

A STATE OF MADHYA PRADESH

v.

HARI DATT SHARMA

NOVEMBER 4, 1992

B [LALIT MOHAN SHARMA, S. MOHAN AND  
N. VENKATACHALA, JJ.]

*Civil Services :*

C *Madhya Pradesh State Fundamental Rules.*

*F.R.56, Sub-Rule (1-a) and M.P. Shaskiya (Adhiwarshkiya Adhinyam) 1987—Retirement age—Superintendent Deaf Mute and Blind School—Whether ‘teaching post’—Duties of supervisory nature—Held respondent rightly retired at 58 years as post was non-teaching post.*

D The respondent in the appeal after due selection by the State Public Service Commission was appointed in 1965 as a Superintendent in a Deaf Mute and Blind School. He was thereafter promoted and posted as Deputy Director, and in 1989 he was further promoted to the rank of Joint Director in the Social Welfare Department. He completed the age of 58  
E years in January, 1991 when according to the decision of the appellant he had to retire. According to the Rules - FR 56, Sub-Rule (1-a) - the age of retirement in the department was 58 years excepting for teachers who were to continue in service till 60.

F The respondent assailed the order of retirement before the State Administrative Tribunal relying upon the Explanation to the Rule which allowed his claim to continue in service upto the age of 60 years and held that he cannot be retired at 58 years.

G In the State's appeal to this Court, it was contended that the post of Superintendent in Deaf Mute and Blind School to which the respondent was initially appointed in 1965 was not a 'teaching post' and he could not therefore claim the benefit of the Explanation to the Rule.

Allowing the appeal, this Court,

H HELD : 1. The parties to the appeal have referred to and relied upon

the advertisement No. 9/1965 issued by the State Public Service Commission inviting applications for appointment to the posts of Superintendent Deaf Mute and Blind School. Paragraph 3 thereof mentions the duties attached to the post, and when examined closely, indicate that they were supervisory in nature and not teaching. The Explanation to the Rule therefore does not come to the aid of the respondent and he was therefore rightly retired on 31.1.1992. [354-G; 355-D]

2. The Original Application filed by the respondent before the State Administrative Tribunal is therefore dismissed. In case the respondent was paid for performing any duty after the date of his retirement, he shall not be asked to refund the same. [355-E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4733 of 1992.

From the Judgment and Order dated 28.2.1992 of the Madhya Pradesh State Administrative Tribunal, Gwalior in Original Application No. 2932 of 1991.

Sakesh Kumar and S.K. Agnihotri for the Appellant.

Vivek Gambhir and S.K. Gambhir for the Respondent.

The Judgment of the Court was delivered by

**SHARMA, J.** 1. By the impugned order the Madhya Pradesh State Administrative Tribunal has allowed the claim of the respondent to continue in service up to the age of 60 years and has held that he cannot be retired at 58 only. We have heard the learned counsel for the parties. Special leave is granted.

2. The respondent was holding the post of Deputy Director when he was promoted as Joint Director, Social Welfare Department in 1989. He completed the age of 58 years in January, 1991 when according to the decision of the appellant he had to retire. According to the Rules the age of retirement in the department is 58 years excepting for teachers who are to continue in service till 60. It is not disputed that the posts of Deputy Director and Joint Director are not teaching posts and the respondent cannot take advantage of the higher age of retirement on that account. However, the respondent relies upon the Explanation to the Rule which is

A in the following terms :-

"Explanation : For purpose of this sub-Rule "Teacher" means a Government Servant, by whatever designation called, appointed for the purpose of teaching in an educational institution run by the Government including technical or medical educational institution in accordance with the recruitment rules applicable in such appointment and shall also include the teacher who is appointed to an administrative post by promotion or otherwise and who has been engaged in teaching for not less than 20 years provided he holds a lien Collegiate/Technical/Medical Educational Service".

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His case is that since initially he was appointed for the purpose of teaching in an educational institution run by the Government, he is entitled to continue in service upto the age of 60 although later he was holding a non-teaching post. At this stage it will be relevant to mention that the condition that a person claiming the benefit of the Explanation had to be engaged in a teaching post for not less than 20 years, has been struck down as *ultra vires* and this part of the Explanation, therefore, does not come in the way of the respondent.

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3. On behalf of the appellant it has been contended that post of the Superintendent in a Deaf Mute and Blind School in which the respondent was initially appointed in 1965 was not a teaching post and he, therefore, cannot claim any benefit of this Explanation. The result of the case is thus dependent upon the issue as to whether the post of Superintendent in Deaf Mute and Blind School is a teaching post or not.

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4. The relevant document which has been referred to and relied upon by both sides is the advertisement No. 9/1965 issued by the Public Service Commission, Madhya Pradesh inviting applications for appointment to the posts of Superintendent Deaf Mute and Blind School. The duties are mentioned in paragraph 3 of the advertisement to the following effect :-

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"Duties - (i) To undertake planning and organisation of the institution for education, vocational training, rehabilitation and recreation of children, (ii) To undertake case-wise in respect of every child of the institution with a view to

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ascertaining the personality make-up, aptitudes and interest, socio-economic background and intelligence, (iii) To apply educational tests, prepare syllabus, organise specialised methods of education and vocational training of children and to organise examination, (iv) To take steps for the after care and rehabilitation of children, (v) To supervise the general maintenance of the children including the general health, recreation, discipline etc. and to meet the special needs of the children, (vi) To supervise and control staff and undertake other administrative duties and (vii) Any other work that may be assigned to him by Government or his superior officers."

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5. We have examined the provisions closely and are of the view that the duties were supervisory in nature and not teaching. Accordingly, we hold that the Explanation referred to above does not come to the aid of the respondent and he was, therefore, rightly retired on 31.1.1992.

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6. In the result the appeal is allowed, the impugned judgment is set aside and the Original Application filed by the respondent before the State Administrative Tribunal is dismissed. The parties will bear their own costs. We, however, make it clear that in case the respondent was paid for performing any duty after the dated of his retirement in pursuance of the impugned order he shall not be asked to refund the same.

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N.V.K.

Appeal allowed.