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JUTHIKA BHATTACHARYA

v.

STATE OF MADHYA PRADESH & ORS.

September 1, 1976

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[Y. V. CHANDRACHUD, P. K. GOSWAMI AND A. C. GUPTA, JJ.]

Interpretation—"should" contained in a clause "should possess a post-graduate degree and requisite experience" whether mandatory or director—"Post-graduate" —Meaning of.

Paragraph 3(b) of a memorandum dated December 21, 1967 issued by the State Government provides that for absorption in the post of Principal of a Higher Secondary School, the person concerned "should" possess a post-graduate degree and should also possess the prescribed experience. An amendment introduced by the memorandum dated December 6, 1972 says that wherever the qualification for a post is post-graduate, the person concerned will have to obtain this degree within three years of absorption. But this amendment was made applicable only to persons who had been working in schools run by Janpad Sabhas and Municipal Committees and for all teachers of non-Government schools taken over by the Government 1967-orders applied.

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The appellant, who was a B.A.B.T., was the Head-Mistress of a Private school. When the administration of the school was taken over by the Government, she was fixed in a lower time scale of pay because, under the rules, no person could be appointed as Principal unless she held a post-graduate degree and possessed the requisite experience.

The High Court dismissed her Writ Petition. In apepal to this Court it was contended that (i) her appointment in a lower post was illegal because she could have obtained the Post-graduate degree within the three years' time from the date of her absorption; (ii) the word 'should' used in the 1967-memorandum showed that the rule is directory in character; (iii) since she held B.A.B.T., she should be considered as having a post-graduate qualification; (iv) she was discriminated against because in the schools run by Government from their inception, teachers who did not hold a Master's degree were appointed as Principals and (v) the qualifications of the teaching staff have to be the same as prescribed in the Regulations of the Board of Secondary Education.

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Dismissing the appeal,

HELD : (1) In view of the express statement in the 1972-Memorandum that it would be applicable only to previous teachers of Janpad Sabhas and Municipalities, the appellant could not claim the benefit of the particular facility. [479 E-F]

(2) The word 'should occurring in paragraph 3(b) must be understood in a mandatory sense. The use of word "should" cannot justify the construction that for absorption in the post of a Principal of a Higher Secondary School the incumbent may or may not possess the Post-Graduate Degree. In a memorandum containing a set of rules prescribing the qualifications for various posts, it is meaningless to provide that the incumbent of a certain post may or may not possess a certain qualification, if the possession of the particular qualification is considered to be a matter of no importance or consequence. Paragraph 3(b) consists of a complex provision one part of which refers to the requirement of a Post-Graduate Degree and the other to the need to possess a certain amount of experience. Both the clauses of a single sentence are governed by the verb "should". If the requirement as to the possession of a Post-graduate Degree is to be directory in character, the same consideration must apply equally to the requirement of experience, with the result that for eligibility for the post of a Principal, it would neither be necessary to possess any particular educational qualification nor any particular experience of teaching. [480 C-E]

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A (3) By "Post-graduate Degree" is meant a Master's degree like the M.A. or M.Sc. and not a Bachelor's degree like B.T. In expressions like "post-nuptial", "post-operative" etc., "post" means "after", the emphasis being on the happening of an event after a certain point of time. In the educational world the expression "post-graduate" has acquired a special significance. It is the holder of a Master's Degree like the M.Ed. or LL.M., who earns recognition as the holder of a post-graduate degree. That is the sense in which the expression is used in the Memorandum. [480 G, 481 A]

B (4) The State Government had a valid reason for prescribing comparatively stringent qualifications for Principals in schools taken over from private institutions. While a teacher in a Government school was appointed as Principal by reason of long and valuable experience gained as teacher, a Head Mistress or a Principal of a private school was appointed directly and straightway without insistence on any worthwhile experience of teaching. [481 G]

(5) Regulations of the Board of Secondary Education framed under the Madhya Pradesh Madhyamik Siksha Adhiniyam 1965 have no relevance in the C present case. They prescribe conditions with which an educational institution had to comply before seeking recognition. The various conditions prescribed by the Regulations do not constitute conditions of service and can create no rights and obligations, contractual or statutory, as between a school and its employees, whether the school is a Government institution or a non-Government institution. [482 A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 696 of 1976.

D (Appeal by Special Leave from the Judgment and Order dated 16-4-1976 of the Madhya Pradesh High Court in M.P. No. 697/72).

A. K. Sen, S. S. Khanduja and *S. K. Jain* for the Appellant.

D. N. Mukherjee and *C. L. Sahu,* for Respondent No. 4.

Ram Panjwani, H. S. Parihar and *I. N. Shroff,* for Respondents E 1—3.

The Judgment of the Court was delivered by

CHANDRACHUD, J. The management of Primary and Middle Schools was taken over by the Madhya Pradesh Government from the Local Authorities under the Madhya Pradesh Local Authorities School Teachers (Absorption in Government Service) Act, 1963. In 1968, F the State Government decided to take over the management of Higher Secondary Schools also. One such school was Kanya Naween Vidya Bhawan, Gadarwara, which was run by a Society registered under the Societies Registration Act. The appellant, Smt. Juthika Bhattacharya, who was a B.A. B.T., was the Head Mistress of that school. Her scale of pay was Rs. 275—700 and at the relevant time she was drawing a monthly salary of Rs. 500.

G On February 23, 1970 the Divisional Superintendent of Education, Narmada-Division, Hoshangabad, wrote to the Society that the managemet of the school run by it would be taken over by the Government if there was no improvement in its financial position. On June 7, 1971 he informed the Society that the Government had issued directions for taking over the management of the school. In pursuance of H this letter, the management of the school, along with its assets, was taken over by the Government on June 18, 1971. The Government assured the Society that the staff of the school will be absorbed in the new set-up.

The case of the appellant is that she was entitled to be appointed as a Principal since she was holding a corresponding post in a substantive capacity on the date of her absorption viz., June 18, 1971. But the Divisional Superintendent of Education acting under the directions of the State Government, and the Director of Public Instructions directed that the appellant should be absorbed as an Upper Division Teacher in the time scale of Rs. 150—290. According to the respondents, the appellant did not hold a post-graduate degree and no person could be appointed to the post of a Principal unless he or she held a post-graduate degree and possessed the stated length of experience. Appellant having had the requisite experience, the only question for decision in this appeal is whether she is entitled to be appointed as a Principal notwithstanding the fact that she does not hold a post-graduate degree.

Relying upon a Memorandum dated December 6, 1972 issued by the Government of Madhya Pradesh in its Department of Education, the appellant contended that even assuming that she could not be appointed as a Principal for the alleged reason that she did not hold a post-graduate degree, she could obtain that degree any time within 3 years from the date of her absorption and therefore the orde passed by the State Government, before the expiry of that period, appointing her on a lower post is illegal. There is no substance in this argument because the Memorandum of December 6, 1972 applies, in terms, only to the staff of the Higher Secondary Schools run by Janpad Sabhas and Municipalities and not to the staff of schools run by private Societies like the school of which the appellant, on the date of absorption, was the Head Mistress. Paragraph 4(b) of the aforesaid Memorandum undoubtedly affords the facility that where the qualification for a post is post-graduation, the post-graduate degree may be obtained within 3 years from the date of absorption. But in view of the express statement in the Memorandum that it will be "applicable only to previous teachers of Janpad Sabhas and municipalities", the appellant cannot claim the benefit of the particular facility. Any lurking doubt in this behalf stands resolved by the further statement in the Memorandum that except in regard to schools run by Janpad Sabhas and Municipalities, the Rules dated December 21, 1967 will continue to apply to non-Government schools without the amendments introduced by the Memorandum.

The Memorandum dated December 21, 1967, the Rules contained in which remain unaffected by the amendments introduced by the Memorandum dated December 6, 1972 provides by paragraph 3(b) that for absorption in the post of the Principal of a Higher Secondary School, the person concerned "should" possess the post-graduate degree and should also possess experience of a certain number of years. The appellant did have the requisite experience but the question is whether paragraph 3(b) of the Memorandum contains but a directory rule as it uses the word 'should' and secondly, whether the appellant can be said to possess a 'post-graduate degree' since she holds the qualification of B.A.B.T.

It is urged on the first limb of this argument that as contrasted with the Memorandum of December 21, 1967 which uses the word "should",

A the one dated December 6, 1972 says that the person concerned "must" have obtained a post-graduate degree and therefore the former rule is directory in character. We are unable to agree. The mere use of the word "should" does not mean necessarily that the compliance with the rule is discretionary. It is well-settled that whether a provision is directory or mandatory depends on its object and purpose, not merely on the use of any particular word or phrase. The object of the B Memorandum is to prescribe qualifications for the staff of non-Government schools and Local Body schools taken over by the State Government. In that context, the use of the word "should" cannot justify the construction that for absorption in the post of a Principal of a Higher Secondary School, the incumbent may or may not possess a post-graduate degree. In a memorandum containing a set of rules prescribing qualifications for various posts, it is meaningless to provide C that the incumbent of a certain post may or may not possess a certain qualification, if the possession of the particular qualification is considered to be a matter of no importance or consequence. Paragraph 3(b) consists of a complex provision, one part of which refers to the requirement of a post-graduate degree and the other to the need to possess a certain amount of experience. Both the clauses of a single sentence are governed by the verb "should". If the requirement as to D the possession of a post-graduate degree is to be directory in character, the same consideration must apply equally to the requirement of experience, with the result that for eligibility for the post of a Principal, it would neither be necessary to possess any particular educational qualification nor any particular experience of teaching. The appointment then to the highest post in the school would depend upon the sweet will of the appointing authority, unguided alike in the matter of E minimum qualification and minimum experience. The word "should" occurring in paragraph 3(b) of the Memorandum of 1967 must therefor be understood in a mandatory sense, so that no person who does not hold a post-graduate degree and possess the requisite experience would be eligible for being appointed as the Principal of a higher secondary school.

F As regards the second limb of the argument that since the appellant holds the qualification of B.A.B.T., she ought to be considered as holding a "post-graduate degree", regard must again be had to the context in which the particular expression occurs and the purpose of the prescription. It is not inconceivable that the expression "post-graduate degree" may in a broad and general sense mean in a given context any degree obtained after graduation and which a graduate alone can ob- G tain. But that is not the sense in which the Memorandum uses the particular expression. By "post-graduate degree" is meant a Master's degree like the M.A. or M.Sc. and not a Bachelor's degree like the B.T. In other words, the expression connotes the successful completion of a course of studies at a higher level in any speciality, after the acquisition of a basic qualification at the graduate level. The B.T. course of studies, we are informed, is open only to graduates and in a dictionary manner of speaking, the degree of "Bachelor of Teaching" H may be said to be a "post"-graduate degree in the sense that the degree is obtainable only "after" graduation. That is the sense in which the word "post" is used in expressions like "post-nuptial", "post-prandial",

"post-operative", "post-mortem" and so forth. In these expressions, "post" means simply "after", the emphasis being on the happening of an event after a certain point of time. But the expression "post-graduate degree" has acquired in the educational world a special significance, a technical content. A Bachelor's degree like the B.T., or the LL.B is not considered to be a post-graduate degree even though those degrees can be taken only after graduation. In the refined and elegant world of education, it is the holder of a Master's degree like the M.Ed. or the LL.M. who earns recognition as the holder of a post-graduate degree. That is the sense in which the expression is used in the Memorandum. Mr. Sen says that in some foreign universities even a Bachelor's degree, obtainable only after graduation, is considered as a post-graduate qualification. We are concerned with the interpretation of an indigenous instrument and must have regard for local parlance and understanding. Such awareness and understanding compel the construction for which we have indicated our preference. Indeed, everyone concerned understood the rule in the same sense as is evident from the permission sought by the appellant herself to appear for the M.A. examination. She asked for that permission in order to qualify for the Principal's post.

The appellant made a serious grievance that she was discriminated against in comparison with several others who have been appointed as principals in higher secondary schools run by the Government. On the record is a statement (Annexure P-VIII) which does show that in schools which were from their inception run by the Government, several teachers were appointed as Principals though they did not hold the Master's degree. Mr. Panjwani appearing on behalf of the State Government has given a valid explanation for this differentiation. Speaking generally, in schools which were always under Government control, a teacher could aspire to become a Principal only after a long period of service. Most of the 19 teachers whose names appear in Annexure P-VIII had served for about 20 years before being appointed as principals. On the other hand, private schools like the one in which the appellant was working as a Head Mistress or a principal did not follow any such convention and appointments to the post of the head of the school were made therein directly and straightway without insistence on any worthwhile experience of teaching. The appellant herself was appointed to the post of a Head Mistress directly in the year 1958. The State Government had therefore a valid reason for prescribing comparatively stringent qualifications for the post of Principal in schools taken over by it from private institutions. It may be added that in its own schools, the Government appointed persons holding merely the qualification of B.A.B.T., to the post of Principal by reason of the long and valuable experience gained by them as teachers and not on the supposition that they held a post-graduate degree.

Reliance was placed by the appellant's counsel on "Regulations of the Board of Secondary Education, Madhya Pradesh", in support of his submission that the qualifications of the teaching staff in any institution have to be the same as prescribed for the corresponding staff in Government institutions. But these Regulations have no relevance in the present case. They were framed under section 28(4) of the

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Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965. Regulation 61 and the allied regulations on which reliance is placed show that they were framed in order to prescribe conditions with which an educational institution had to comply before seeking recognition of the Board of Secondary Education. The various conditions prescribed by the Regulations do not constitute conditions of service and can create
B no rights and obligations, contractual or statutory, as between a school and its employees whether the school is a Government institution or a non-Government institution.

Before concluding we would like to say that the State Government ought to consider the request which was made by the appellant long since for permission to appear for the final M.A. Examination. She has already passed Part I of that examination with Political Science as her
C subject but she was refused permission to complete the course on the ground that she had not yet completed one year's service under the State Government. That objection can no longer hold good. We are confident that the proceedings taken by the appellant for vindicating her rights will not be allowed to stand in her way if and when she is found fit and qualified for further promotion in accordance with the relevant rules.

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For these reasons we confirm the judgment of the High Court and dismiss the appeal but there will be no order as to costs.

P.B.R. *Appeal dismissed.*