.16 को निम्नानुसार अभिमत दिया गया है :—

" All the other writ petition as aforesaid were disposed of by the hon'ble single bench of the hon'ble court relying upon the decision passed in case of yugal kishore sharma (supra) therefore, i opine that the order passed in writ petition no. 4030/2009 may be challenged by filling writ appeal mainly on the ground interalia that the instructors in women weaving center can not be equated to the post of teachers working in the government educational institution.

thus it is opined accordingly. "

अपील का आधार :—

दिनांक 28.02.2016 को श्रीमती दुर्गा जायसवाल की 62 वर्ष की आयु पूर्ण हो रही है। म.प्र. शासन, महिला एवं बाल विकास विभाग द्वारा क. 271/112/2015/50-1 दिनांक 04.02.2015 में यह आदेशित किया गया है कि विभाग अंतर्गत शैक्षणिक संस्था में कार्यरत कर्मचारी छात्र छात्राओं का अध्यापन का कार्य नहीं करते बल्कि सिलाई प्रशिक्षक आदि के रूप में कार्य करते हैं। अतः वित्त विभाग द्वारा विभाग के अधीन संचालित विभिन्न शासकीय संस्थाओं में कर्मचारियों की सेवानिवृत्ति आयु 60 वर्ष के स्थान पर 62 वर्ष किये जाने पर असहमति व्यक्त की गई है। श्रीमती दुर्गा जायसवाल को 62 वर्ष की आयु में सेवानिवृत्त किये जाने पर शासन को याचिका कर्ता को अतिरिक्त भुगतान करना होगा एवं वित्त विभाग के निर्देशों के तहत शासकीय कर्मचारियों के 60 वर्ष में सेवानिवृत्त करने के आदेशों का पालन नहीं हो सकेगा एवं शासकीय धन की हानि होगी।

अतः प्रकरण में पुनः शासन का सही पक्ष रखे जाने एवं मान. न्यायालय का निर्णय शासन के पक्ष में कराये जाने तथा प्रकरण में रिट अपील दायर किये जाने की अनुमति प्राप्त किया जाना आवश्यक है।

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