



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE ASHISH SHROTI

WRIT PETITION No. 20188 of 2021

DR. RONAK SHARMA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND ANOTHER

Appearance:

Shri Gaurav Mishra - Advocate for the petitioner.

Shri N.K. Gupta - Govt. Advocate for the State.

Shri Shashank Indapurkar – Advocate for the respondent no.2.

WITH

WRIT PETITION No. 20442 of 2021

LOKESH SINGH RAGHUVANSHI AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

None for the petitioner.

Shri N.K. Gupta - Govt. Advocate for the State.

Shri Shashank Indapurkar – Advocate for the respondent no.2.

WRIT PETITION No. 20581 of 2021

ANKIT SHRIVASTAVA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND ANOTHER

Appearance:

Shri D.S. Raghuvanshi - Advocate for the petitioner.



Shri N.K. Gupta - Govt. Advocate for the State.

Shri Shashank Indapurkar – Advocate for the respondent no.2.

WRIT PETITION No. 20691 of 2021
DR KAMAL KHARE AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND ANOTHER

Appearance:

Shri Gaurav Mishra - Advocate for the petitioner.

Shri N.K. Gupta - Govt. Advocate for the State.

Shri Shashank Indapurkar – Advocate for the respondent no.2.

Reserved on: 06/10/2025

Pronounced on : 29/10/2025

ORDER

The petitioners in this bunch of writ petitions are aggrieved by the prescription of interview as the sole criterion for selection prescribed in the advertisement, dated 14.06.2021, (Annexure P/1) issued by M.P. Public Service Commission, respondent no.2, for filling up posts of Medical Officer in the Public Health & Family Welfare Department of State of Madhya Pradesh. The issue raised in all these petitions is similar and, therefore, the same is being decided by this common order. For convenience sake, the facts are taken from W.P. No.20188 of 2021 filed by Dr. Ronak Sharma and others.

[2]. In order to face the outbreak of Covid-19 pandemic, the State of Madhya Pradesh decided to fill-up 576 posts of Medical Officer, a Class-II post, on emergency basis. The respondent no.2-Commission accordingly



published an advertisement on 14.06.2021 (Annexure P/1) inviting applications from eligible candidates for the aforesaid posts. As per the advertisement, out of total 576 posts, 144 posts were to be filled-up from unreserved (UR) category candidates while 72 from SC, 242 from ST, 60 from OBC and 58 posts from EWS category candidates.

[3]. The petitioners submitted their candidature for the post under UR category. However, since they could not secure minimum eligibility criteria, they were not called for interview. They are thus aggrieved by the action of respondents in prescription of minimum qualifying marks on the basis of their marks secured in MBBS course and also by prescription of interview as the sole mode of selection for the post. The petitioners also challenge the action of respondents in enhancing cut-off qualifying marks subsequently which, according to them, is contrary to Procedure Rules of Commission.

[4]. The learned counsel for petitioners vehemently argued that the selection process, solely based on interview, is arbitrary inasmuch as it gives a free hand to interview Board in selecting the candidates of their own choice. It is his further submission that the advertisement does not lay down the criteria for awarding marks in interview. The learned counsel also submitted that the selection process adopted by Commission is violative of provisions of M.P. Public Service Commission Rules of Procedure 2019 which provides for conducting written examination when the number of posts exceeds 500 and the number of candidates exceeds five times the number of vacancies.



[5]. The learned counsel also submitted that setting out cut-off marks on the basis of eligibility examination (MBBS) for calling candidates for interview is also arbitrary inasmuch as every College/University has its own scoring pattern and it may happen that some college award good marks to its students while the other may be strict in valuation. The learned counsel also submitted that, after receiving the applications forms from candidates, the Commission enhanced the cut-off qualifying marks subsequently which is also not permissible and amounts to changing the rules of game after the game began.

[6]. In support of his submissions, the learned counsel placed reliance upon Apex Court judgments rendered in the case of **Ajay Hasia & Ors. Vs. Khalid Mujib Sehravardi & Ors.** reported in AIR 1981 SC 487 and also in the case of **Ku. Rashmi Mishra Vs. M.P. Public Service Commission and others** reported in 2007(1) MPHT 196 (SC).

[7]. Shri Dharmendra Singh Raghuwanshi, learned counsel for petitioner, in connected writ petition adopts the arguments of Shri Gaurav Mishra, Advocate.

[8]. On the other hand, learned counsel for respondent no.2 supported the impugned selection process and at the outset raised a preliminary objection that the petitioners participated in the process without any protest and, therefore, they cannot be allowed to raise objection regarding process of selection after when they remained unsuccessful. It is his submission that the entire selection process including prescription of minimum qualifying marks based upon MBBS qualification and the interview to be the sole criteria for selection, was clearly set out in the advertisement.



Being fully aware about the same, the petitioners participated in the selection process. Therefore, they cannot be allowed to challenge the process subsequently.

[9]. The learned counsel also submitted that since the petitioners did not cross the minimum qualifying marks for interview, the prescription of interview being the sole basis of selection, is inconsequential for them.

[10]. The learned counsel further submitted that under the M.P. Public Service Commission Rules of Procedure, 2019, the discretion has been given to the Commission to fix the selection criteria. He also submitted that candidates equal to five times of number of vacancies have to be called for interview category-wise whereas the petitioners are taking the same on total number of vacancies which is not the rule. He also submitted that the selection was made in emergency situation and, therefore also, interview was fixed as sole criteria for selection. The learned counsel also submitted that none of the selected candidate is impleaded as party in the writ petition and, therefore, the same is not maintainable. He thus prayed for dismissal of writ petition.

[11]. Considered the arguments and perused the records.

[12]. The challenge in these petitions is primarily made on the ground of fixation of selection criteria by the Commission. Therefore, before advertng to facts of the case, the rule position needs to be examined. Admittedly, the process is governed by M.P. Public Service Commission Rules of Procedure 2019 (in short 'Rules'). Rule 5 provides for mode of selection and for purposes of decision of these cases, provisions of Rule 5.4 are relevant and are accordingly reproduced hereunder:

**5. BY SELECTION:****(Recruitment through interview without holding competitive examination)**

Where recruitment to a service or post is to be made by selection and consultation with the commission is required, the commission shall-

5.1 to 5.3 xxx xxx xxx

5.4 5.4.(1) Consider all applications received and if necessary shortlist them for interview either through written examination or on the basis of criteria relating to academic qualifications and/or experience.

5.4.(2) Where short listing of candidates is made either by holding written exam or on the basis of educational qualifications and/or experience the number of candidates to be shortlisted in each category/ sub category for interview shall be three times of posts advertised, in addition to the number of candidates securing marks equal to the last candidate so counted, provided that number of qualified candidates in each category/sub category meets out the required strength.

5.4.(3) Where short listing is done by holding examination, final merit list shall be prepared on the basis of total marks obtained in written examination and interview.

5.4.(4) Where short-listing is to be done on the basis of essential educational qualifications and/or experience the actual criteria regarding the percentage of marks and/or experience, which will differ from service to service, shall be decided by the commission in respect of each such recruitment. The number of candidates to be short-listed will be as follows:

No. of Posts	No. of candidates to be
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	called for interview
1	2
For One post	Up to 12 candidates
For 2-3 posts	Up to 24 candidates
For 4-6 posts	Up to 36 candidates
For 7-9 posts	Up to 48 candidates
For 10 posts and above	Up to 50 candidates or above 5 times the number of posts

Where the number of applicants exceeds 500 and their number is also more than five times the number of vacancies then a written examination shall be held. As a result of the written examination, candidates to be called for interview in each category/subcategory, shall be unless otherwise decided by the commission, in the ratio of 1:3 i.e., three candidates for one vacancy plus such additional candidates who have secured marks equal to the last candidate on the basis of the ratio aforementioned subject to the availability of eligible candidates.

Provided that written examination shall not be necessary when number of vacancies to be filled is ten or less, irrespective of the number of applications that may have been received. Provided further that the Commission may decide to adopt a procedure with such modifications in the procedure prescribed here-in-before as may be warranted if the exigencies of the type of post, the educational qualifications prescribed for the post and the number of applications likely to be received so require.

[13]. Thus, Rule 5.4.(1) permits the Commission to shortlist candidates for interview based upon result of written exam, wherever required, or on the basis of their academic qualification. Rule 5.4(2) provides for shortlisting of candidates in each category/sub-category equal to three times the number of vacancies advertised. However, when the number of posts exceeds 50, such ratio would be 1:5 i.e. five candidates for each post. It is also clear from this rule that shortlisting of candidates equal to



three/five times of the posts is to be done category-wise separately and not on the basis of total number of aggregate vacancies in all categories.

[14]. Further, Rule 5.4(4) provides the situation in which the written examination is required to be conducted. It provides that where number of applicants exceeds 500 and their number is also more than five times the number of vacancies then written examination shall be held. Thus, for requiring written examination to be conducted, both the conditions are required to be satisfied viz. number of candidates should be more than 500 and also should be more than five times the number of vacancies advertised.

[15]. The proviso to Rule 5.4.(4) enables the Commission to adopt a procedure with modifications in the prescribed procedure as may be warranted in case of exigency of the type of the post.

[16]. As per the specific averments made in the return, looking to the emergent situation due to outbreak of Covid-19 pandemic, the Commission decided to shortlist the candidates based upon marks secured by them in MBBS course and then to fill-up the posts based upon interview. Clause 9 of the advertisement provided for selection process which reads as under:

“नौ चयन प्रक्रिया:-

चयन साक्षात्कार के आधार पर होगा। अर्हकारी परीक्षा में प्राप्त अंकों के गुणानुक्रम के आधार पर प्रत्येक श्रेणियों/उप श्रेणियों हेतु विज्ञापित पदों के 5 गुना अभ्यर्थियों को साक्षात्कार हेतु आमंत्रित किया जाएगा बशर्ते कि पात्र अभ्यर्थी उपलब्ध हो।

साक्षात्कार में प्राप्त अंकों के गुणानुक्रम के आधार पर अंतिम चयन सूची घोषित की जाएगी। साक्षात्कार हेतु पूर्णांक 100 होगा। अनारक्षित तथा आर्थिक रूप से कमजोर वर्ग हेतु 41% तथा मध्य प्रदेश के मूल निवासी अनुसूचित जाति, अनुसूचित जनजाति तथा अन्य पिछड़ा वर्ग (गैर क्रीमी लेयर) तथा दिव्यांगजन श्रेणी हेतु 31% न्यूनतम उत्तीर्णांक होंगे।

**टीप:-**

(1) आवश्यक होने पर लिखित परीक्षा ऑनलाइन पद्धति से आयोजित की जाएगी। लिखित परीक्षा में प्राप्त अंको के गुणानुक्रम के आधार पर विभिन्न श्रेणियों/उप श्रेणियों हेतु विज्ञापित पदों के 3 गुना तथा समान अंक अर्जित करने वाले अभ्यर्थियों को साक्षात्कार हेतु आमंत्रित किया जाएगा। अंतिम चयन लिखित परीक्षा तथा साक्षात्कार में प्राप्त अंकों के योग के गुणानुक्रम के आधार पर किया जाएगा। लिखित परीक्षा की स्थिति में साक्षात्कार हेतु कोई न्यूनतम उत्तीर्णांक नहीं होंगे।

(2) लिखित परीक्षा की स्थिति में परीक्षा योजना तथा पाठ्यक्रम यथासमय "रोजगार एवं निर्माण" समाचार पत्र तथा आयोग की वेबसाइट www.mppsc.nic.in तथा www.mppsc.com पर प्रकाशित किया जाएगा। लिखित परीक्षा की स्थिति में आवेदकों को परीक्षा शुल्क का पृथक से भुगतान करना होगा।

चयन परिणाम प्रकाशित होने के बाद भी यदि कोई कंप्यूटर त्रुटि/लिपिकीय त्रुटि ध्यान में आती है तो आयोग का चयन परिणाम को सुधारने का अधिकार सुरक्षित है।”

[17]. It is thus seen that the selection process prescribed in advertisement was in consonance with provisions of Rule 5.4 of Procedure Rules.

[18]. The learned counsel for petitioners challenged the action of respondents on the ground that since the posts advertised were more than 500, the shortlisting of candidates could have been done based on written test and not based on MBBS marks of candidates. However, the fallacy of this argument lies in the fact that for requiring written examination to be conducted as per Rule 5.4(4), two conditions need to be satisfied firstly, number of candidates should be more than 500 and also that this number should exceed five times the number of post. In the instant case, 576 posts were advertised and five times of this comes to 2880. The number of applications received were 2550 which is less than five times of number of posts. Thus, the Commission rightly did not conduct written examination.



[19]. It is seen from document filed as Annexure R-2/4, the total number of posts advertised in UR category was 144 for which total 1580 applications were received. Out of this, 205 applications were rejected as the same were either incomplete or received after the cut-off date. Thus, there remained 1375 posts. About 25 candidates were found to be ineligible and, therefore, the total number of application reduced to 1350. Since, five times of total number of posts advertised was 720, total 726 were shortlisted for calling them for interview. Six candidates acquired equal marks in MBBS and, therefore, they were called for interview even though the total number exceeded five time of the post. Similar is the position in other categories.

[20]. Thus, the action of the respondent-Commission is found to be in consonance with the Rules as also with the terms of advertisement. Consequently, the contention of the petitioners that the shortlisting should have been done by conducting written exam instead of marks of MBBS, is not acceptable. Further, the decision of the Commission to make selection based upon interview alone is also required to be upheld in view of provisions of Rule 5.4 quoted above.

[21]. Another aspect to be considered is that the selection was done in emergency situation facing outbreak of Covid-19 pandemic. Thus, conducting written exam was neither possible nor advisable. Proviso to Rule 5.4(4) empowers the Commission to adopt selection criteria with modification in case of exigency of type of post so warrants. Thus, the Commission had the discretion to modify the selection criteria based on exigency of Covid-19 pandemic in this case. Conducting written examination was not possible as also advisable in the situation. Thus, for



this reason also, the decision of Commission to make selection only on the basis of interview, needs to be upheld.

[22]. Yet another ground on which the petitioners are not entitled to challenge the selection criteria is that knowing well about the selection process, they participated therein without any demur or protest. It is only after they remained unsuccessful, the petitioners sought to challenge the process of selection in the present writ petitions. This is not permissible in view of law laid down by Apex Court in the case of **Madan Lal Vs. State of J&K** reported in (1995)3 SCC 486 wherein, dealing with somewhat similar situation, the Court held as under:

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla* [1986 Supp SCC 285 : 1986 SCC (L&S) 644 : AIR 1986 SC 1043] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at



the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

[23]. The legal proposition has been reiterated by Apex Court in the case of **Ashok Kumar Vs. State of Bihar** reported in **(2017)4 SCC 357** as under:

“12. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppel would operate.

13. The law on the subject has been crystallised in several decisions of this Court. In *Chandra Prakash Tiwari v. Shakuntala Shukla* [*Chandra Prakash Tiwari v. Shakuntala Shukla*, (2002) 6 SCC 127 : 2002 SCC (L&S) 830], this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In *Union of India v. S. Vinodh Kumar* [*Union of India v. S. Vinodh Kumar*, (2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792], this Court held that : (SCC p. 107, para 18)

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See *Munindra Kumar v. Rajiv Govil* [*Munindra Kumar v. Rajiv Govil*, (1991) 3 SCC 368 : 1991 SCC (L&S) 1052] and *Rashmi Mishra v. M.P. Public Service Commission* [*Rashmi Mishra v.*



M.P. Public Service Commission, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345] .)”

[24]. The petitioners were well aware that the selection is to be made only based upon interview. They were further aware that shortlisting of candidates is to be done based upon their MBBS marks. They participated in the process without any demur or protest. Thus, they are now estopped from challenging the selection process after having remained unsuccessful, even to qualify for interview.

[25]. In view of the discussion made above, the judgments cited by learned petitioner’s counsel do not help them in any manner.

[26]. The next argument advanced by petitioners’ counsel is that Rule 5.6 of Procedure Rules prescribed cut off marks for UR category as 41 while for SC/ST/OBC category as 31 and, therefore, prescription of separate cut-off marks subsequently for UR and other categories, for calling them for interview, was also bad in law.

[27]. It is seen that under Rule 5.6, a cut-off mark is prescribed as minimum qualifying marks for calling a candidate for interview. This is for shortlisting of candidates as it was not conducive to conduct interview of large number of candidates. However, based upon this cut-off, the number of candidates to be called for interview in each category was still exceeding the five times of number of posts. Therefore, the respondent Commission enhanced the cut-off marks for shortlisting of candidate so as to make it close to five times of number of posts. This is evident from notice, dated 17.09.2021 (Annexure P/4) for calling candidates for interview. For UR category candidates, the cut-off was fixed at 60% in MBBS course. The petitioner could not cross this cut-off and were



consequently not called for interview. This prescription of higher cut-off marks for shortlisting of candidates cannot be said to be illegal as it was done to satisfy the requirement of selecting candidates for interview equal to five times the number of vacancies.

[28]. The Apex Court in the case of **M.P. Public Service Commission Vs. Navnit Kumar Potdar** reported in (1994)6 SCC 293, was considering the validity of an order, issued by the Commission raising the period of practice as an advocate from five years to seven and half years while calling applicants for interview, for appointments against the posts of Presiding Officers of the Labour Courts. The Court held thus:

“8. The sole purpose of holding interview is to search and select the best among the applicants. It is obvious that it would be impossible to carry out a satisfactory viva voce test if large number of candidates are interviewed each day till all the applicants who had been found to be eligible on basis of the criteria and qualifications prescribed are interviewed. If large number of applicants are called for interview in respect of four posts, the interview is then bound to be casual and superficial because of the time constraint. The members of the Commission shall not be in a position to assess properly the candidates who appear before them for interview. It appears that Union Public Service Commission has also fixed a ratio for calling the candidates for interview with reference to number of available vacancies.

9. In Kothari Committee's Report on the “Recruitment Policy and Selection Methods for the Civil Services Examination” it has also been pointed out in respect of interview where a written test is also held as follows:

“The number of candidates to be called for interview, in order of the total marks in written papers, should not exceed, we think, twice the number of vacancies to be filled....”



In this background, it is all the more necessary to fix the limit of the applicants who should be called for interview where there is no written test, on some rational and objective basis so that personality and merit of the persons who are called for interview are properly assessed and evaluated. It need not be pointed out that this decision regarding short-listing the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of short-listing is part of the process of selection. Once the applications are received and the Selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short-listed, the process of selection commences. If with five years of experience an applicant is eligible, then no fault can be found with the Commission if the applicants having completed seven and half years of practice are only called for interview because such applicants having longer period of practice, shall be presumed to have better experience. This process will not be in conflict with the requirement of Section 8(3)(c) which prescribes the eligibility for making an application for the post in question. In a sense Section 8(3)(c) places a bar that no person having less than five years of practice as an advocate or a pleader shall be entitled to be considered for appointment to the post of Presiding Officer of the Labour Court. But if amongst several hundred applicants, a decision is taken to call for interview only those who have completed seven and half years of practice, it is neither violative nor in conflict with the requirement of Section 8(3)(c) of the Act.”

[29]. Similar view was taken by the Apex Court in the case of **Yogesh Yadav Vs. Union of India** reported in (2013)14 SCC 623.



[30]. Thus, the contention of petitioners that prescription of higher cut-off marks subsequently by the Commission was illegal, is not acceptable. The higher cut-off mark was prescribed only to shortlist the candidates to be called for interview which would not amount to changing the rules of game after the game has begun.

[31]. In view of the discussion made above, no indulgence can be shown in favour of petitioners. The action of respondents is thus upheld. The petitions are **dismissed**.

(ASHISH SHROTI)
JUDGE

Vpn/-