

(1) W.A.No.1542/2022 & WA No.1515/2022

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 3rd OF JULY, 2024

WRIT APPEAL No. 1542 of 2022

(HARIKRISHAN MISHRA

Vs

(SANDEEP KUMAR GARG & OTHERS)

Appearance :

(SHRI SANTOSH KUMAR AGARWAL-ADVOCATE FOR
APPELLANT)

(SHRI ARUN DUDAWAT-ADVOCATE FOR THE
RESPONDENTS/STATE)

(SHRI ANAND KUMAR BHARDWAJ-ADVOCATE FOR
RESPONDENT NO.2)

(SHRI ARUN DUDAWAT-ADVOCATE FOR RESPONDENT
NO.1)

&

WRIT APPEAL No. 1515 of 2022

(MANISH DARBARI

Vs

THE STATE OF MADHYA PRADESH AND OTHERS)

Appearance :

(SHRI ANAND KUMAR BHARDWAJ-ADVOCATE FOR
APPELLANT)

(SHRI VIVEK KHEDKAR-ADDITIONAL ADVOCATE
GENERAL FOR RESPONDENTS/STATE)

(SHRI ARUN DUDAWAT-ADVOCATE FOR RESPONDENT
NO.3)

(SHRI SANTOSH AGARWAL-ADVOCATE FOR
RESPONDENT NO.4)

Per : VIVEK RUSIA, J.

ORDER

WA No.1542/2022 & WA No.1515/2022 have been filed under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 by appellant/respondent No.3 & 4 respectively challenging the order dated 17/10/2022 passed by the Writ Court, whereby the Writ Petition No.20356/2018 filed by the respondent/petitioner-Sandeep Kumar Garg has been allowed.

2. As these appeals arise out of the same impugned order, therefore, they are being disposed of by this common order.

3. Facts of the case in short are as under: -

(i) Appellant/respondent No.3&4 & respondent/petitioner Sandeep Kumar Garg are practising advocates and residents of Tehsil - Badarwas, District Shivpuri (M.P.). District and Sessions Judge, Shivpuri issued an advertisement inviting applications from local lawyers for appointment on 2 posts of Notaries lying vacant in Tehsil Badarwas of District Shivpuri (M.P.). Apart from others, appellants/respondent Nos.3 & 4 & respondent/petitioner Sandeep Kumar Garg submitted their applications for Notaries in Badarwas, District Shivpuri (M.P.). After scrutinizing all the applications, the District Judge forwarded the names of the advocates with the report of the Superintendent of Police, vide letter dated 27/10/2017. Vide order 21/08/2018, the appellant/respondent Nos.3&4 was appointed as Notary by the respondent/State. Hence, the writ petitioner-Sandeep Kumar Garg filed the Writ Petition challenging their appointment *inter alia* on the grounds *firstly* that appellant/respondent No.3 & 4 are not the residents of Tehsil Badarwas, District Shivpuri (M.P.), *secondly*, the

District and Sessions Judge, Shivpuri did not make any recommendation of the name of any of the candidates for appointment and *thirdly*, the procedure prescribed under Rules 7 & 8 of the Notaries Rules, 1956 (for brevity, 'the 1956 Rules') has not been followed. Therefore, the impugned order is liable to be set aside.

(ii) After notice, respondent No.2 therein i.e. the Competent Authority/District & Sessions Judge, Shivpuri filed the reply by submitting that 15 new posts of Notaries in District Shivpuri were sanctioned by the State of M.P. *vide* order dated 29/11/2016 and a letter was sent with a request to send the panel of eligible advocates along with police verification report with recommendations of District and Sessions Judge. *Vide* memorandum dated 15/12/2016 respondent No.2 advertised 15 new posts for the Bar Association of district headquarters at Shivpuri and Tehsils Pichhore, Kolaras, Karera, Pohari & Khaniyadana. The advertisement was confined to the advocates practice within the District Shivpuri. All the applications were sent to S.P. District Shivpuri for character verification. After completing the requisite procedure prescribed under Rules 6 & 7 of the 1956 Rules, *vide* letter dated 27/10/2017 respondent No.2 forwarded its recommendations. It is further submitted that holding an enquiry by the District and Sessions Judge as contemplated under Rule 7(1) of the 1956 Rules is only discretionary and not mandatory. It is further submitted that since the District and Sessions Judge did not receive any objection from any of the candidates against any other candidate; therefore, there was no reason to conduct an enquiry. Hence, no interference is called for.

(iii) Respondent No.1/State also filed the return by submitting

that recommendations sent by respondent No.2/Competent Authority were duly considered in all respects and proposed the names to the Minister of the Law and Legislative Affairs Department and thereafter, the appointment orders were issued. Respondent No.4-Manish Darbari also filed the return that he is practicing in a Court at Tehsil Kolaras, District Shivpuri which is evident from various vakalatnama filed along with the reply.

(iv) After hearing learned counsel for parties at length, vide order dated 17/10/2022, the Writ Court has allowed the Writ Petition and quashed the impugned order dated 21/8/2018 (Annexure P/1) with the direction to the respondents to consider the case of all the aspirants who made their applications for appointment on the post of Notary in Tehsil Badarwas, District Shivpuri after taking note of various factors including those mentioned in Rule 7(3) of the 1956 Rules. The Writ Court has held that there has to be a recommendation by the District and Sessions Judge after taking into consideration the factors mentioned in Rule 7(3) of the 1956 Rules and in the present case, the same has not been done. The respondents No.3& 4 are the residents of Tehsil Kolaras, District Shivpuri which has not been considered by respondents No.1&2. Hence, the present Writ Appeals have been filed before this Court by respondent No.3&4.

4. We have heard the learned counsel for the parties at length and perused the record of the case.

5. At the very outset, learned counsel appearing for the writ petitioner submits that these Writ Appeals have been rendered infructuous because the period of Notary for which they were appointed i.e. 5 years has already expired on 19/08/2023. Therefore, now a fresh

advertisement is liable to be issued.

6. Learned counsel for respondents submitted that the order of appointment of Notary dated 21/08/2018 is liable to be renewed for a further period of 5 years as per Rule 8B of the 1956 Rules. If their appointments are upheld by this court then appointments are liable to be extended for a further five years, hence writ appeal still survives.

7. The only issue involved in these Writ appeals is as to whether the procedure prescribed under Rule 7 of the 1956 Rules has been followed by the Competent Authority or not in the appointment of appellant/respondent Nos. 3&4. Appellant/respondent No.3&4 applied for two newly sanctioned posts of Notary in Tehsil Badarwas, District Shivpuri. As per the advertisement, the applications were invited from the local advocates. For these two posts, 16 advocates have submitted their applications. Applications were sent to S.P. Shivpuri for character verification. In Vide letter dated 21/02/2017, S.P. Shivpuri sent a character verification report of all the applicants. Vide letter dated 27/02/2017, the District and Sessions Judge forwarded the name of a panel of advocates with their character verification report to the Principal Secretary, Law and Legislative Affairs Department. In this letter, names of certain advocates were recommended for cancellation of their names due to certain disqualifications and the rest of the names were recommended for the purpose of the interview. However, the State Government did not conduct any interviews and directly sent the order of appointment to the District & Sessions Judge, Shivpuri.

8. As per Rule 7(1) of the 1956 Rules, the Competent Authority shall, after holding such inquiry as he thinks fit and after giving the applicant an opportunity to make his representation against

the objections, if any, received within the time fixed under sub-rule (1) make a report to the appropriate Government recommending that the applicant may be allowed to appear before the Interview Board. Rule 7(3) of the 1956 Rules provides for recommendation under sub-rule (1), that the competent authority shall have due regard to the following matters, namely, whether the applicant ordinarily resides, in the area in which he proposes to practice as a notary.

9. In the present case, no such complaints were received against appellant/respondents No.3 and 4 by writ petitioner or any other candidate; therefore, there was no question for enquiry by competent authority. It is correct that the inquiry is required to be conducted only if any objection is received within the time fixed under Sub-rule (2) of Rule 6. Thereafter, the District and Sessions Judge may send a report to the appropriate Government recommending whether the applicant may be allowed to appear before the Interview Board or not. Therefore, the District and Sessions Judge is required to recommend only for appearance before the Interview Board. Rule 7A of the 1956 Rules provides that if the appropriate Government allows the applicant may be asked to appear before the Interview Board, the Competent Authority shall inform the applicant to appear before the Interview Board. As per the proviso to sub-rule (2), the appropriate Government may dispense with the condition of holding of interviews for which reasons are to be recorded in writing. Therefore, according to the State Government, in this case, the State Government has been exempted from holding of interview. Even otherwise, an interview is liable to be conducted only after the recommendation by the District and Sessions Judge. Rule 8 of the 1956 Rules mandate that on receipt of the

recommendation of the interview board, the appropriate Government shall consider the report and shall allow the application in respect of the whole of the area to which it relates, and the applicant shall be informed of every order passed by the appropriate Government under sub-rule (1). The competent authority recommended the interview but the State Government ought to have constituted the interview board.

10. Learned counsel for respondents No.3 & 4/appellant submits that Rule 3 of the 1956 Rules provides for qualification for appointment as a notary according to which, a person has been practising at least for ten years and in the case of woman, the minimum period is 7 years of practice as a legal practitioner apart from other conditions but there is no such condition that he should be a permanent or ordinary resident of such place; therefore, the condition of resident of particular place is not mandatory.

11. It is correct that under Rule 3 of the 1956 Rules, there is no such qualification that the person should be a resident of a place where the posts are to be filled or advertised. But Rule 7(3) of the 1956 Rules mandates that the competent authority shall give due regard in the matter whether the applicant ordinarily resides in an area in which he proposes to practice as a notary. There is a distinction between permanent residents and ordinary residents. If there is more than one applicant then while recommending the name, a Competent Authority should give due weightage as contemplated in sub-rule (3)(a) of Rule 7 of the 1956 Rules. In the present case, the District & Sessions Judge after character verification sent all the names to the State Government without recommending or preparing the order of recommendation. Under sub-rule (3) of the 1956 Rules, the Competent Authority is

required to recommend under sub-rule (1) only for the appearance of the applicant before the Interview Board and after recommendation, the appropriate Government may ask the applicant to appear before the Interview board. Then on the recommendation of the Interview Board, the appointment is liable to be made under Rule (8) of the 1956 Rules. If there is no recommendation by the Competent Authority for the appearance of the applicant before the Interview Board and the Competent Authority simply sends the names to the appropriate Government for appointment of a notary and sub-rule (4) of Rule 8 of the 1956 Rules, the appropriate Government may allow the application and shall appoint the applicant as a notary. In the present case, the Competent Authority recommended for appearance before the Interview Board and the State Government did not constitute the Interview Board; out of the names sent by the District & Sessions Judge, the appropriate Government has appointed appellant/respondent No.3&4. Thus, the Writ Court has set aside the appointment of appellant/respondent No.3& 4. Even otherwise the original term of 5 years of appointment of the appellants has expired. Application for renewal is liable to be made in six months advance from the date of expiry of the term of 5 years. Hence the state Government is directed to issue a fresh process to fill the vacant post.

12. Accordingly, the impugned order of the writ court is hereby upheld, and both the writ appeals are dismissed.

(VIVEK RUSIA)
JUDGE

(RAJENDRA KUMAR VANI)
JUDGE