

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

**BEFORE
HON'BLE SHRI JUSTICE ANAND PATHAK**

ON THE 11th OF JANUARY, 2024

WRIT PETITION No. 752 of 2024

BETWEEN:-

1. **SANJAY KUMAR SHARMA S/O LATE SHRI RAJENDRA PRASAD SHARMA, AGED 50 YEARS, OCCUPATION: SERVICE (TEACHER) R/O TULSHI COLONY GANESHPURA DISTRICT MORENA (MADHYA PRADESH)**
2. **BAJRANG SAHAY SHRIVASTAVA S/O LATE SHRI JAMUNA PRASAD SHRIVASTAVA, AGED 48 YEARS, OCCUPATION: SERVICE R/O VILLAGE LALU BASAI THASIL AMBAH (MADHYA PRADESH)**
3. **RAJESH KUMAR SHRIWASTAVA S/O SHRI RAJNATHSHRIWASTAVA, AGE 53 YEARS, OCCUPATION: SERVICE R/O JYOTI HSS SECONDARY SCHOOL MORENA (MADHYA PRADESH)**
4. **NAWAL KISHOR SHARMA S/O SHRI RAMNATH SHARMA, AGED 51 YEARS, OCCUPATION: SERVICE R/O JYOTI HSS SECONDARY SCHOOL MORENA (MADHYA PRADESH)**
5. **PRADEEP SINGH YADAV S/O SHRI NAWAL SINGH YADAV, AGE 45 YEARS, OCCUPATION: SERVICE R/O JYOTI HSS SECONDARY SCHOOL MORENA (MADHYA PRADESH)**
6. **VIJAY BAHADUR SINGH YADAV S/O SHRI DARSHAN LAL YADAV, AGED 46 YEARS, OCCUPATION: SERVICE R/O JYOTI HSS SECONDARY SCHOOL MORENA (MADHYA PRADESH)**
7. **SMT. MEENA ANDORIYA W/O SHRI VINOD SHAKYA, AGE 50 YEARS, OCCUPATION: SERVICE R/O JYOTI HSS SECONDARY CHOOOL (MADHYA PRADESH)**
8. **SMT. ANJANA SHARMA W/O SHRI RAJENDRA**

2

SHARMA, AGED 54 YEARS, OCCUPATION:
SERVICE R/O JYOTI HSS SECONDARY SCHOOL
MORENA (MADHYA PRADESH)

9. JYOTI SHRIVASTAVA D/O SHRI DINESH
SHRIVASTAVA, AGED 43 YEARS, OCCUPATION:
SERVICE R/O JYOTI HSS SECONDARY SCHOOL
MORENA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI RAJENDRA SINGH DHAKAR - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH ITS
PRINCIPAL SECRETARY VALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)
2. COMMISSIONER, DIRECTORATE OF PUBLIC
INSTRUCTION (DPI), GAUTAM NAGAR BHOPAL
(MADHYA PRADESH)
3. THE COMMISSIONER, MUNICIPAL
CORPORATION MORENA DISTRICT MORENA
(MADHYA PRADESH)
4. DISTRICT EDUCATION OFFICER (DEO) DISTRICT
MORENA (MADHYA PRADESH)
5. GOVT. JYOTI HIGHER SECONDARY SCHOOL
GANESHPURA DISTRICT MORENA (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI N.S. TOMAR - GOVERNMENT ADVOCATE)

.....
*This petition coming on for admission this day, the court passed the
following:*

ORDER

1. The present petition is preferred under Article 226 of the Constitution
seeking following reliefs:-

- a. That impugned order dated 12.05.2017 Annexure P/1
and there consequential order time to time passed by
respondents also may kindly be quashed.

b . That, remaining salary from dated of absorption, service benefits and DA of the period from 22.03.2002 up to 31.03.2007 may kindly be directed to be paid as the regular pay as Govt. employee to the petitioners excluding the amount already paid and also directed to grant the benefit of the 7th pay scale, Kramonnati and other service benefits as applicable time to time.

c. That, Direction to grant of General provident fund (GPF) and gratuity with interest.

d. That earned leave be directed to be paid at the time of retirement.

e . Any other writ order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case be granted Costs be awarded.

2. The grievance of the petitioners is that they were not being given the benefit of absorption with effect from the date of taking over the school by the State Government from 22.03.2002 but were extended the benefit with effect from 01.04.2007.

3 . Counsel for the petitioners has submitted that the petitioners were Teachers in a school named Jyoti Higher Secondary School Ganeshpura District Morena which was run by a society registered under the M.P. Society Registrikaran Adhinyam, 1960 and initially they were appointed as Teachers in the aforesaid school which was a non-government school in between year's 1990 to 1999. It was further contended that their service conditions were governed by Ashaskiya Shiksha Bharti Adhinyam, 1978 and the rules made thereunder wherein there is a provision for three grades of teachers known as Lower Division Teacher (LDT), Upper Division Teacher (UDT) and Lecturers. Later on, many non-government Schools were taken over by the State Government vide its order dated 22.03.2002 including the petitioners' institution

by a consequential order dated 13.05.2002. After the institution of the petitioners was taken over by the Government and later on due to some litigation ensued due to certain acts of the respondents, the matter ultimately went up till the Hon'ble Apex Court, where the dispute was resolved.

4. Learned counsel for the petitioners while assailing the impugned order (Annexure P/1) had placed reliance in the matter of **Veer Singh Rana Vs. State of M.P. and others passed in W.P. No.28660 of 2021 dated 04.08.2023** and had contended that since the petitioners were working as Samvida Shala Shikshak at the time of taking over of the school by the State Government the date of their absorption would be treated as 21.03.2002 and as their cases are identical to that of the petitioner in the aforesaid writ petition, in which the impugned order dated 12.05.2017 was quashed and respondents were directed to grant all the consequential benefits to the petitioner accrued to him with effect from 22.03.2002 within a period of three months they are also entitled for the said benefit. It was further contended that the aforesaid order of the coordinate Bench of this Court was based upon an order passed in W.P. No.5306/2005 and a consequent in CONC No.138/2012, in which this Court has held as under:

5. Similarly, attention of this Court is also drawn to the order passed by this Court in CONC No.138/2012, in which this Court has held as under:-

"1. Vide order dated 12.05.2017, which has been brought - on record by the respondents - contemnors, they have accepted that teaching and non-teaching employees of the petitioners Institutions shall be absorbed in respective local bodies in terms of the order dated 21.03.2002 issued by the State Government. This Court had earlier noted vide order dated 07.04.2017 that the cut off date of absorption

will be 21.03.2002 and that has been accepted by the respondents. Therefore, all the benefits of absorption including pay fixation and revision of pay made from time to time will be applicable from 21.03.2002.

4 . Shri Vishal Mishra, learned counsel for the respondents contemnors submits that in para 4 of the order dated 12.05.2017, it is clearly mentioned that they are given appointment on contract rates in the local bodies w.e.f. 21.03.2002. Since they have been given appointment on contract basis in the local bodies w.e.f. 21.03.2002, the date for entitlement for emoluments is inbuilt in this para 4 itself and it will be 21.03.2002 only. Therefore, this Court clarifies that even the non-teaching staff of the Schools, which have been taken over, will be entitled to contract salary as revised from time to time w.e.f. 21.03.2002 and not w.e.f. 2013 as has been sought to be clarified by the respondents in a very crafty manner in the last para of the impugned order that the date of payment of wages on Collector rate applicable to skilled labourers will be 21.03.2002 and the revisions made thereafter and not 2013. Shri Vishal Mishra undertakes to get this rectified within a period of 15 days from today and on such undertaking, these contempt petitions stand disposed of with the following directions :

1) As has been admitted by the respondents, the date of absorption of both the teaching and non-teaching staff will be 21.03.2002; and 2) Non-teaching staff will be entitled to payment of wages as are applicable to all the contract employees from time to time w.e.f. 21.03.2002 and the revisions so made thereafter."

5 . Though, the learned Govt. Advocate had opposed the prayer, however, he could not deny the factum of passing of the order in writ petition No.28660/2021 dated 04.08.2023 and orders passed in W.P. No.53060/2005 and in Contempt Petition No.138/2012.

6. In such circumstances, on perusal of the documents filed on record, this Court finds force in the submissions as advanced by the counsel for the petitioners and is of the opinion that the benefit of absorption ought to have been given to the petitioners with effect from 21.03.2002 as has been directed by this Court in CONC No.138/2012.

7. Accordingly, the petition stands allowed and the order (Annexure P/1) dated 12.05.2017 is hereby quashed so far as it relates to the petitioners and the respondents are directed to grant all the consequential benefits to the petitioners accrued to them with effect from 21.03.2002 within a period of three months.

8. Needless to observe that the amount which has already been paid to the petitioners shall be deducted from the amount which they are liable to receive with effect from 22.03.2002.

9. Petition stands disposed of.

(ANAND PATHAK)
JUDGE

ojha