
(2017) 10 MP CK 0030
In the Madhya Pradesh High Court
Case No : 197 of 2017

Ramswaroop Kumhar

APPELLANT

Vs

State of M.P. & Ors

RESPONDENT

Date of Decision : 26-10-2017

Acts Referred:

[Madhya Pradesh Uchcha Nyayalaya \(Khand Nyayapeeth Ko Appeal\) Adhiniyam, 2005](#), [Section 2\(1\)](#)

Citation : (2017) 10 MP CK 0030

Hon'ble Judges : Sheel Nagu, Ashok Kumar Joshi

Bench : Single Bench

Advocate : N.S.Kirar, Prashant Sharma

Final Decision : Dismissed

Judgement

1. The present Intra Court Appeals filed u/S. 2 (1) of Madhya Pradesh Uchcha Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005 assails the final order dated 9/12/2015 passed in W.P.No.4524/12 whereby the petition in question challenging the order dated 29/5/2012 sending certain selected ineligible candidates for training for appointment to the post of Patwari, has been allowed by directing thus:-

"9. The inevitable result of the aforesaid discussion is that the respondents are under obligation to prepare a fresh merit list in respect of recruitment on the post of Patwaris undertaken by them in the year 2008 in District Bhind by excluding the names of ineligible candidates namely the candidates who have certificates from Universities situate in the State of Chhattisgarh as well as the candidates who have been permitted to participate in the counseling after cut-off date and the candidates who have expressed their inability to join the service in view of the fact that they have been appointed somewhere else. Accordingly, it is directed that the respondents shall prepare a fresh merit list of the candidates belonging to general category for the post of Patwari in respect of District Bhind and thereafter shall take action to issue appointment to

the eligible candidates belonging to the General Category in accordance with law. The aforesaid exercise shall be carried out by the competent authority, i.e., Collector Bhind within a period of three months from today. Needless to state that in case the petitioners are found eligible, they shall be given appointment to the post of Patwaris as they have already undergone training for the post of Patwari in view of the interim orders passed by the Bench of this Court in previous round of litigation." 2. The learned counsel for the appellant-State has primarily contended that the direction for preparing fresh merit list is bad in law as the recruitment in question commenced in the year 2008 whereafter much time has elapsed and since the subsequent recruitment for the same post was held in 2012, the question of operating the select list emanating from 2008 recruitment does not arise. It is further submitted that mere mention of the names of respondents in the select list/waiting list does not bestow indefeasible right to be appointed. It is further submitted that the merit list prepared pursuant to the process of recruitment cannot not be a perennial source for appointment. It is further submitted that the respondents were in the waiting list and since no person less meritorious has been appointed, the petitioners have no justiciable right. It is also submitted that the State cannot be asked to fill up all the vacancies advertised. In support the decisions of the Apex court in the cases of Shankarsan Dash Vs. Union Of India (AIR 1991 SC 1612), Jatinder Kumar & Ors Vs. State Of Punjab & Ors [AIR 1984 SC 1850 (para 12),] State of West Bengal Vs. Subhas Kumar Chatterjee & others 2010(11) SCC 694 and Gujarat State Dy. Executive Engineer Vs. State Of Gujarat And Ors. 1994(2) (supp) SCC 591 are pressed into service.

3. Per contra, learned counsel for the respondents/petitioners submits that 2008 recruitment could not mature into a lawful select list. It is submitted that the appointments out of the said select list were made by the State even till 2012 and therefore the State is estopped from taking the plea of the validity of the select list having expired due to efflux of time. It is further submitted that the respondents-petitioners were litigating the matter from 2012 and the appellant-State itself had operated the select list many years after the recruitment. More so, no recruitment rules or executive instructions prevailed for regulating the period of validity of select list prepared for the appointment to the post of Patwari in 2008. In support, the decisions of the Apex Court in the case of State Of U.P. vs Ram Sawrup Saroj reported in 2000(3) SCC 699 and Purushottam Vs. Chairman, MSEB & another reported in 1999(6) SCC 49 (para 4) are pressed into service.

4. The bare facts attending the instant case reveal that pursuant to the recruitment commenced by advertisement issued in 2008 to fill up 161 vacancies of Patwari in the district of Bhind, several merit lists were prepared and several rounds of counselling were held. During this process, complaints were filed that several candidates who have obtained fake diploma certificates have been selected and placed in the merit list. The respondents who were placed in one of the select lists and claimed their diploma certificates to be genuine filed W.P.Nos.

3226/10 and 3127/10 which were allowed by an order dated 8/4/2011 with direction to the authorities to verify genuineness of the documents filed by the respondents-petitioners which if found to be correct then appointment order be issued after permitting them to undergo training.

4.1 Thereafter, it is submitted that the petitioners have filed contempt petition bearing Nos. 57/11, 86/11 and 286/12 alleging non-compliance of the said directions which are pending adjudication. 4.2 It is submitted that the question of genuineness of the certificates issued by the University situated in the State of Chhatisgarh was concluded on 14/5/2013 by deciding W.P.No.4759/12 holding the said University to be not recognized. The order dated 14/5/2013 passed in W.P.No.4759/12 was upheld by order dated 1/7/2014 in W.A.No.260/13. It is submitted by the petitioners that thereafter no fresh select list was prepared in terms of the order passed in W.P.No.4759/12.

4.3 In this factual background, prayer was made before the writ court in W.P.No. 4524/12 for quashment of Annexure-P/1 and recasting of the merit list pursuant to 2008 selection after following the directions dated 14/5/2013 in W.P.No.4759/12 by removing names of those from the merit list who had obtained certificates from Chhatisgarh University.

4.4 The writ court allowed the petition by the impugned order by directing preparation of fresh merit list after excluding not only those candidates who had secured certificates from the University situated in the State of Chhatisgarh which were declared by this court to be fake but also those who were participated in the counselling after cut-off date and also such candidates who have expressed their inability to join service for having been appointed elsewhere.

5. The principal contention of the learned counsel for the State is that the select list prepared pursuant to 2008 selection has lapsed due to efflux of time.

5.1 The above said contention of lapsing of the select list was rejected by the writ court on the ground that pursuant to the judicial order passed by this court in W.P.No.4759/12 the State and it's functionaries had failed to recast merit list by excluding those Writ Appeal No. 197/2017 5

candidates who fell within the 3 categories as enumerated in para 9 of the impugned order.

5.2 True it is that the service jurisprudence recognizes the concept of validity of merit list for a limited period of time so as to prevent the same to become a perennial source for employment and to avoid the same to become arbitrary and discriminatory as it may deprive eligible candidates in the open market to be considered for public employment. However, the present is a case where in the absence of any statutory or executive provision regulating the period of validity of the select list, the principle of reasonableness, fair play and good conscious comes into operation for deciding the aspect of period of validity of the select list.

The State and its functionaries were obliged to recast the merit list as the original merit lists prepared were vitiated for containing names of ineligible candidates belonging to the three categories enumerated in para 9 of the impugned order. The direction of the single judge of this court declaring the said candidates to be ineligible contained in the order dated 14/5/2013 in W.P.No.4759/12 indisputably has attained finality not only by rejection of W.A.No.260/13 but also due to failure of the State to approach the Apex Court.

5.3 There is nothing on record to indicate that after 14/5/2013 (date of order in W.P.No.4759/12) any attempt was made by the State and its functionaries to prepare select list and waiting list of those candidates who had participated in 2008 selection process after removing the names of the candidates belonging to three categories enumerated in para 9 of the impugned order.

5.4 The subsequent development of holding of fresh selection in 2012 to justify the plea of expiry of select list fades into insignificance in the face of the failure on the part of the State to recast the select list in terms of the order dated 14/5/2013 in W.P.No.4759/12 and after excluding ineligible candidates belonging to the categories defined in para 9 of the impugned order.

5.5 The State and its functionaries have due to their own omission and commission created a situation where large number of ineligible candidates were included in the select list which led to exclusion from the selection list eligible candidates who may be less meritorious than the candidates wrongly selected and appointed but the said less meritorious candidates of the like of petitioners could have found place in the merit list/waiting list and could have been sent for training for appointment.

5.6 Thus, the omission and commission on the part of the competent authority of the State has led to a piquant situation where large number of candidates who are otherwise eligible and competent and meritorious to be placed in the select list were deprived to benefit the ineligible candidates for alleged oblique motives.

6. In the considered opinion of this court, the direction passed by the writ court not only sets things right but also ensures justice to the meritorious and eligible candidates and as such prevents failure of justice.

7. Consequently, this court does not find any reason to interfere in the order passed by the writ court and summarily dismisses the present writ appeal.

No cost.