

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 7th OF DECEMBER, 2022

WRIT PETITION No. 13312 of 2022

BETWEEN:-

**ANIL SINGH KAURAV S/O SHRI BADAN SINGH, AGED
ABOUT 24 YEARS, OCCUPATION: BA KANCHAPURA
TEHSIL GOHAD (MADHYA PRADESH)**

.....PETITIONER

(BY MRS. SMRATI SHARMA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH PRINCIPAL
SECRETARY VALLABH BHAWAN BHOPAL M.P.
(MADHYA PRADESH)**
- 2. THE DIRECTOR GENERAL OF POLICE, POLICE
HEADQUARTERS JAHANGIRABAD, BHOPAL, M.P.
(MADHYA PRADESH)**
- 3. PROFESSIONAL EXAMINATION BOARD, THR.
REGISTRAR CHAYAN BHAWAN, MAIN ROAD NO.1,
CHINAR PARK (EAST) BHOPAL (MADHYA PRADESH)**
- 4. DISTRICT EMPLOYMENT EXCHANGE, BHIND DIST.
BHIND BHIND (MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI SANJAY SHARMA - ADVOCATE FOR
RESPONDENTS NO.1, 2 AND 4 AND SHRI PRAVEEN
KUMAR NEWASKAR - ADVOCATE FOR THE
RESPONDENT NO.3)***

&

WRIT PETITION No. 14384 of 2022

BETWEEN:-

**ADITYA SINGH TOMAR S/O MUNISHWAR SINGH
TOMAR, AGED ABOUT 30 YEARS, SHIVAJI NAGAR
AANKHO KAMPOO LASHKAR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI RAJNEESH SHARMA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH PRINCIPAL
SECRETARY MANTRALAYA, VALLAB BHAWAN
BHOPAL (M.P.) (MADHYA PRADESH)**
- 2. DIRECTOR GENERAL OF POLICE POLICE
HEADQUARTERS BHOPAL (MADHYA PRADESH)**
- 3. CONTROLLER PROFESSIONAL EXAMINATION
BOARD, BHOPAL MAIN ROAD NO.1, CHINAR PARK,
EAST BHOPAL (MADHYA PRADESH)**
- 4. DISTRICT EMPLOYMENT EXCHANGE GWALIOR
(MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI SANJAY SHARMA - ADVOCATE FOR
RESPONDENTS NO.1, 2 AND 4 AND SHRI PRAVEEN
KUMAR NEWASKAR - ADVOCATE FOR THE
RESPONDENT NO.3)***

*This petition coming on for motion this day, the court passed the
following:*

ORDER

Regard being had to the similitude of controversy, both petitions
are heard analogously and decided by this common order. For

convenience's sake, facts as narrated in Writ Petition No.13312 of 2022 are taken into consideration.

2. Instant petition has been preferred by the petitioner under Article 226 of the Constitution of India taking exception to the action and inaction of respondents whereby respondents have not accepted renewed certificate (Annexure P-3) issued in favour of the petitioner although subsequently. Petitioner has prayed for following reliefs:-

“(i) That the respondents may kindly be directed to accept renewed certificate Annexure P/3 issued in favour of the petitioner by respondent no.4 treating the same to be valid for all purposes, in the interest of justice.

(ii) Cost of the petition be awarded or any other order or direction deemed fit in the circumstances of the case be issued in the favour of the petitioner.”

3. Precisely stated facts of the case are that petitioner is *bonafide* resident of Village Kanchapura, Tahsil, Gohad, District Bhind. In response to advertisement dated 31.12.2022 (Annexure P/1), examination form for the post of Constable (GD) Police was filled up by the petitioner. It appears from the record and submissions, petitioner had registration certificate of Employment Exchange till 01.09.2020. Thereafter, petitioner could not renew his registration certificate because

of COVID-19 pandemic situation. As submitted, office/website of respondent No.4 was not functioning due to COVID-19 pandemic, therefore, he could not renew it and when he got the opportunity in April, 2022 then he got it registered afresh on 04.04.2022.

4. Meanwhile in November-December 2020, advertisement was issued by Professional Examination Board (respondent No.3 herein) for recruitment to the post of Constable (GD) Police. In response thereof, petitioner also submitted his form vide Annexure P-2. When petitioner appeared in Physical Proficiency Test (PPT) in June, 2022, then he was restrained to participate because of lapse of registration certificate with employment exchange at the time of filing the application form. Therefore, this petition was preferred seeking reliefs as referred above in which interim order was passed and petitioner was allowed to participate in the Physical Proficiency Test (PPT) which is held on 25.06.2022 (only in W.P. No.13312 of 2022).

5. It is the submission of learned counsel for the petitioner that initially petitioner got registered with the Employment Exchange and his registration was continued till 01.09.2020. Meanwhile, due to wrath of pandemic COVID-19, all offices and regular working of government offices were disrupted and only essential services were carried out, therefore, despite all efforts, petitioner could not register or renew his registration certificate with the employment exchange. It is the specific submission that offices/website of Exchange were not functioning.

Meanwhile, in response to the advertisement issued by respondent No.3, he filled up the form and intended to participate in the examination. Later on, he got his registration afresh from Employment Exchange on 04.04.2022, certainly before appearing in Physical Proficiency Test (PPT) on 25.06.2022.

6. It is further submitted that condition of Registration Certificate of Employment Exchange so prescribed by the respondent no.3 is based upon executive instructions and it is not backed by any statute *per se*. In absence of any statutory flavour, imposition of such condition is arbitrary and illegal. Even otherwise, petitioner was well within the possession of relevant Registration Certificate at the time of appearance in the examination on 25.06.2022 and it is not the case of respondents that petitioner otherwise bereft of essential qualifications as sought by the respondents.

7. Ms. Smrati Sharma appearing on behalf of petitioner specifically submits that P.P.T. and written examination is conducted and result is yet to be declared.

8. Learned counsel for the petitioner relied upon the judgment in the case of **Kishore K. Pati vs. Distt. Inspector of Schools, 2000 (9) SCC 405, Union of India and Others vs. Pritilata Nanda, 2010 (11) SCC 674 and Ved Prakash Sharma and others vs. State of M.P. and others, 2011 (3) M.P.L.J. 148.**

9. On the other hand, learned counsel for respondent/State opposed

the prayer and submitted that because of the effect of Rule 11 (1) (ii) of the Madhya Pradesh Public Prosecution Class-III (Non-Gazetted) Service Recruitment Rules, 1998, the examination is to be held by the Selection Committee in accordance with order issued by the Government from time to time. Since Government has issued instructions from time to time by incorporating the condition of registration with Employment Exchange, therefore, it is imperative for the candidates to get themselves registered before appearing in the examination. Therefore, counsel prayed for dismissal of the petition.

10. Learned counsel for respondent No.3 (VYAPAM) also opposed the prayer by filing separate reply. He relied upon the circular dated 12.05.2017 (Annexure R-1) and circular dated 04.07.2019 (Annexure R-2) to bring home the submissions that said circulars incorporate such condition of registration with Employment Exchange, therefore, in absence of such registration certificate, any candidate is not entitled to appear in examination. Therefore, learned counsel for respondent No.3 also prayed for dismissal of the petition.

11. Heard the learned counsel for the parties at length and perused the documents appended thereto.

12. This is the case where the petitioner is seeking consideration of his case on the basis of his qualification and performance in the competitive examination.

13. In the present case respondent No.3 (VYAPAM) has conducted

recruitment drive for recruitment to the post of Constable (GD) Police. According to the learned counsel for the respondents, as per the Madhya Pradesh Public Prosecution Class-III (Non-Gazetted) Service Recruitment Rules, 1998, the condition of registration with the employment exchange is mandatory. But on close scrutiny, it appears that condition of registration with employment exchange appears to be directory and more of procedural than of any substance.

14. Prescription of qualifications is the domain of statutory rules governing the appointment and other service conditions of that particular cadre and unless relevant rules prescribe any such qualification in specific terms and in mandatory manner, only on the basis of circular or by way of executive instructions, such incorporation apparently cannot be made in the instant factual set up, specially in view of mandate of Hon'ble Supreme Court issued for time to time. In the case of **Kishore K. Pati (Supra)**, this aspect of sponsorship by Employment Exchange and resultant effect of non-issuance of sponsorship was considered and it was held that the said condition cannot be imposed as precondition for appointment of a government employee.

15. In the case of **Pritilata Nanda (Supra)**, Apex Court had the occasion to discuss the issue in following manner:

16. In our opinion, there is no merit in the arguments of the learned Additional Solicitor General. In the first place, we consider it necessary to observe that the condition embodied in

the advertisement that the candidate should get his/her name sponsored by any special employment exchange or any ordinary employment exchange cannot be equated with a mandatory provision incorporated in a statute, the violation of which may visit the concerned person with penal consequence.

17. The requirement of notifying the vacancies to the employment exchange is embodied in the [Employment Exchanges \(Compulsory Notification of Vacancies\) Act, 1959](#) (for short, 'the 1959 Act'), but there is nothing in the Act which obligates the employer to appoint only those who are sponsored by the employment exchange. [Section 4](#) of the 1959 Act, which provides for notification of vacancies to employment exchanges reads as under:

- "4(1) After the commencement of this Act in any State or area thereof, the employer in every establishment in public sector in that State or area shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed.
- (2) The appropriate government may, by notification in the Official Gazette, require that from such date as may be specified in the notification, the employer in every

establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed, and the employer shall thereupon comply with such requisition.

- (3) The manner in which the vacancies referred to in sub-section (1) or sub-section (2) shall be notified of the employment exchanges and the particulars of employments in which such vacancies have occurred or are about to occur shall be such as may be prescribed.
- (4) Nothing in sub-sections (1) and (2) shall be deemed to impose any obligation upon any employer to recruit any person through the employment exchanges to fill any vacancy merely because that vacancy has been notified under any of those sub- sections."

18. A reading of the plain language of [Section 4](#) makes it clear that even though the employer is required to notify the

vacancies to the employment exchanges, it is not obliged to recruit only those who are sponsored by the employment exchanges. [In Union of India v. N. Hargopal](#) (1987) 3 SCC 308, this Court examined the scheme of the 1959 Act and observed:

"4.It is evident that there is no provision in the Act which obliges an employer to make appointments through the agency of the Employment Exchanges. Far from it, [Section 4\(4\)](#) of the Act, on the other hand, makes it explicitly clear that the employer is under no obligation to recruit any person through the Employment Exchanges to fill in a vacancy merely because that vacancy has been notified under [Section 4\(1\)](#) or [Section 4\(2\)](#). In the face of [Section 4\(4\)](#), we consider it utterly futile for the learned Additional Solicitor General to argue that the Act imposes any obligation on the employers apart from notifying the vacancies to the Employment Exchanges."

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6."It is, therefore, clear that the object of the Act is not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most

efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. We are, therefore, firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchanges."

19. In K.B.N. Visweshwara Rao's case, a three-Judge Bench of this Court considered a similar question, referred to an earlier judgment in [Union of India v. N. Hargopa](#)(supra) and observed:

"6.It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/ establishment to intimate

the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

By applying the ratio of the above noted judgments to the case in hand, we hold that the concerned authorities of the South Eastern Railway committed grave illegality by denying appointment to the respondent only on the ground that she did not get her name sponsored by an employment exchange.

20. The issue deserves to be considered from another angle. It was neither the pleaded case of the appellants before the Tribunal and the High Court nor any evidence was produced

by them to prove that notification/advertisement dated 31.1.1987 was sent to all the employment exchanges including the special employment exchanges in the State of Orissa. Before this Court also, no document has been produced to show that the advertisement was circulated to the employment exchanges in the State. In this backdrop, it is not possible to approve the stance of the appellants that the respondent was not appointed because she did not get her candidature sponsored by an employment exchange.

16. This Court in the case of **Ved Prakash Sharma (Supra)** considered the non-availability of the registration certificate with Employment Exchange in respect of selection on the basis of Patwari and found that eligible candidate cannot be held ineligible only for the reason of non-availability of sponsorship certificate/registration certificate from Employment Exchange.

17. Recently in the case of **Mohit Soni and others Vs. State of Madhya Pradesh and another (W.P. No.12770 of 2019)**, this Court considered the identical issue in similar facts and circumstances of the case and allowed the writ petition filed by the petitioner and found him to be eligible for appointment if he is otherwise eligible for the post. Said order received the stamp of approval from learned Division Bench of this Court when State government went into Writ Appeal. Vide order dated 01.08.2022 passed in Writ Appeal No.430 of 2022, the writ appeal

preferred by the State government was dismissed. The said dismissal was based upon judgment passed by the Hon'ble Apex Court in the case of **Pritilata Nanda (Supra)**. Here, facts of the case are similar, therefore, this court intends to tread over the same path.

18. Petitioner has tried to demonstrate through GOP dated 30.07.2012 vide No.137/2012 issued under Section 12 of the Police Act, 1868, prior permission of State Government vide letter dated 27.07.2012 was taken. In the said GOP under Clause 2(1) सामान्य it has been referred that prior to 90 days of deposit of application form, Live Registration in any of the Employment Exchanges of State is required, but this aspect pales into oblivion in view of the discussion made above. Even otherwise, this qualification is not mandatory. It falls under General Conditions, not under Special or Mandatory one.

19. Sponsorship from employment exchange appears to be a phenomena of closed economy and limited competition whereby candidates were appointed through sponsorship by the Employment Exchange without appearing in competitive examination. Now in the era of open and competitive examinations said concept has little meaning. Apparently this was mechanism which is meant for providing employment opportunities especially at Class- IV / Class -III level and opportunity to the sons of the soil or local candidates. Here, both the petitioners appear to be *bonafide* resident of Madhya Pradesh (Gwalior region) therefore, this aspect may not come into way of prospects of petitioner if they

stand successful in the examination.

20. Here, in the present sets of facts, one more aspect deserves consideration is the onslaught of COVID -19 pandemic and the situation arose out of it. COVID-19 pandemic was once in a century phenomena and it virtually disrupted the proceedings to a great extent and all procedural work of the government came to a grinding halt. In such peculiar circumstances, when even Hon'ble Supreme Court has taken a lenient view in respect of application for Limitation Act in different legal proceedings which is otherwise to be reckoned and construed strictly, then other procedural shortcomings (if they do not touch the core of the qualifications) can be dispensed with. On this ground also, petitioner has a good case on merits.

21. Respondents cannot restrict the prospect of candidate who is otherwise successful and bearing essential qualifications to move forward. Respondents are directed not to insist upon the qualification of sponsorship of registration certificate with Employment Exchange. They shall test the suitability of both the petitioners just like any other candidate on the parameters so fixed for recruitment of Constable (GD) Police. Both the petitioners shall be entitled to appear in the fray if they are otherwise eligible for the same.

22. As per the submissions, result has not been declared yet, therefore, case of the petitioners deserve consideration on the basis of their performance in the examination and then result can be declared with

other candidates in accordance with time schedule. Since both the petitioners have filed the petitions before the Physical Proficiency Test (PPT). Exam is held on 25.06.2022, therefore, they are entitled for the relief.

23. Petition stands **allowed and disposed** of in above terms.

(ANAND PATHAK)
JUDGE

Rashid