

(2018) 06 MP CK 0130

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12716, 12740, 12787, 12832, 13008, 13071, 13422, 13782, 13783, 13495, 12789, 12723, 12785, 12826, 13659, 13815, 13845, 13846, 13839, 13812, 13797, 13715, 13844, 13916, 13889 Of 2018 (S), Wa No. 808 Of 2018

Rohit Singh Sikarwar & Others

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 27-06-2018

Acts Referred:

Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 — Rule 12
Madhya Pradesh Junior Administrative Service (Recruitments and Service Conditions of Service) Rules, 2011 — Rule 7, 12, 13, 20

Citation : (2018) 06 MP CK 0130

Hon'ble Judges : HEMANT GUPTA, CJ;VIJAY KUMAR SHUKLA, J

Bench : Division Bench

Advocate : Anil Lala, Mukesh Agrawal, Mahendra Pateriya, Praveen Kumar Verma, Manoj Biniwalle, Sunil Verma, Anoop Saxena, Abhay Pandey, Anmol Khedkar, Amit Seth, Rahul Diwaker

Final Decision : Dismissed

Judgement

Hemant Gupta, CJ.

Since common questions of fact and law are involved in the present bunch of cases, they are heard analogously and are being decided by this common

order. However, for the sake of convenience, the facts are taken from W.P. No.12787/2018 (Vivek Upadhyay & others vs. State of M.P. and

others).

2. The petitioners are the Patwari/Revenue Inspectors desirous of appointment to the post of Naib Tehsildar for which an Advertisement (Annexure

P/4) has been issued with the stipulation that the last date for submission of the application form is 18.06.2018 and that examination shall be conducted

on 30.06.2018.

3. Earlier, an Advertisement was issued on 06.02.2012 (Annexure R-3 to the return filed in W.P. No.12602/2018) inviting applications for the posts of

Patwari (It may be mentioned that the return filed by the respondents-State in W.P. No.12602/2018 (Ramji Tiwari & others vs. State of M.P. &

others) has been adopted by them in all these cases. The copy of the return was supplied to all the counsel appearing for the petitioners). The

condition in the advertisement was that the select list prepared in pursuance to the examination shall be valid for a period of three years and that no

salary or honorarium shall be paid for the training period. It was also stipulated that appointment shall be made against the vacant post after completion

of the training and passing of the examination. The relevant conditions of the Advertisement, which are in Hindi, on being translated into English, read

as under:-

19. Waiting List:- The select list and waiting list in respect of Patwari Selection Competitive Examination shall be valid for 3 years.

20. Conditions to be complied with during training period:- During training period, no salary/honorarium shall be paid.

21. Conditions of appointment:- The appointment shall be given subject to availability of vacant posts after qualifying the examination and undergoing

training. The instructions issued by the State Government from time to time and the provisions of Madhya Pradesh Land Records Manual Part-I,

Chapter-1 shall be applicable for appointment to the post of Patwari.

4. In pursuance of such advertisement dated 06.02.2012, petitioners qualified the written examination. The petitioners were deputed for training on

10.07.2012 (Annexure P/2) for the training starting from 16.07.2012. After completion of training, the petitioners were appointed on 20.09.2013 and

02.07.2014 (Annexure R-4 to the return filed by the State in W.P. No.12602/2018).

5. The petitioners claim that they are eligible for appearing in the limited competitive examination to be conducted for the posts of Naib Tehsildar on

30.06.2018 for the reason that the training is to be counted as a part of officiating service in terms of Madhya Pradesh Junior Administrative Service

(Recruitments and Service Conditions of Service) Rules, 2011 (for short the 2011 Rules).

6. Learned counsel for the petitioners rely upon an order passed by Delhi High Court in Writ Petition (Civil) No.3129/2011 (Manoj Kumar Singh &

Others vs. Food Corporation of India and others) and other connected petitions decided on 13.11.2013 wherein, in terms of Government of India

circular dated 08.03.1983 it was held that the training period is required to be taken into consideration for direct recruitment. Learned counsel for the

petitioners also relied upon M.P. Land Records Manual published in M.P. Gazette dated 24.05.2018. Such scheme would be applicable in respect of

appointment to be made in terms of Madhya Pradesh Land Records and Settlement Class-III, Non-Gazetted (Executive and Technical) Service

Recruitment Rules, 2012. The scheme published on 24.05.2018 contemplates that the appointment will start from the date of joining training. It is, thus,

contended that training is part of service; therefore, the period spent by the petitioners on training has to be counted for the purpose of eligibility for

appearing in the examination for the posts of Naib Tehsildar.

7. Mr. Anil Lala, relies upon Rule 12 of Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 (for short "the 1961 Rules")

to contend that as seniority of the members of the service is in order of merit in which they were recommended for appointment by the Commission,

therefore, the date of selection is relevant and not the date of joining service. Rule 12 reads as under:-

"12. Seniority. - The seniority of the members of a service or a distinct branch or group of posts of that service shall be determined in accordance

with the following principles, viz.,-

(1) Seniority of Direct Recruits and Promotees. - (a) The seniority of persons directly appointed to a post according to rules shall be determined on the

basis of the order of merit in which they are recommended for appointment irrespective of the date of joining. Persons appointed as a result of an

earlier selection shall be senior to those appointed as a result of a subsequent selection.

(b) Where promotions are made on the basis of selection by a Departmental Promotion Committee, the seniority of such promotees shall be in the

order in which they are recommended for such promotion by the committee.

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8. Mr. Lala, learned counsel has also placed reliance upon a Division Bench

judgment of this Court reported as 1999 (2) MPLJ 134 (State of M.P. vs.

Anand Kumar Jain and others). He has also placed reliance upon a Single Bench decision of Gwalior Bench of this Court on 14.12.2010 in W.P.

No.1883/2010 (S) (Dharmendra Singh Verma and another vs. State of M.P. and others), wherein it was held that seniority of the petitioners to the

post of Patwari shall be maintained in accordance with the placement in the selection list. Such order has been followed in Writ Petition No.661/2011

(Ku. Rajni Kushwah vs. The State of M.P.) decided on 04.07.2014 by the Gwalior Bench.

9. On the other hand, Mr. Seth, learned counsel for the State argued that the petitioners were appointed in terms of the Scheme published in the

Gazette on 05.12.2011 (Annexure R-2 to the return filed in W.P. No.12602/2018), after the 2011 Rules were published. The Scheme contemplates

that no salary or honorarium shall be paid for the training period and that appointment shall be offered after qualifying the written examination on

completion of training and on availability of vacant post. The advertisement dated 6.2.2012 has the conditions in terms of such Scheme. The petitioners

have undergone training and some of the petitioners were appointed on 20.09.2013 whereas some others were appointed on 02.07.2014. Since the

petitioners became members of the service only after appointment, therefore, the period of training cannot be counted as the petitioners have worked

on the post of Patwari on permanent/officiating capacity as contemplated in the Rules only after their appointment.

10. It is contended that training is not contemplated by the 2011 Rules, therefore, these Rules will be applicable only after appointment is made.

Therefore, the training period cannot be counted towards the experience required for appearing for appointment to the posts of Naib Tehsildar. The

relevant clauses of the Rules read as under:-

â??7. Appointment to the Service â?" All appointments to the service after the commencement of these rules shall be made by the appointing

authority and no such appointment shall be made except after selection by one of the methods of recruitment specified in rules 6.

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12. List of candidates recommended by the commission â?" (1) The Commission shall prepare and forward a list to the Government arranged in order

of merit of the candidates, who have qualified by such standards, as the commission may determine and of the candidates belonging to the Scheduled

Castes, Scheduled Tribes and Other Backward Classes, who though not qualified by that standard, declared by the Commission to be suitable for

appointment to the service with due regard to the maintenance of efficiency in administration. The list shall also be published for general information.

(2) Subject to the provisions of these rules and of the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961, candidates shall be

considered for appointment to the available vacancies in the order in which their names appear in the list.

(3) The inclusion of a candidate's name in the list confers no right to appointment unless the Government is satisfied, after such enquiry, as may

be considered necessary, that the candidate is suitable in all respects of appointment to the service.

(4) The selection list will be valid for a period of one year from the date of its issue.

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13. Selection by Direct Recruitment through limited competitive examination to the post of Naib Tahsildar from the Ministerial Service and

Patwari/Revenue Inspectors cadre. " Only such members of Ministerial Services of the offices of Revenue Board, Commissioner, Land Records

and Settlement, Commissioners and Collectors and Patwari and Revenue Inspector will be eligible to get benefit of this scheme who have been

serving for at least 5 years as a clerk of Patwari/Revenue Inspectors in permanent or officiating capacity in the Revenue Department and who are

holding Graduate degree in Arts, Science (including technical and engineering), Commerce, Agriculture from any recognized University.

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19. Select List. " (1) the Commission shall considered the list prepared by the committee along with the other documents received from the

Government and unless it considers any change necessary, approve the list.

(2) If the Commission considers it necessary to make any changes in the lists received from the Government, he shall inform the commission at the

change proposed, and after taking into account the comments, if any, of the Committee may approve the lists, finally with such modifications, if any, as

may in its opinion be just and proper.

(3) The lists as finally approved by the Commission shall form the select list for promotion to the post of Naib Tahsildar/Tahsildars.

(4) (a) The select list prepared for promotion to the post of Naib Tahsildar from Revenue Inspectors in accordance with rule 13 shall be considered by

Government who would, unless any changes are considered necessary approve the list.

(b) If Government considers it necessary to make any change in the list received from the Committee, the Government may approve the list finally

with such modification as in its opinion be just and proper after recording the reasons thereof.

(5) The select list shall ordinarily be in force until reviewed or revised in accordance with sub-rule (4) of rule 17, but the validity of these lists shall not

be extended beyond a total period of 18 months from the date of its preparation:

Provided that, in the event of a grave lapse in the conduct or performance of duties on the part of any person included in the select list, a special

review of the select list may be made at the instance of the Government and the Commission, may, it thinks fit, remove the name of such person from

the select list.

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20. Appointment from the Select List. " (1) Appointments of the persons included in the select list to post borne on the cadre of the service shall

follow the order, in which the names of such persons appear in the select lists.

(2) It shall not ordinarily be necessary to consult the Commission before appointment of a person whose name is included in the select lists in the

service unless during the period intervening between the inclusion of his name in the select lists, and the date of the proposed appointment, there

occurs any deterioration in his work which, in the opinion of the appointing authority, is such as to render him unsuitable for appointment to the

service.

11. Mr. Seth, learned counsel for the respondents-State also relies upon a Single Bench order of Indore Bench of this Court passed on 18.06.2018 in

W.P. No.12811/2018 (Shekhar Tanwar and others vs. State of M.P. and others) wherein the training period was found not to satisfy the condition

required under the Rules.

12. We have heard learned counsel for the parties at length and find no merit in the present writ petition.

13. As per Rule 12 of the 2011 Rules, the Commission is to prepare a list of the candidates in order of merit whereas Sub-Rule (2) contemplates that

the candidates will be considered for appointment to fill the available vacancies in the order in which their names appear in the list. Rule 20

contemplates that the appointments of the persons included in the select list to the post borne on the cadre of the service shall follow the order, in

which the names of such persons appear in the select list. The candidates were sent for training in accordance with the result declared by the Board

in terms of the scheme of appointment circulated on 05.12.2011. It is only after clearing the written examination after completion of training and

availability of vacancies, the candidates were appointed. The petitioners were not paid any emoluments during the training period. They were

appointed to the service only after completion of training and on qualifying the written examination. Therefore, the petitioners have not served for at

least five years in permanent or officiating capacity to be eligible for appointment to the post of Naib Tahsildar.

14. Rule 12 of 1961 Rules would not be applicable to determine the eligibility of the petitioners to appear in the examination for the post of Naib

Tahsildar. Firstly, Rule 12 is Rule of seniority and that seniority is not the question which is being examined in the present petitions. In terms of Rule 20

of the 2011 Rules, the appointment of the persons included in the select list is in order in which names of such persons appear in the select list but such

appointment is circumscribed by the three conditions; completion of training; on qualifying the written examination and availability of vacancy. The

petitioners were appointed after completion of training and on successfully qualifying the examination. Therefore, the period prior to their appointment

to the cadre of service in terms of Rule 7 of the 2011 Rules cannot be counted as permanent or officiating experience on the post of Patwari. The

Rule 13 of the 2011 Rules contemplates that the candidates should have served at least for five years as Patwari in permanent or officiating capacity.

The training is prior to appointment, therefore, cannot be taken into consideration for the purposes of experience for the post of Naib Tehsildar.

15. The judgment in Anand Kumar Jain's case (supra) is not applicable as it deals with seniority in the category of Deputy Collector. The candidates

were claiming seniority on the basis of merit list prepared by the Commission but such is not the situation in the present case. Similarly a Single Bench

order in Dharmendra Singh Verma's case (supra) is again not applicable. The Diploma in Computer Application obtained from Dr. C.V. Raman

University, Bilaspur was found to be valid for the purpose of appointment. Therefore, the said order is not applicable to the facts of the present case

as the issue decided in the said case was the validity of Diploma Certificate of a University.

16. Similarly, judgment of Delhi High Court in Manoj Kumar Singh (supra) deals with the circular issued by the Government of India in respect of an

employee who is required to undergo training before his regular appointment to be treated as eligible for appearing in the departmental examination.

We find that such judgment does not provide any assistance to the arguments raised. Firstly, the instructions which have been relied upon were issued

by the Government of India whereas the post in question is in the Government of Madhya Pradesh. Still further, the instructions itself contemplated

training to be counted as eligibility to sit in the departmental examination. The scheme in question specifically stipulates that the appointment shall be

made to the posts of Patwari after completion of training and on qualifying the written examination. Therefore the Judgment of Delhi High Court is not

helpful to the arguments raised.

17. The revised scheme issued on 24.05.2018 would be applicable for appointment to the post of Patwari after issuance of such scheme and also in

respect of the Rules mentioned therein. The petitioners were appointed in pursuance to the scheme notified in the year 2011 and in terms of the 2011

Rules. The advertisement was issued specifying that the petitioners shall not be paid any emoluments during the period of training and that they shall

be appointed after completion of training and on qualifying the written examination. Therefore, the appointments which have been made prior to the

scheme on 24.05.2018, no benefit will accrue to the petitioners on the basis of such scheme.

18. In view of the above, we do not find any merit in the present bunch of writ petitions. The same are dismissed.