

(2011) 05 MP CK 0043

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3452 of 2009

Dinesh Kumar Arya

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 18-05-2011

Acts Referred:

Citation : (2011) ILR (MP) 1724

Hon'ble Judges : S.N Aggarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Aggarwal, J.—The Petitioner belongs to a Handicapped Scheduled Caste Category. The Respondent No. 2 had advertised four posts of Assistant District Prosecution Officer (ADPO) vide advertisement published in the Employment News with block dates of 29th December, 2008 to 4th January, 2009 (Annexure P/3 at page 14 of the paper-book). All these four posts were reserved for handicapped people. Out of them, two were unreserved, one reserved for SC and one for ST.

2. The selection was to be made on the basis of written test followed by an interview. The Petitioner and Respondent No. 3 both belong to SC handicapped category. Petitioner got 247 marks in the written examination whereas Respondent No. 3 got only 180 marks. The mark-sheet of the Petitioner is Annexure P-9 at page 10 of the rejoinder. The mark sheet of the Respondent No. 3 is Annexure R-3/4 at page 13 of the return to the petition filed by Respondent No. 3. There is no dispute between the parties that the Petitioner is more meritorious than the Respondent No. 3 in the selection process held for recruitment to the post of Assistant District Prosecution Officer (ADPO) pursuant to the advertisement, Annexure P/3.

3. The Petitioner was denied appointment by Respondent No. 2 (PSC) for reasons best known to it. The Respondent No. 3, who also belongs to SC handicapped

category and was less meritorious than the Petitioner, got her appointment to the post in question vide appointment letter dated 23rd October, 2010 (Annexure R-3/6 at page 15 of the return filed by Respondent No. 3). Her appointment was, however, subject to the final outcome of the present writ petition and this was so mentioned as condition No. 2 in her appointment letter.

4. The Respondent No. 2 being the Public Service Commission, PSC, who had held the recruitment process for recruitment to the post of Assistant District Prosecution Officer (ADPO), was called upon by this Court vide its order dated 3rd May, 2011 to produce the original record of selection before this Court on the next date. When the case was taken up on the next adjourned date of hearing, i.e. on 10th May, 2011, Mr. S.K. Jain, appearing on behalf of Respondent No. 2 again gained time for producing the selection record and on his said request the case was adjourned on that date for today. While adjourning the case on 10th May, 2011 it was made clear that in case the Respondent No. 2 would fail to produce the selection record called for from it, the Court may draw an adverse inference against the Respondent No. 2 at the time of decision of the present case.

5. Mr. S.K. Jain, learned Counsel appearing on behalf of PSC (Respondent No. 2) has today placed on record copy of office nothings to contend that the selection record is not traceable in the office of Respondent No. 2 and efforts are on for tracing the record. The Public Service Commission (PSC) is an instrumentality of the State and has been entrusted with the task of making selection for civil posts to be filled up in public offices. The Respondent No. 2 cannot be expected to function in a casual manner misplacing the selection record which was just about 1-2 year old knowing full well that the case pertaining to selection is pending in the Court and it may be required to produce the record before the Court to show its transparency in the matter. It seems that the Respondent No. 2 has set all principles of transparency at naught in not only producing the selection record called for from it but also by filing a false affidavit stating in para 4 thereof that the last SC handicapped candidate selected for appointment to the post of Assistant District Prosecution Officer (ADPO) had scored 319 marks completely forgetting that there was only one post reserved for handicapped SC candidate, against which Respondent No. 3 was appointed, who got only 180 marks as per her mark sheet (Annexure R-3/4 at page 13 of the return of Respondent No. 3). This attempt on the part of Respondent No. 2 appears to be to mislead this Court on vital question of fact and the same was not expected of it. In the opinion of this Court, the Respondent No. 2 has wrongly denied appointment to the Petitioner, who admittedly was more meritorious than the Respondent No. 3. This Court is conscious of the fact that the Respondent No. 3 has got entry into service of Respondents No. 1 and 2, though she was less meritorious than the Petitioner. This Court is further conscious of the fact that the Respondent No. 3 pursuant to her appointment vide Annexure R-3/6 to the return of Respondent No. 3 has already worked for 6 to 7 months. However, it may be noted that the appointment of Respondent No. 3 in terms of her appointment letter (Annexure

R-3/6) was subject to final outcome of the present writ petition. Upon balancing the equities between Petitioner and Respondent No. 3, this Court is of the considered view that the Respondent No. 3, who admittedly is less meritorious than the Petitioner, must pave way for the Petitioner for his appointment to the post of Assistant District Prosecution Officer (ADPO), for which he was found more meritorious in the selection process. The Respondent No. 3 should immediately vacate the office occupied by her, as the post against which she was appointed has to go to the Petitioner.

6. In the facts and circumstances of the case delineated herein above, this petition is allowed with directions to the Respondents No. 1 and 2 to consider the merit of the Petitioner for his appointment to the post of Assistant District Prosecution Officer (ADPO) under the handicapped SC category and if found entitled, appoint him to the said post after completing the left over formalities. The appointment of Respondent No. 3 is set aside. The Respondents No. 1 and 2 are further directed to grant all consequential benefits to the Petitioner in the event of his appointment to the post of Assistant District Prosecution Officer (ADPO) like benefit of seniority without any monetary claim till the date of his actual appointment. The needful exercise in regard to appointment of the Petitioner be completed by the Respondents as expeditiously as possible but not later than four weeks of receipt of certified copy of this order. There shall be no order as to costs.