

(2018) 07 MP CK 0058

In the Madhya Pradesh High Court

Case No : Writ Petition No.. 12901 Of 2018

Sandeep Kumar Saini

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 09-07-2018

Acts Referred:

Madhya Pradesh Junior Administrative Service, (Recruitment and Service Conditions of Service) Rules, 2011 — Rule 5, 13, 13(1)
Constitution of India, 1950 — Article 226

Citation : (2018) 07 MP CK 0058

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

Bench : Division Bench

Advocate : Siddharth Seth, Amit Seth, Rahul Diwakar

Final Decision : Dismissed

Judgement

In the instant writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a direction to allow him to participate in the

departmental Examination for the post of Naib Tehsildar being advertised vide advertisement dated 04.06.2016; and also to treat him as an eligible

candidate to participate in the said Examination.

2. The necessary facts in short are that the petitioner had earlier worked as Patwari in the Department of Revenue. Thereafter, he was selected on

the post of Training Officer in Skill Development Department in the year, 2013. He was relieved to join by the SubDivisional Officer, Tehsil Barghat,

District Seoni vide order dt. 11.09.2013 and at present though he is working in the Skill Development Department. It is contended that in view of

Circular dt. 15th July, 1993 his lien is still in the Revenue Department and therefore, he is eligible to appear in the departmental Examination for the

post of Niab Tehsildar known as 'Rajaswa Mandal, Ayukta BhuAbhilekh Evam Bandobast Pramukh Rajaswa Ayukta, Sambhagayukta Tatha

Collector Sthapnao Ki Lipik Samvarg Se Naib Tehsildar Pad Par Vibhagiya Seemit Pratiyogita Pariksha Ke Madhyam Se Sidhi Bharti, 2018' (in

short referred as 'Recruitment 2018').

3. We do not find any merit in the contention of the learned Counsel for the petitioner that his subsequent appointment in the Skill Development

Directorate has to be treated as 'on deputation' and his lien is still with the Revenue Department and therefore, he is eligible to participate in the

departmental Examination to the Post of Niab Tehsildar from the post of Patwari.

4. The factual expose succinctly stated are that in the year, 2003 the Department of Revenue had advertised vacancies for the post of Patwari. The

petitioner was initially selected for training and thereafter, by order dated 07.05.2004 he was posted as Patwari. The said posting order was recalled

and subsequently he was posted at Sagar by order dt. 18.03.2005 and he remained in District Sagar from 12.05.2005 till 07.08.2007. Thereafter the

petitioner was transferred to other districts when he was working as Patwari.

5. In the year, 2013 the Directorate of Skill Development, Government of Madhya Pradesh, notified certain vacancies to the post of Training Officer

at different Industrial Training Institutes in the State of Madhya Pradesh. The Tehsildar concerned had granted permission to the petitioner to appear

in the said selection process. Being successful in the selection for the post of Training Officer, the petitioner was appointed by order dated 06.09.2013

on the post of Training Officer by the Directorate of Skill Development and was sent for training at Women Industrial Training Institute Bhopal. He

was relieved by the Sub-divisional Officer Tehsil- Barghat, District Seoni from the post of Patwari. The service book of the petitioner was sent to the

Directorate of Skill Department by the Revenue Department after his relieving from the said post. Thereafter, the petitioner joined on the post of

Training Officer on 15.10.2013.

6. In the year, 2018, the Department of Revenue has issued an advertisement notifying the vacancies to the post of Niab Tehsildar to be filled by the

employees/Officers of the Revenue Department which is called 'Recruitment, 2018'. The recruitment on the post of Naib Tehsildar is governed

by the statutory Rules namely Madhya Pradesh Junior Administrative Service,

(Recruitment and Service Conditions of Service) Rules, 2011

(hereinafter referred to as "Rules, 2011"). The Rule-13 of Rules-2011 lays down the eligibility criteria for selection by direct recruitment through

limited competitive examination to the post of Naib Tehsildar from the Ministerial Service and Patwari/Revenue Inspectors cadre. Sub-rule 1 of Rule-

13 of the Rules, 2011 provides that a limited competitive examination to fill-up the post of Naib Tehsildar by selection from Ministerial service of

Revenue Board, Commissioner, Land Records and Settlement, Commissioners and Collectors shall be conducted annually in accordance with the

scheme laid down in Schedule V. The relevant provision of Rule-13 of the Rules, 2011 is reproduced as under:

"13. Selection by Direct Recruitment through limited competitive examination to the post of Naib Tehsildar 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.

(1) For filling up the posts of Naib Tahsildar by selection from amongst the Ministerial Services of Revenue Board, Commissioner, Land Records and

Settlement, Commissioners and Collectors, appointing authority shall hold annually, at such time, as he may determine, a limited competitive

examination in accordance with the scheme laid down in Schedule V."

7. In Schedule V, the eligibility criteria is prescribed as under:

"2. Eligibility. - Only such members of Ministerial Services of the Officers of Revenue Board, Commissioner Land Records and Settlement,

Commissioner of Divisions and Collectors and Patwari/Revenue Inspectors Cadre will be eligible for getting the benefit of this scheme who possess

the following qualifications, namely :-

(i) Who have been working on any Ministerial post in the Revenue Department or as Patwari/Revenue Inspectors for at least 5 years in permanent or

officiating capacity;

(ii) Who are, on the 1st January of that year in which application is made, does not exceed 40 years. Maximum age limit for employees belonging to

Schedule Castes and Scheduled Tribes and Other Backward Classes will be 45 years; and

(iii) No person will be allowed to appear for more than three times in the examination under this scheme.â??

8. From a bare perusal of the aforesaid provisions, it is luminescent as it provides that the members of the Ministerial Services working in various

offices of Revenue Department shall be eligible for getting the benefit of the Scheme. Only those members who have been working on any Ministerial

post in the Revenue Department as Patwari/Revenue Inspector at least for 5 years in permanent or officiating capacity, shall be eligible to appear in

the Examination. Thus, the members of Ministerial Services of these offices of the Revenue Department who have been working as Patwari/Revenue

Inspector for at least 5 years shall be eligible to appear in the Examination. Admittedly the petitioner is not a member of Revenue Services after his

fresh appointment in the Directorate of Skill Development.

9. Upon perusal of the order of appointment of the petitioner after his selection by the Directorate of Skill Development dt. 06.09.2013, it is crystal

clear that he was appointed afresh by the Directorate of Skill Development on probation for a period of two years. The said engagement was a fresh

appointment and not an order of appointment on deputation as submitted by the counsel for the petitioner.

10. After relieving of the petitioner from the services of the Revenue Department on his appointment to the post of Training Officer, his service

record was also transmitted to the Skill Development Department and his lien stood terminated. Thus there was a complete rescission of relationship

of master and servant between Revenue Department and the petitioner. There was no lien of the petitioner with the Revenue Department. The

reliance placed upon by the petitioner on the Circular dated 15 th July, 1993 is misplaced. In the obtaining factual matrix it is quite vivid that the

petitioner was appointed afresh on probation by the Directorate of Skill Development by order dated 06.09.2013. Noo question for retention of the

petitioner on lien arises in the present case.

11. In view of the specific provisions engrafted in Rule-5 of Rules 2011 and Schedule V, we find that the petitioner is not eligible to appear in the Examination-2018 for the post of Naib Tehsildar.
12. Ex-consequenti, there is no merit in the writ petition.
- Accordingly, it is dismissed. No order as to costs.