

1
THE HIGH COURT OF MADHYA PRADESH
W.P. No.7370/2016
Azad Khan vs. State of M.P. & Ors.

Gwalior, Dated :08/01/2020

Shri Rajmani Bansal, Counsel for the petitioner.

Shri P.S. Raghuvanshi, Government Advocate for the respondents No.1 to 5/State.

Shri Kaushlendra Singh Tomar, Counsel for the respondent No.7.

This petition under Article 226 of the Constitution of India has been filed against the order dated 4.10.2016 passed by Commissioner, Chambal Division, Morena in Case No.7/2015-16/Revision by which the revision filed by the petitioner has been dismissed.

2. The necessary facts for disposal of the present petition in short are that an advertisement was issued by the respondent No.5 for appointment on the post of Gram Rojgar Sahayak.

3. It is the case of the petitioner that in pursuance of the said advertisement the petitioner as well as the respondents No.6 and 7 submitted their applications before the respondent No.5. The petitioner along with the application form also enclosed computer certificate apart from other relevant documents and the copy of the computer certificate issued by State Board of Examination (State Council of Vocational Training Madhya Pradesh) is annexed as

THE HIGH COURT OF MADHYA PRADESH
W.P. No.7370/2016
Azad Khan vs. State of M.P. & Ors.

Annexure P/2. After scrutiny of the application form, a tentative list was issued (Annexure P/3) and the name of Sattar Khan (respondent No.6) was placed at Srl. No.1 whereas the name of the petitioner was placed at Srl. No.8. It appears that objections were filed against the tentative list by various persons including respondent No.7 Dhara Singh and it was decided by the Committee that Dhara Singh/respondent No.7 is eligible to participate in the proceedings and, therefore, his name may also be included in the merit list and it was further observed that the petitioner is entitled for 50 points for passing computer and, accordingly, the fresh merit list be prepared and the name of the petitioner be placed at Srl. No.1 and the name of Dhara Singh be placed at Srl. No.2. It is submitted that accordingly by order dated 20.12.2012 the petitioner was granted appointment on the post of Gram Rojgar Sahayak, Gram Panchayat Gudhaasan, Janpad Panchayat Jaura, District Morena. The appointment of the petitioner was challenged by respondent No.6 by filing an appeal before the Additional Collector, Morena which was registered as Case No.14/2012-13/Appeal. The said appeal was allowed by Additional Collector, District Morena by order dated 11.12.2013 by holding that the petitioner had produced the certificate of having passed computer examination issued by the State Board of Examination but as the said certificate is not in relation to computer

THE HIGH COURT OF MADHYA PRADESH
W.P. No.7370/2016
Azad Khan vs. State of M.P. & Ors.

but is in relation to trade/course, therefore, the petitioner was wrongly awarded 50 points and, accordingly, the appointment of the petitioner on the post of Gram Rojgar Sahayak, Gram Panchayat Gudhaasan, Janpad Panchayat Jaura, District Morena was set aside and the respondent No.6 was awarded appointment on the said post. Being aggrieved by the order passed by the Additional Collector, the petitioner filed a writ petition before this Court which was registered as W.P.No.162/2014(s) and by order dated 13.1.2014, the interim order was passed directing not to dispense with the services of the petitioner on the post of Gram Rojgar Sahayak. However, later on by order dated 30.3.2016, the said writ petition was dismissed on the ground of availability of alternative remedy and it was also observed that till the revision preferred by the petitioner is decided by the Commissioner, the ad-interim relief granted by this Court by order dated 13.1.2014 shall remain in force. In pursuance to the liberty granted by this Court, the petitioner filed a revision before the Commissioner, Chambal Division, Morena. However, the said revision has been dismissed by impugned order dated 4.10.2016 thereby holding that as per clause 6 of the guidelines, 50 points are awarded for the diploma certificate issued by ITI either for accountancy or computer application or data entry operator or architect or assistant. However, the petitioner has passed the

THE HIGH COURT OF MADHYA PRADESH
W.P. No.7370/2016
Azad Khan vs. State of M.P. & Ors.

computer examination from State Board of Examination (State Council of Vocational Training Madhya Pradesh), therefore, he was not entitled for 50 points. Thus the petitioner cannot be said to be eligible, however, since the respondent No.7 was placed at Srl. No.2 in the merit list, therefore, he is entitled to be appointed on the said post and, therefore, the matter was remanded back to CEO, Janpad Panchayat Jaura, District Morena with a direction to make the appointment on the post of Gram Rojgar Sahayak in the light of order passed by the Commissioner as well as in accordance with the decision made by the District Level Committee on the objections raised by different persons.

4. It is submitted by the counsel for the petitioner that in the light of the impugned order dated 4.10.2016 at present the respondent No.7 is working on the post of Gram Rojgar Sahayak, Gram Panchayat Gudhaasan, Janpad Panchayat Jaura, District Morena.

5. Challenging the order passed by the Commissioner, it is submitted by the counsel for the petitioner that although the petitioner had filed the copy of the Provisional National Trade Certificate issued by the State Board of Examination (State Council of Vocational Training Madhya Pradesh) and now along with rejoinder, the petitioner has filed the copy of the National Trade certificate issued by the State Council for Vocational Training. It is

THE HIGH COURT OF MADHYA PRADESH**W.P. No.7370/2016****Azad Khan vs. State of M.P. & Ors.**

submitted that the diploma certificate is titled as “National Trade Certificate and according to the said certificate the petitioner has passed the Trade of Computer (COPA). It is further submitted that from the Provisional National Trade Certificate (Annexure P/2) it is clear that the course passed by the petitioner was of one year course which had started from August 2008 till July 2009 whereas according to the guidelines for appointment on the post of Gram Rojgar Sahayak, the minimum qualification was a six months' training course conducted by ITI for accountancy, computer application, data entry operator, architect, assistant. It is submitted that the petitioner had passed the computer training/course as regular student of Maharana Pratap Industrial Training Institute, Gwalior. It is submitted that merely because the State Council of Vocational Training, M.P. had titled the certificate as “National Trade Certificate” would not mean that the petitioner was not holding the minimum qualification as required under the guidelines and thus it is held that the petitioner was rightly awarded 50 marks for having passed the Job Oriented Professional Training Course conducted by ITI.

6. Since the respondents were directed by the Commissioner to make appointment as per the decision taken by the District Level Committee as well as the observations made by him, it appears that

THE HIGH COURT OF MADHYA PRADESH
W.P. No.7370/2016
Azad Khan vs. State of M.P. & Ors.

the respondent No.7 was granted appointment on the post of Gram Rojgar Sahayak by order dated 18.10.2016 and, accordingly, the respondent No.7 filed an application for impleading himself as respondent which was allowed and the respondent No.7 has also filed his short reply.

7. It is submitted by Shri Kaushlendra Singh Tomar, counsel for the respondent No.7 that in fact the petitioner was not eligible for appointment on the post of Gram Rojgar Sahayak as his name was not only mentioned in the voter list of Gram Panchayat Gudhaasan, Janpad Panchayat Jaura, District Morena but his name was also mentioned in the voter list of Islampura Road Jaura, Tahsil Jaura, District Morena and the said fact was concealed by the petitioner and as the petitioner has not approached this Court with clean hands and since the conduct of the petitioner is bad in law, therefore, this petition is liable to be dismissed and, accordingly, I.A.No. 6099/2019 has been filed for taking additional facts on record. However, the counsel for the respondent No.7 could not point out as to how the trade certificate issued by State Council for Vocational Training, Madhya Pradesh cannot be considered as the minimum qualification.

8. The State has filed its return and submitted that since the certificate submitted by the petitioner is of the State Board of Examination (State Council of Vocational Training Madhya Pradesh)

THE HIGH COURT OF MADHYA PRADESH
W.P. No.7370/2016
Azad Khan vs. State of M.P. & Ors.

which was issued by Maharana Pratap Industrial Training Institute, Gwalior, therefore, it cannot be said to be the “computer diploma certificate” as per clause of Gram Rojgar Sahayak Policy and thus it is claimed that the certificate submitted by the petitioner does not fulfill the criteria laid down in Clause 8 of the Policy.

9. Heard the learned counsel for the parties.

10. Before considering the case on merits, it would be appropriate to consider I.A.No.6099/2019, an application filed by the respondent No.7 for taking documents on record.

11. For the first time, the respondent No.7 has alleged that since the name of the petitioner was mentioned in the voter list of Gram Panchayat Gudhaasan, Janpad Panchayat Jaura, District Morena as well as in the voter list of Islampura Road Jaura, Tahsil Jaura, District Morena, therefore, he has concealed the material facts and thus he is not entitled for any relief.

12. The question is that whether the respondent No.7 can be permitted for the first time to raise this objection or not.

13. The undisputed facts are that by order dated 20.12.2012 the petitioner was granted appointment on the post of Gram Rojgar Sahayak, Gram Panchayat Gudhaasan, Janpad Panchayat Jaura, District Morena. The respondent No.7 did not challenge the appointment order of the petitioner presumingly for the reason that he

THE HIGH COURT OF MADHYA PRADESH
W.P. No.7370/2016
Azad Khan vs. State of M.P. & Ors.

was placed at Srl. No.2 by the District Level Committee. However, the appointment of the petitioner was challenged by the respondent No.6 by filing an appeal before the Additional Collector, Morena. The respondent No.7 was neither a party to the said appeal nor the respondent No.7 moved any application for intervention after the appointment of the petitioner was set aside by the Additional Collector. The petitioner initially filed a petition before this Court which was registered as W.P.No.162/2014 and thereafter in pursuance to the order dated 30.3.2016, the petitioner filed revision before the Court of Commissioner, Chambal Division, Morena. Even before the Revisional Court, the respondent No.7 was not a party. It appears that only by impugned order dated 4.10.2016 when the Commissioner, Chambal Division, Morena directed the respondents to give appointment in accordance with the decision taken by the District Level Committee as well as in accordance with the observations made by it, the respondent No.7 was awarded appointment. Although the respondent No.7 can oppose this writ petition on the ground that the award of 50 marks to the petitioner was not in accordance with law but he cannot be permitted to raise any other grounds for the first time before this Court. If the respondent was aggrieved by the appointment of the petitioner, then he should have filed an appeal which was not done by him, therefore, in the considered opinion of

THE HIGH COURT OF MADHYA PRADESH
W.P. No.7370/2016
Azad Khan vs. State of M.P. & Ors.

this Court, the respondent No.7 cannot be permitted to argue except on the question that whether the award of 50 marks to the petitioner was in accordance with law or not.

14. Under these circumstances, the ground that the name of the petitioner is recorded in two voter list of different area cannot be raised for the first time. Accordingly, I.A.No.6099/2019 is hereby rejected.

15. The moot question for consideration is that whether the National Trade Certificate issued by the State Council for Vocational Training, M.P. would fulfill the minimum qualification as provided under the guidelines for appointment to the post of Gram Rojgar Sahayak or not.

16. Clause 4 of the Guidelines issued for appointment to the post of Gram Rojgar Sahayak reads as under:-

4 (b). सामान्य प्रशासन विभाग के ज्ञाप क. सी/3-11/08/2/एक, भोपाल दिनांक 12.6.2009 में उल्लेखित निम्न संस्थाओं ने से किसी एक संस्था से कम्प्यूटर परीक्षा उत्तीर्ण।

i) Diploma from all Universities recognized by UGC.

ii. Diploma from all Open Universities recognized by UGC.

iii. Diploma level examination from DOEACC

THE HIGH COURT OF MADHYA PRADESH
W.P. No.7370/2016
Azad Khan vs. State of M.P. & Ors.

(स्थानीय रूप से DOEACC is
 Affiliated/Accredited संस्थाओं के डिप्लोमा मान्य नहीं।)

iv. Modern Office Management Course
 from Govt. Polytechnic College.

2) औद्योगिक प्रशिक्षण संस्था (ITI) द्वारा रोजगारोन्मुखी व्यावसायिक प्रशिक्षण योजना अन्तर्गत एकाउन्टेन्सी, कम्प्यूटर एप्लीकेशन, डाटा इन्ट्री ऑपरेटर, आर्किटेक्ट, असिस्टेंट में 06 माह कोर्स में प्रशिक्षण प्राप्त।

3) राष्ट्रीय ग्रामीण रोजगार गारंटी योजना के अन्तर्गत संविदा पद पर न्यूनतम 01 वित्तीय वर्ष का कार्य अनुभव अथवा सीआईडीसी से मेट प्रशिक्षण प्राप्त अभ्यर्थी।

4) औद्योगिक प्रशिक्षण संस्था (ITI) द्वारा ग्रामीण इंजीनियर योजना में 110 कार्य दिवस का मेसन/प्लम्बर व्यवसाय में प्रशिक्षित या औद्योगिक प्रशिक्षण संस्था (ITI) से ड्राफ्ट्समेन सर्वेयर का दो वर्षीय प्रशिक्षण।

5) विश्वविद्यालय अनुदान आयोग से मान्यता प्राप्त संस्थाओं से बी.काम. परीक्षा उत्तीर्ण।

17. It is clear from clause 4(b)(2) that a person holding a six months Job Oriented Professional Training Certificate issued by ITI in Accountancy, Computer Application, Data Entry Operator, Architect, Assistant was eligible to be appointed on the post of Gram Rojgar Sahayak. The Additional Collector had set aside the appointment of the petitioner on the ground that marks has been wrongly awarded to the petitioner because the certificate which was issued to the petitioner was not in respect of computer but it was of “professional” in nature. As per the guidelines, the minimum

THE HIGH COURT OF MADHYA PRADESH**W.P. No.7370/2016****Azad Khan vs. State of M.P. & Ors.**

qualification was six months Job Oriented Professional Training Course conducted by ITI. Undipustedly the petitioner has completed one year Job Oriented Professional Training Course as regular student of Maharana Pratap Industrial Training Institute, Gwalior. It is clear from clause 4(b)(2) that diploma certificate was not required but merely a training certificate is required. Thus this Court is of the considered opinion that the Additional Collector committed a material illegality by holding that the certificate held by the petitioner was not fulfilling the minimum qualification as laid down in the guidelines for appointment to the post of Gram Rojgar Sahayak. Similarly, the Commissioner, Chambal Division Morena has also committed a material illegality by holding that the petitioner was required to hold a diploma certificate after completing the training. Clause 4(b)(1) speaks about diploma issued by Universities/Open Universities recognized by UGC or Diploma level examination from DOEACC or Modern Office Management Course from Government Polytechnic College. However, six months Job Oriented Professional Training Course conducted by ITI is provided in clause 4(b)(2) which has to be read independent to the qualifications provided under clause 4(b)(1). Clause 4(b)(2) does not speak for any diploma certificate but it merely provides for six months Job Oriented Professional Training Certificate conducted by ITI. The petitioner

THE HIGH COURT OF MADHYA PRADESH
W.P. No.7370/2016
Azad Khan vs. State of M.P. & Ors.

had passed one year National Trade Certificate in COPA conducted by ITI. Thus, by no stretch of imagination it can be said the national trade certificate issued by State Council of Vocational Training, Madhya Pradesh was not fulfilling the minimum qualification as laid down in the guidelines for appointment to the post of Gram Rojgar Sahayak. Accordingly, this Court is of the considered opinion that the District Level Committee had rightly awarded 50 marks to the petitioner for having passed one year Job Oriented Professional Training Course from ITI. The Deputy Collector as well as the Commissioner, Chambal Division, Morena committed material illegality by setting aside the decision of the District Level Committee. Undisputedly if 50 marks are awarded to the petitioner for having passed computer training course from ITI, then he would come at Srl. No.1 in the merit list. Accordingly, this Court is of the considered opinion that the petitioner was rightly granted appointment on the post of Gram Rojgar Sahayak, Gram Panchayat Gudhaasan, Janpad Panchayat Jaura, District Morena. As a consequence thereof, the order dated 11.12.2013 passed by Additional Collector, Morena in Case No.14/2012-13/Appeal as well as the order dated 4.10.2016 passed by Commissioner, Chambal Division, Morena in Case No.7/2015-16/Revision are hereby set aside.

THE HIGH COURT OF MADHYA PRADESH
W.P. No.7370/2016
Azad Khan vs. State of M.P. & Ors.

18. Since the respondent No.7 was granted appointment in pursuance to the direction given by the Commissioner, Chambal Division, Morena by its order dated 4.10.2016 and since the said order has been set aside by this Court, therefore, the status quo ante which was prevailing prior to passing of order dated 4.10.2016 has to be maintained. As a consequence thereof, the appointment order dated 18.10.2016 of the respondent No.7 is also hereby quashed. The appointment order dated 20.12.2012 of the petitioner on the post of Gram Rojgar Sahayak, Gram Panchayat Gudhaasan, Janpad Panchayat Jaura, District Morena is restored. The respondents are directed to immediately permit the petitioner to join on the post of Gram Rojgar Sahayak, Gram Panchayat Gudhaasan, Janpad Panchayat Jaura, District Morena. This order shall come into force with immediate effect.

19. With aforesaid observations, the petition is **allowed**.

(alok)

(G.S. Ahluwalia)
Judge