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**(1997) 08 MP CK 0015**  
**In the Madhya Pradesh High Court**  
**Case No : L.P.A. No. 59 of 1995**

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| M.P. Electricity Board and Another | Vs | APPELLANT  |
| Virendra Kumar Sharma              |    | RESPONDENT |

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**Date of Decision :** 27-08-1997

**Acts Referred:**

**Citation :** (1998) 1 JLJ 49 : (1997) 2 MPLJ 616

**Hon'ble Judges :** Shacheendra Dwivedi, J;A.S. Tripathi, J

**Bench :** Division Bench

**Advocate :** K.N. Gupta, for the Appellant; T.C. Singhal, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Tripathi, J.

This letters patent appeal has been preferred against the judgment and order dated 10th of March, 1995 passed by the learned Single Judge of this Court in writ petition No. 2962 of 1990 whereby it was directed that the case of the Respondent-Petitioner be considered for appointment as per law laid down in the case of Shivsingh v. State of M.P. 1988 (1) MPWN 24.

The Respondent-Petitioner had prayed for a direction to the present Appellants to give him appointment on the post of Trainee Apprentice Grade II. The Petitioner-Respondent was an unemployed boy. He had applied for the post of Trainee Apprentice Grade II. He was called for interview by letter dated 10.12.1986, copy of which is Annexure P/I on the record of the writ petition. Interview was held on 24.12.1986 and a select list was prepared for appointment as and when required by the Superintending Engineer, Morena and the Committee. That list was approved by the Chief Engineer, Bhopal on 25.12.1986. The Respondent-Petitioner was at Sr. No. 33 in that list. 22 candidates from that list have already been appointed. Several vacancies were lying in T.A. Gr. II but appointment order was not issued from the list. The Petitioners had made representations several times. He was asked to do apprenticeship w.e.f. 21.6.1987 with an assurance

that he will get appointment from the list itself in T.A. Gr. II. On the assurance, the Petitioner joined and continued his apprenticeship upon 21.6.1989. He had also completed two years of apprenticeship. He was relieved from the post by letter Annexure P/2 on the record of the writ petition. The posts in T.A. Gr. II were available but the Petitioner was not appointed on the ground that the panel had exhausted after one year. The appointment of the Petitioner-Respondent was arbitrarily denied on the pretext that the list had exhausted. He had given a notice Annexure P/3 on the record of the writ petition and since no reply was given, thereafter, the petition was filed.

The present Appellants who are Respondents in the writ petition had taken a plea that since the list had exhausted after one year, therefore, no appointment could be given to the Petitioner.

The learned Single Judge relying on the case of Shivsingh, referred above, gave the above direction, against which present appeal was preferred.

We have heard learned Counsel for the parties and examined the record. Our attention was drawn to Annexure P/1 on the record of the writ petition, by which the Petitioner-Respondent was called for interview. P/2 is the relieving letter from the post of apprenticeship given to the Petitioner and Annexure P/3 is the notice given by the Petitioner.

The Appellants laid stress on the order. Annexure R/4 on the record of the writ petition terminating the services of the Petitioner-Respondent from the post of apprentice after completion of his apprenticeship. Annexure R/5 is the posting letter for a specific period on the post of apprenticeship given to the Petitioner. Annexure R/6 is the joining letter. Annexure R/7 is the alleged regulation for the selection to the post in question.

It is not disputed that the Petitioner-Respondent was selected after due test and interview and his name stood at Sr. No. 33 of the select list prepared. Learned Counsel for the Appellants laid stressed on Clause (v) of Item No. 1 of the Circular issued in this respect, which is dated 9.12.1968, Annexure R/7 on the record of the writ petition. It was mentioned in this clause that the panel prepared should be for a specific period not exceeding one year and whenever the period expires, a fresh panel should be prepared and the unoperated portion of the earlier panel revoked. Learned Counsel for the Appellants basing his arguments on this clause, argued that since the period of panel expired after one year, appointment could not be given to the Petitioner-Respondent and the order passed by the learned Single Judge is against the statutory provisions.

It has not been brought on record that any fresh panel was prepared thereafter and the remaining part of the panel unoperated was revoked. It was also not brought on record that there was no vacancy at the time of revocation of the panel after expiry of one year. On the other hand, the Petitioner-Respondent had categorically stated that 22 vacancies were still lying there which ought to have been filled up from the panel itself and the present Appellants had deliberately

avoided to appoint the Petitioner and allowed the period to expire and the list was revoked unoperated in spite of the existing vacancies being there.

The learned Single Judge had based his order on the finding given in the case of Shiv Singh, referred above, and the law laid down in that case has been quoted in the judgment impugned, which is again repeated below:

Having heard the learned Counsel for the parties, we have come to the conclusion that this petition must be allowed. The contention of the learned Counsel for the Petitioner is that the Petitioner has been lawfully selected and recommended for appointment against the vacant post of Constable and, is therefore, entitled to be appointed as a Constable. The refusal to appoint the Petitioner as a constable on the ground that it is too late to appoint a selected from the waiting list is not reasonable and cannot be sustained in law. The Petitioner had appeared before the Respondent No. 5 on 23.10.1986 as directed by him and was recommended for appointment. No rule has been shown to us by the learned Counsel appearing for the Respondents which puts limitation of time in making appointment out of the selectees from the waiting list. Appointment to the posts advertised ought to be made from among the selected candidates who had applied in response to that advertisement. In the circumstances of the present case refusal to appoint the Petitioner and keeping the post vacant in the absence of any statutory rule requiring the waiting list of selectees to lapse beyond a prescribed time limit, would be arbitrary. We, therefore, hold that the Petitioner is entitled to be appointed as a Constable against the vacant post and direct that the Respondents shall issue an appointment order to the Petitioner in respect of that post within six weeks from the date of this order. Petition allowed.

Reliance was placed on the circular, which is Annexure R/7 on the record of the writ petition that the panel was for only a period of one year as was mentioned in Clause (v) as referred above. We have examined this clause and found that it was not a part of any statute. It was issued in a form of a circular. No statutory provision has been shown to the Court that under any Act or Rule there was any such provision to maintain the list only for one year. In absence of any statutory rule brought before us, the direction given in Shivsingh's case, referred above fully applies and the learned Single Judge had rightly given necessary direction that in absence of any statutory rules, revocation of list after one year was arbitrary when the posts were lying vacant and no fresh panel was prepared during that period.

In the facts and circumstances, we find that the learned Single Judge had rightly given directions in the writ petition. We find no reason to interfere with the same in this LPA. This appeal is accordingly dismissed.