
(2007) 12 MP CK 0012
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2598 of 2003

Santosh Singh Chauhan and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 05-12-2007

Acts Referred:

Citation : (2008) ILR (MP) 690 : (2008) 3 MPLJ 121

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : H.D. Mishra, for the Appellant; Ku. Sudha Shrivastava, Panel Lawyer for Respondents No. 1 and 2 and S.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.

This case has a chequered history, is the oldest service matter pending before this Court which was initially filed on 9th February, 1990 and is being taken up for final hearing today.

In the year 1990 petitioners eight in number filed this petition inter alia contending that a select list for promotion to the post of Head Constable in the Transport Department has been published by the respondents vide Annexure P/5 in which the private respondents are included. Inter alia contending that the process for promotion initiated and the select list prepared is not in accordance with provisions of Rule 14 of the Madhya Pradesh Transport Department Subordinate Class-III Executive Service Recruitment Rules, 1969, petitioners filed this petition. According to the petitioners, the recruitment to the post in question as per Rule 14 has to be conducted by conducting a written test and holding interview and thereafter the selected candidates have to undergo a cadre course before preparation of the fit list. It is further stated that the select list has to be prepared on the basis of the result in the written test and candidates five times the number of vacancies have to be called for interview. When the petition

was filed, the main grievance of the petitioners were that the syllabus in advance was not circulated and written test was also conducted deviating from the old practices in the matter of setting the paper for the written examination. Pointing out the following illegality in the matter of conducting selection process, this petition was filed:

- (i) Syllabus as was circulated in the previous years was not circulated, in the previous years examination is two papers were held but in the current year written test in only one paper is being held; and
- (ii) Select list has been prepared without conducting interview and the marks obtained by various candidates have not been disclosed, no merit list has been supplied and therefore the entire selection process is vitiated and interference is sought for.

Initially when the petition was filed in the year 1990, there was a lot of confusion with regard to jurisdiction of this Court to deal with the matter on account of formation of the State Administrative Tribunal and the matter went upto the Supreme Court and ultimately, the matter stood transferred to the State Administrative Tribunal which was created at the relevant time. In the process of adjudication of the matter with regard to jurisdiction to deal with the matter, a lot of time was consumed and after abolition of the Tribunal, the matter stood transferred to this Court. In the meanwhile, initially, interim order of stay was granted by this Court restraining the respondents from making any promotion on the basis of the fit list. Subsequently, stay order was vacated on 27th May, 1991 directing the respondents to keep eight posts vacant for the present petitioners while granting permission to promote the other candidates. In pursuance to the same, the private respondents who are promoted have been arrayed as respondents and during the pendency of this petition some of them have expired and the names of the respondents Nos. 5, 9, 12, 13, 15, 19, 22 to 24 have been deleted as per the orders passed by this Court on various dates.

By filing return and by bringing on record the process initiated for conducting the examination, the State Government and the private respondents have pointed out that the notification for conducting the examination was issued on 2nd November, 1989 vide Annexure R/2. According to this notification, examination was to be held on 4th December, 1989. Admittedly, the notifications, Annexures R/2 and R/3 issued by the State Government and the procedure indicated for conducting the examination therein shows that the examinations was to be conducted on 4th December, 1989 at 8.00 A.M., the duration of examination was 2½ hours. It is stated that the examination and the papers will consist of three parts; the first part will be General Knowledge, the second part general Hindi and the third part primary mathematics relating to the requirements of the department. The entire written examination would carry 60 marks and according to the respondents, the examination was conducted and the result were declared. It is the case of the respondents that in the written examination conducted, all the petitioners appeared and failed, 15 candidates in the general

category, 03 in the scheduled caste category and 04 in the scheduled tribe category, total 22 candidates passed in the examination and therefore, they were sent for cadre course from 13th March, 1990 to 30th April, 1990 and in the cadre course, they were put to various examinations and thereafter they were subjected to some interview and thereafter appointed. The respondents have indicated the marks obtained by each of the petitioners and it is pointed out by them that as the petitioners have failed in the written test, they should have no grievance as the petitioners have only a right for consideration and as after considered, as they have failed in the written test, they are not entitled for any further relief. During pendency of the petition, I.A. No. 10530/06 has been filed by the petitioners with a prayer for summoning of the records of the examinations conducted in the years 1985 and 1989. The Government has produced the records pertaining to the examination conducted from 1985 but the records of the examination conducted in the year 1989 are not available in the file produced by the learned Government Advocate. A perusal of the file produced indicates that in the previous years i.e. in the year 1985 and 1986, 40 marks was fixed as the minimum pass work for the general category candidates and 30% for the scheduled castes and scheduled tribe candidates and accordingly assessment has been made and the candidates who had passed the written test have been granted promotion. Kumari Sudha Shrivastava and Shri S.K. Sharma, learned counsel appearing for the respondents emphasised that as the petitioners appeared and participated in the written test without any objection on 4th December, 1989, after failing in the examination, they have no right to challenge the process and manner in which written examination was conducted. It is the case of the respondents that after participating in the written examination, petitioners cannot make a complaint with regard to the manner in which, the question paper was set and non-circulation of the syllabus and other particulars pertaining to conduct of the written examination. It is the case of the respondents that as the petitioners have participated and failed in the written test, they are estopped and cannot challenge the result of the written examination. Accordingly, placing reliance on a judgment of the Supreme Court in the case of University of Cochin vs. N. S. Kanjoonjamma and others, 1997 SCC (L&S) 976, the respondents pray for dismissal of the petition.

Having heard learned counsel for the parties at length and on scanning the entire record available, it is seen that even though in the record produced by the respondents, the minimum pass marks and other particulars for the examination in the year 1989 is not available, but details of the examination conducted in the years 1985-86 are available. In the written test conducted in the year 1985-86 40% marks has fixed as minimum pass marks for the general category candidate and 30% for reserved candidate and admittedly all the petitioners eight in number belonging to the general category and as per the records produced by the respondents, the marks obtained by each of the petitioners are as under:

Petitioner No. 1, Santosh Singh Chauhan 25

Petitioner No. 2, Saggir Ahmad Ansari 16

Petitioner No. 3, Krishna Pal Singh Kushwaha 21.5

Petitioner No. 4, Kishan Singh Kushwaha 22.5

Petitioner No. 5, Umesh Shrivastava 10.5

Petitioner No. 6, Rajmani Gurjar marks not available

Petitioner No. 7, Brijendra Singh Bhadroia 10.75

Petitioner No. 8, Shyam Babu Dubey 22.5

In this case, respondents have not produced the complete record of examination. The record produced is incomplete, it only shows the marks obtained by the candidates and the petitioners are shown as failed in the report submitted by the State Government on 2nd January, 2001 (available at page 240/241). However, the record shows that written test was held on 4th December, 1989 in which there was one paper of three parts and the maximum marks are 60, however, the minimum pass marks is not indicated, but in the previous examinations conducted by the department up to the year 1986, the minimum pass marks was 40% for general candidates and 30% marks for the reserved category candidates. That being so, it has to be held that in the examination held on 4th December 1989 also the minimum pass marks was 40%.

According to the notification, Annexure R/3 indicating the procedure and the manner of conducting the examination, the written test has to be in one paper consisting of three parts as indicated hereinabove and the total marks allotted for the written test was 60 marks. If 40% marks is the minimum pass marks prescribed as has been done on the previous occasions then the minimum pass marks required for being declared as passed would be 24 out of 60 marks. All the petitioners, except Petitioner No. 1, Santosh Singh Chauhan have received less than 24%, therefore, they have been rightly declared as failed. The petitioner No. 1, Santosh Singh Chauhan has received 25 marks out of 60 marks which is more than 40%. The marks obtained by petitioner No. 6, Rajmani Gurjar are not available.

No doubt, from the records produced by the respondents, the entire process of selection as conducted cannot be said to be strictly in compliance with the requirement of Rule 14 of the Madhya Pradesh Transport Department Subordinate (Class III Executive) Service Recruitment Rules, 1969 governing conduct of the examination. The conditions for eligibility for promotion and other particulars are contained in Rule 14 and Rule 14(3)(ii) contemplates holding of written test and interview for selection. In the present case, written test is conducted and the select list is prepared of all the candidates who have passed in the written test and they have been sent for cadre course. According to sub-Rule 14(e), promotion is to be made by written test and interview and the selected candidate is required to go through a cadre course which has to be conducted in

the headquarter. Constables passing through the cadre course are eligible to come into the fit list. It is, therefore, clear from this rule that written test has to be conducted, interview held and thereafter the selected candidate has to be sent for cadre course and thereafter they will be brought in the fit list. In the present case, the record indicate that the selection is not done strictly in accordance with rules, on the contrary, written test is conducted, results declared and the selected candidates were sent for cadre course and after passing in the cadre course the interview is held and they were promoted to the post in question. This is not strictly in compliance to the statutory rules but at the same time it has to be taken note of by this Court that the selection process was initiated in the year 1990 and all the selected candidates have been granted promotion and most of them have retired on attaining the age of superannuation and some of them have expired, and therefore, it would not be proper now to cancel the entire select list after a period of 17 years. That apart, the records indicate that out of the petitioners eight in number, six have failed in the written test, they are petitioners Nos. 2, 3, 4, 5, 7 and 8, that being so, they are not entitled for any relief. As these petitioners have failed to perform well in the written test, they have no right to participate in the further process of interview. All the petitioners having participated in the written test and having failed cannot challenge the process of examination now. So far as petitioner No. 1, Santosh Singh Chauhan is concerned, the respondents have committed some irregularity. In such circumstances as petitioner No. 1 has passed the written examination as he has obtained the minimum pass prescribed for the written test, he is entitled to participate in the further process of selection, i.e. for appearing in the cadre course and thereafter becoming eligible for promotion. So far as petitioner No. 6, Rajmani Gurjar is concerned, the records does not indicate as to how many marks he has received in the written test.

Accordingly, this Court has to take note of totality of the facts and circumstances of the case and has to decide the case in such a manner that substantial justice is done to all concerned and the things which have been settled for the last 17 years are not disturbed in such a manner that everything is reopened and uncertainty created after a period of seventeen years. That being so, even though the records indicate that the respondents have committed some irregularity in deviating from the statutory rules in the matter of conducting the exercise of promotion for the post in question, I am not inclined to quash the entire selection and direct the respondents to re-do the entire process of selection as same is not in the interest of all concerned. More so, when six out of eight petitioners have failed in the written test, petition so far as it relates to these petitioners has to be dismissed.

The main grievance as has been put forth in the present case by the petitioners is that the written test has been conducted without circulation of the syllabus, no question is set in the subject of mathematics and the result of the written test has not been circulated to the candidates. Once the process of conducting written test and other particulars were disclosed as per circular, Annexure R/3

and all the petitioners participated in the written test, it is seen that even their right to make a complaint about the manner of conducting the written test after failing in the written examination is not available, this Court has declined to interfere in the matter as these petitioners have participated in the written test and have failed in the examination, therefore, they are estopped from challenging the process of written test. That being so, petition so far as it relates petitioners Nos. 2, 3, 4, 5, 7 and 8 are concerned being devoid of merit is dismissed.

So far as petitioner No. 1, Santosh Singh Chauhan is concerned, he having received more than 40% marks in the written test is entitled for participating in the cadre course and interview as has been done in the case of other selected candidates, that being so, he is entitled to the following relief:

Respondents are directed to take steps for considering the case of petitioner No. 1, Santosh Singh Chauhan for promotion on the post of Head Constable from the stage of declaration of his result in the written test and thereafter evaluating his case as per recruitment rules, his case for promotion as was done in the case of other employees be done undertaken within a period of two months from the date of receipt of a certified copy of this order.

As far as petitioner No. 6, Rajmani Gurjar is concerned, the respondents are directed to finding out the number of marks received in the written test by this petition and in case this petitioner has received 24 marks or above, then his case shall also be considered and decided as directed in the case of the petitioner No. 1, Santosh Singh Chauhan. In case the petitioner No. 6 has received less than 24 marks then he is to be declared as failed and not entitled for participation in the cadre course, like the other six petitioners.

As this Court has already directed for keeping eight posts vacant, now the respondents are free to fill up the vacancies after considering the cases of petitioner No. 1, Santosh Singh Chauhan and petitioner No. 6, Rajmani Gurjar as directed hereinabove.

Before parting, it may be observed that this case is pending since 1990 i.e. for seventeen years, most of the respondents have worked on the promoted post and have retired or left this world, and therefore, now it would be against the interest of justice to remand the matter back to the department, that being so, this Court has adopted the method followed in the previous years to hold that 40% is the minimum pass marks in the written examination and has decided the case on the said basis in order to do substantial justice to all concerned.

Accordingly, petition stands allowed to the extent indicated hereinabove and disposed of without any order so as to cost.