

HIGH COURT OF MADHYA PRADESH AT JABALPUR

Writ Petition No : 16754 OF 2006

Arvind Shroti

- V/s -

State of Madhya Pradesh and another

Present : Hon'ble Shri Justice Rajendra Menon.

Shri Vivek Rusia, learned counsel for the petitioner.

Shri S.S.Bisen, learned GA for Respondent No.1.

Shri K.S.Wadhwa with Ku. Vandana, learned counsel for
Respondent No.2.

ORDER

(25/10/2010)

2- Challenging the action of the respondents in not granting appointment to the petitioner on the post of Dy. Director Public Instructions and rejecting his claim for grant of appointment to the aforesaid post, petitioner has filed this writ petition.

3. Facts in brief necessary for adjudication of this writ petition are that the petitioner claims to be a post graduate having passed the post-graduation examination in Economics and, thereafter, it is stated that he was selected as Assistant Statistical Officer in the School Education Department on 17.5.1980, after working for seven years in the said post, he was promoted on the post of District Planning Officer. From the post of



District Planning Officer, the next promotional post is to the post of Dy. Director Public Instructions (DPI).

4. Promotion/ appointment to this post is governed by the M.P. Education Services (School Branch) Promotion Rules 1982. Various qualifications are prescribed for promotion to this post and it is not in dispute that petitioner fulfills the requisite qualifications. However, as per the recruitment rules, 75% posts of Dy. Director Public Instructions is to be filled up by promotion and 25% posts are to be filled up by direct recruitment. Annexure-P1 is relevant recruitment rule.

5. According to the petitioner, in the year 1994 an advertisement was published for direct recruitment to the post of Dy. Director Public Instructions by the Public Service Commission and seven posts were advertised, petitioner participated in the selection process and after results were declared on 22.1.1994 in the select list Annexure-P2, name of the petitioner was kept at Sr. No.1 in the waiting list.

6. According to the petitioner, in the School Education Department 69 posts are sanctioned in the cadre of Dy. Director Public Instructions, if 75% posts are reserved for promotion then the 25% posts would be 17 posts and out of 17 posts, 9 posts are already filled up in the year 1992. It is the case of the petitioner that 8 posts were remaining for direct recruitment instead of filling up of these 8 posts, the advertisement was issued only for 7 posts, and as the petitioner is at Sr. No.1 of the waiting list and according to the petitioner 8 posts were to be filled up, it is said that for appointment to the 8th post, which was lying vacant should be made from the waiting list and further challenging the appointment of one Asma Nazir on the ground that she has been wrongly selected, even though based on minimum qualification for appointment on the post of



Dy. Director Public Instructions, she is not entitled, petitioner had submitted a representation. When the representation on both these counts was rejected, records indicate that an application under Section 19 of the Administrative Tribunal's Act before the M.P. State Administrative Tribunal Bhopal vide O.A.No.71/1994 filed by the petitioner. Annexure-P5 is copy of the application filed by the petitioner.

7. The tribunal found that the appointment of Smt. Asma Nazir was not proper, she was not having adequate qualification. Accordingly, vide order Annexure-P6, the tribunal allowed the application filed by the petitioner and quashed the appointment of Smt. Asma Nazir.

8. However, Smt. Asma Nazir and the State Government both challenged the order Annexure-P6 dated 3.5.2000 passed by the Tribunal by filing a writ petition before this Court being W.P.No.3004/2000 and W.P.No.3459/2000. Both the writ petitions were allowed and the order passed by the Tribunal was quashed by the High Court vide order Annexure-P9 dated 26.3.2002. The Division Bench of this Court found that Smt. Asma Nazir was correctly appointed and the order passed by the tribunal quashing her appointment was not proper.

9. Petitioner challenged this order before the Supreme Court and the S.L.P. filed by the petitioner was also dismissed by the Supreme Court.

10. After the aforesaid events took place, petitioner filed this writ petition and initially, it is his contention that as there were 8 vacant posts in the department and as the 8th post should go to the petitioner as his name is at Sr. No.1 in the waiting list, he should have been appointed. When this aspect of the matter was not considered, he initially filed W.P.No.2240/2003. This writ petition was disposed of by directing the respondents to consider the representation of the petitioner. When the

□

representation of the petitioner was not considered, petitioner filed a contempt petition and finally by the impugned order Annexure-P13 dated 21.7.2006, the representation of the petitioner seeking appointment on the 8th vacant post having been rejected, petitioner filed this writ petition.

11. Initially, when the writ petition was filed, it was the case of the petitioner that as 8th post is lying vacant and as the recruitment is not done for all the 8 posts, petitioner whose name appears at Sr. No.1 should be appointed against that 8th vacant post.

12. According to the respondents, the 8th vacant post is reserved for Schedule Caste Candidate as per the roster and, therefore, petitioner cannot be appointed. Respondents have brought on record the order Annexure-P13 and the reason given for rejecting petitioner's claim is that the 8th vacant post is reserved for a Schedule Caste Candidate and, therefore, petitioner cannot be appointed. Petitioner by filing the documents has tried to demonstrate before this Court that as per the roster, the 8th vacant post has to go to a general candidate and, therefore, his claim for appointment on the 8th vacant post cannot be rejected. However, during the pendency of this writ petition, when one Shri Ajay Kumar Rastogi who was appointed in the recruitment process which took place in the year 2004 was granted Voluntary retirement, petitioner amended the writ petition and sought for his appointment on the post vacated by Shri Ajay Kumar Rastogi.

13. Considering the aforesaid grievance of the petitioner, on 5.12.2008, Respondents were directed to consider the representation of the petitioner for his appointment against the post that was vacated by Shri Ajay Kumar Rastogi. This representation of the petitioner was also rejected vide order Annexure-P18, the claim of the petitioner was rejected on the ground that

□

his name is removed from the waiting list, the petitioner amended the writ petition and challenged the rejection of his claim vide Annexure-P18.

14. Shri Vivek Rusia, learned counsel for the petitioner canvassed two grounds in support of his contention. The first ground was that as 8 posts were vacant and as recruitment should have been conducted for all the 8 posts, petitioner is entitled to be appointed as he is at Sr. No.1 in the waiting list, it is stated that this post should go to the petitioner. Shri Vivek Rusia emphasized that the contention of the respondents to the effect that the 8th post is reserved for the Schedule Caste Candidate as per the roster is not correct. By bringing the model roster along with rejoinder on record, Shri Vivek Rusia points out that 8th post is not reserved but is allocated to a general candidate. Accordingly, on this first ground, relief is claimed for in this writ petition.

15. As far as second ground is concerned, it is argued by learned counsel that Shri Ajay Kumar Rastogi, who was selected and was appointed has sought voluntary retirement and as the post held by Shri Ajay Kumar Rastogi is now vacant, placing reliance on a judgment rendered by the Supreme Court in the case of **R.S.Mittal Vs. Union of India 1995 (Supp) 2 SCC 230 (4)** and a judgment rendered by this Court in the case of **Kanchan Saxena Vs. State of M.P. and another 2006 (2) MPHT 447**, learned counsel for the petitioner submitted that the waiting list would still be in existence as the petitioner is assailing the matter since the selection held in the year 2004 and now as Shri Ajay Kumar Rastogi has taken voluntary retirement, petitioner is liable to be appointed. Accordingly, on this count Shri Vivek Rusia seeks for interference into the matter.

□

16. That apart, Shri Vivek Rusia points out that the order passed by the Public Service Commission vide their letter dated 13.7.2002 removing the name of the petitioner from the waiting list is an illegal order and enquiry report into the matter is awaiting. Accordingly, Shri Rusia submits that the action of the Public Service Commission in removing the name of the petitioner from the waiting list is illegal.

17. Shri S.S.Bisen, and Shri Rajesh Tiwari along with Shri Wadhwa submitted that now no relief can be granted to the petitioner. It is pointed out by learned counsel for the parties that the petitioner is claiming relief on the assumption that his name is included in the waiting list. The said assumption is incorrect. It is stated by Shri Bisen that when the petitioner appeared in the selection process that was held in the year 2004, it transpires that the petitioner participated in the process of selection by producing a false Experience Certificate. Accordingly, Collectors East Nimad Khandwa and Hoshangabad conducted an enquiry into the matter and submitted the enquiry report Annexure-R3 indicating that the so called Experience Certificate produced by the petitioner is not correct. It is pointed out by Shri Bisen that Experience Certificate produced is found to be incorrect and, therefore, based on the enquiry conducted by the Collector, Public Service Commission Vide Annexure-R4 dated 22nd of February, 2007 has deleted the name of the petitioner from the waiting list. It is stated that once the name of the petitioner is deleted from the waiting list then on the assumption that his name appears in the waiting list, no relief can be claimed by the petitioner. Accordingly, on the aforesaid ground, it is argued by the respondents that the petition is liable to be dismissed. That apart, it is pointed out that the recruitment itself took place for seven posts and when the entire selection was for seven

□

posts, then by assuming that the selection was to be conducted for 8 posts, relief cannot be granted to the petitioner more so when the name of the petitioner is removed from the waiting list.

18. I have heard learned counsel for the parties at length and perused the records. From the records it is clear that the petitioner is claiming the benefit on grounds 1 and 2 raised by him in this writ petition only because his name appeared in the waiting list prepared by the Public Service Commission on 22.1.1994 and his name is placed at Sr.No.1 of the waiting list. From the return filed by the respondents, it is clear that on complaints received with regard to submission of false Experience Certificate, an enquiry ordered by the Collector East Nimad Khandwa and the Collector Hoshangabad and after such an enquiry, both these authorities submitted report Annexure-R3. In the report submitted by these officers, the Collector East Nimad Khandwa and the Collector Hoshangabad, it is indicated that the Experience Certificate produced by the petitioner on the basis of which, he has participated in the selection process is forged and illegal and based on the report Annexure-R3, the Public Service Commission vide Annexure-R4 dated 22.2.2007 has deleted the name of the petitioner from the waiting list and in view of this order passed by the Public Service Commission Annexure-R4 dated 22.2.2007, petitioner's name no more survives in the waiting list, it has been deleted from the waiting list. Petitioner neither challenged the enquiry held in the matter and the action taken by the Public Service Commission in this writ petition and except for amending the writ petition and adding ground-g to the effect that the communication dated 30.11.2002 received by the petitioner is not proper, petitioner has not made any effort to challenge the order passed, deleting his name from the waiting list on the contrary

□

the averment made by the petitioner in ground-g indicates that a Charge-sheet was issued by the petitioner on this count and the final enquiry conducted into the matter is still pending. Once the name of the petitioner is deleted from the waiting list and the said deletion is still in force, by assuming the petitioner's name to be existing in the waiting list, no relief can be granted to the petitioner. On this ground alone, the petition is liable to be rejected. If the Public Service Commission on enquiry report received from the Collectors of East Nimad Khandwa and Hoshangabad, deleted the name of the petitioner from the waiting list, this court cannot hold the petitioner to be at Sr. No.1 in the waiting list until and unless the deletion in the waiting list is found to be illegal.

19. In this neither is any challenge made to the action of Public Service Commission nor any ground raised in this regard.

20. In para-7 of the writ petition and in the prayer made inspite of the fact that the respondents have filed the reply and have indicated that the name of the petitioner is removed from the waiting list on 30.11.2007, petitioner has not challenged the said deletion in this writ petition.

21. During the course of hearing of this writ petition, the counsel for the Public Service Commission emphasized that before deleting the name of the petitioner from the waiting list, a show cause notice issued to the petitioner in this regard and as the District Collector East Nimad Khandwa and the District Collector Hoshangabad have found that the Experience Certificate produced by the petitioner with regard to working in various institutes is false and, therefore, they have submitted report that the Experience Certificate produced by the petitioner is false and cannot be accepted. This contention of the learned counsel has much force and has to be accepted.

□

22. Keeping in view these circumstances, this court does not find any ground to interfere in the matter. Once the name of the petitioner is deleted from the waiting list, no relief can be granted to the petitioner. Accordingly, in view of the aforesaid, the grounds raised by the petitioner can be canvassed only if his name is included in the waiting list. Once the name of the petitioner is deleted from the waiting list then to proceed and decide the entitlement of the petitioner on such consideration does not arise.

23. Accordingly, in the facts and circumstance of this case and finding no case for interference on the grounds raised, the petition is dismissed.

(RAJENDRA MENON)
J U D G E

nd/-