

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

**HON'BLE SHRI JUSTICE ANAND PATHAK
&
HON'BLE SHRI JUSTICE ANIL VERMA**

WRIT APPEAL NO. 279 of 2026

**DR. GULAB SINGH JATAV
Vs.**

STATE OF MADHYA PRADESH & ORS.

APPEARANCE:

Shri L.C. Patne -Advocate (through video conferencing) and Shri Prateek Kulshreshtha – Advocate for the appellant.

Shri Vivek Khedkar – Senior Advocate with Shri Sohit Mishra – Government Advocate for the respondents/State.

JUDGMENT
{Delivered on 18th the Day of February, 2026}

Per: Justice Anand Pathak

1. The present appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 is preferred by the appellant/petitioner being crestfallen by the order dated 10-12-2025 passed by learned Single Judge in Writ Petition No.23740 of 2022 whereby the writ petition filed by appellant (hereinafter referred to as “the petitioner”) has been dismissed.
2. Precisely stated facts of the case are that in response to a special drive initiated by Higher Education Department, Government of Madhya Pradesh for filling up backlog posts of Assistant Professor,

applications were invited vide advertisement dated 10-07-2003 (Annexure P/2 of writ petition) and appellant/petitioner appeared in the examination. Clause 7 of the Advertisement provided that candidates are required to ensure that they possess necessary educational qualification. As per relevant rules, educational qualification was at the relevant point of time passing of National Eligibility Test (NET) or Madhya Pradesh State Level Eligibility Test (SLET) or Ph.D. holder.

3. However, a corrigendum to the advertisement was issued on 02-10-2003 (Annexure P/3) prescribing the necessary educational qualification for appointment on the post stipulating NET/SLET/Ph.D. holder. However, it was stipulated that the candidate who was not having such qualification as referred above then their appointments would be subject to acquisition of qualification within two years otherwise their appointments had to be terminated. It was further stipulated that this special relaxation was given by General Administration Department (GAD) only as one time relaxation.
4. Petitioner successfully participated in the recruitment process and was appointed on the post of Assistant Professor vide order dated 14-06-2004 (Annexure P/7). He submitted his joining on 12-07-2004. Subsequently, appointment order was amended vide order dated 27-12-2004 by incorporating the condition of acquisition of NET/SLET/Ph.D. within two years. In other words, petitioner had to acquire the qualification till end of year 2006 at best as latest period for acquisition of qualification.
5. It further appears that Higher Education Department vide order dated 09-06-2006 extended the time to acquire qualification by two

years. However, it was clear that petitioner's appointment on the post of Assistant Professor was on probation for a period of two years and during the period of two years, he was required to obtain qualification of NET/SLET/Ph.D. This process continued and later on, vide order dated 27-09-2017 (Annexure P/12), said period was extended upto year 2017.

6. During this period, petitioner did not acquire qualification of NET/SLET/Ph.D. and ultimately awarded Ph.D. vide **notification dated 24-07-2017**. Accordingly, vide order dated 28-01-2019 (Annexure P/1) petitioner got confirmation in service w.e.f. 28-04-2017 that is the day after he acquired qualification. This is the bone of contention.
7. Petitioner preferred writ petition but suffered. Therefore, petitioner is before this Court. Grievance of petitioner is that his appointment was on probation for a period of two years, therefore, he ought to have been confirmed in service on completion of two years i.e. on 14-06-2006. Therefore, according to him, acquisition of Ph.D. qualification was not condition precedent for his confirmation in service.
8. According to him, condition for acquiring Ph.D. qualification was not incorporated in his order of appointment but it is subsequently incorporated vide order dated 27-12-2004. Therefore, it is not binding on him. Once petitioner is appointed against the post, he is entitled to draw increments.
9. It is the grievance of petitioner that because of delay in confirmation of service, petitioner is deprived from the benefit of increments as well as seniority for very long period of time. Petitioner refers rule 12(1) (f) of M.P. Civil Services (General Conditions of Services)

Rules, 1961 (hereinafter referred to as “the Rules of 1961”), Fundamental Rule 22-C & 24 and Rule 8 of Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1990 to bring home the analogy that he is entitled to get seniority as well as increments after completion of two years of his probation. He tried to distinguish Full Bench judgment of this Court in the case of **Manoj Kumar Purohit Vs. State of M.P. & others 2016 (1) MPLJ 449**. He placed reliance over the judgment passed in the case of **Arun Parmar Vs. State of M.P. and others, 2021(2) MPLJ 500** whereby rule 12 of Rules of 1961 is interpreted. He also relied upon the Apex Court's judgments in the case of **Dr. G. Sadasivan Nair Vs. Cochin University of Science and Technology and others, (2022) 4 SCC 404**, **S. Sumanyan and others Vs. Limi Niri and others, (2010) 6 SCC 791** and **G.P. Doval and others Vs. Chief Secretary, Government of U.P. and others, (1984) 4 SCC 329**.

10. *Per contra*, learned counsel for the respondents opposed the prayer and submits that as per the terms of appointment, petitioner was required to acquire qualification within a period of two years. In fact petitioner was liable for removal because of condition precedent that if desired qualification is not acquired then petitioner could have been removed from the job because his appointment was dependent on the qualification. He was required to attain the qualification within two years. He supported the impugned order and prayed for dismissal of this appeal.
11. Heard learned counsel for the parties and perused the documents appended thereto.
12. This is a case where petitioner preferred the writ petition seeking following reliefs:

“1. That, the order impugned dated 28.01.2019 contained in Annexure — P/I confirming the services w.e.f. 29.4.2017 may kindly be quashed with a further direction to the respondents to correct the date of confirmation w.e.f. 9.7.2006 as the petitioner has completed two years probation period and the same be corrected within stipulated time period with a further direction to the respondents to extend all the consequential benefits to the petitioner including periodical increments etc. with a further to pay difference of arrears of salary alongwith interest @18% p.a., in the interest of justice.

2. That, any other relief which is suitable in the facts and circumstances of the case in favour of the petitioner including the costs throughout may be granted.”

13. From the relief it appears that primarily petition was against denial of confirmation and increments after completion of two years' probation period because he was confirmed w.e.f. 28-04-2017. According to him, he deserved to be confirmed in 2006 itself.
14. Main contention of petitioner is that he will lose seniority as similarly situated employees have been confirmed after completion of two years. So far as entitlement of petitioner is concerned; from the documents it is clear that appointment of petitioner was contingent to the acquisition of qualification. Lest termination was the only way out. In other words, if qualification would not have been acquired by the petitioner then as per terms of appointment he was required to be removed.

15. So far as condition of appointment is concerned, condition of acquisition of qualification was provided in the advertisement itself and thereafter appointment order also incorporated such condition. Therefore, it is not a case where no such prescription of qualification was provided. Petitioner accepted the advertisement to enter into fray and remained successful. Petitioner even accepted appointment order (and subsequent modification also) and rightly so.
16. After appointment it was the duty of the petitioner to have acquired necessary qualification but petitioner took 13 long years to attain such qualification whereas his job was to impart teaching (education) to the students. Therefore, a person who was to be removed, got continued in the employment because of extension of period for acquisition of qualification from time to time. Therefore, petitioner cannot be permitted to receive premium for his own failure. He was expected to attain qualification within two years but failed.
17. Full Bench of this Court in the the case of **Manoj Kumar Purohit (supra)** has formulated questions in similar facts and circumstances of the case. Questions framed in para 2 of the said judgment were as under:

“(A) Whether an employee is entitled to increment from the initial date of appointment or only from the date of passing of Hindi Typing Test, because of such condition specified in his letter of appointment? Further, is it open to the Appointing Authority to provide such a condition in the letter of appointment?

- (a) When the Recruitment Rules expressly prescribe condition of passing Hindi Typing Test?
- (b) When the Recruitment Rules are silent but the letter of appointment contains such stipulation about passing of Hindi Typing Test?
- (c) When the Recruitment Rules provide that preference would be given to candidates who have passed Hindi Typing Test and the letter of appointment contains such stipulation?
- (d) When the appointment is made under the Policy of Compassionate Appointment or Regularization specifying passing of Hindi Typing Test as essential and also the letter of appointment provides for that condition for entitlement of increment.

(B) When the appointment is made under the Policy of either Compassionate Appointment or Regularization and the Policy expressly provides that passing of Hindi Typing Test is essential, absence of such condition in the letter of appointment would make any difference.

(C) Whether decisions in the cases of *State of M.P. v. Onkarlal, 2011 (3) MPLJ 404* and *State of M.P. vs. Ku.Ramani Bai Bhagat, 2013 (1) MPHT 96* lay down correct proposition of law?"

18. After due discussion, the Full Bench held in para 11 of **Manoj Kumar Purohit (supra)** in the following manner:

"(a) Question No.(A)(a):

Indisputably, when the Recruitment Rules stipulate that the candidate in order to be eligible for appointment to the post

of Lower Division Clerk, should have passed Hindi Typing Test, then the appointee would be entitled to the grant of benefit of increment only after passing the Hindi Typing Test. In such cases, the initial appointment itself will be a conditional appointment.

(b) Questions No.(A)(b) and (c):

We may now examine another situation, namely, whether in the absence of any prescription in the Rules with regard to Hindi Typing Test or where such Rules provide for preference to the candidates who have passed Hindi Typing Test, is it permissible for the State to prescribe such a qualification in the letter of appointment as per the qualification prescribed in the public notice inviting application?

The expression “conditions of service” means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond retirement in the matters like pension. [See: I.N.Subba Reddy v. Andhra University, AIR 1976 SC 2049 and Lilliy Kurian vs. Sr. Lewine, AIR 1979 SC 52]. Thus, passing of Hindi Typing Test after joining the service becomes a condition of service, be it for regularisation or grant of increment. It is well established that a new service condition may be brought into effect by an executive instructions and such condition would remain in force as long as it is not repealed either expressly or by necessary implication by another executive order or a Rule made under proviso to Article 309 of the Constitution or by

a statute. A specific stipulation of passing the Hindi Typing Test can always be prescribed in the absence of any specific bar in the Rules. [See: Sitaram Jivyabhai Gavali vs. Ramjibhai Potiyabhai Mahala and others, AIR 1987 SC 1293]. Similar view has been taken by the Supreme Court in the case of Punjab National Bank and another vs. Astamija Dash, (2008) 14 SCC 370. The Supreme Court in the case of State of Rajasthan and others vs. Rajendra K. Verma, (2004) 13 SCC 706 has held that an employee would be entitled for regularization of his services from the date when he passes the test as stipulated in the order of State Government. Therefore, in cases where the Rules are silent about passing of Hindi Typing Test or provide that preference will be given to candidate who passed Hindi Typing Test but the letter of appointment contains such a stipulation, then the employee would be entitled to increment only after passing Hindi Typing Test and not from the initial date of appointment.”

19. So far as FR 24 (regarding increment) and FR 9 (substantive pay) are concerned, they are explained in para 17 of the judgment of **Manoj Kumar Purohit (supra)** as under:

“17. Even if contention of the petitioners that provisions of Fundamental Rules apply to their cases, is accepted, even then, same is of no assistance to the petitioners as under Fundamental Rule 24, an increment shall ordinarily be drawn as a matter of course unless it is withheld. Fundamental rule 24 reads as under:-

“F.R.24. An increment shall ordinarily be drawn as a

matter of course unless it is withheld.”

The expression “ordinarily” used in Fundamental Rule 24 intrinsically recognizes, that there can be deviation which can be justified by reasons. The expression ‘ordinarily’ does not promote a cast iron rule, and it is flexible and is never used in a case where there are no exceptions. The exceptions implied by expression need not be limited to those specially provided for by law. [See: Union of India vs. Majji Jangamayya (1997) 1 SCC 607 and Mohan Baitha vs. State of Bihar (2001) 4 SCC 350]. Thus, even under Fundamental Rule 24 itself an increment can be withheld, by imposing a condition with regard to entitlement of the same, by an executive order in the absence of any express prohibition in the Rules. Similarly, the contention of the petitioners that Rules cannot be amended by an order issued by the State Government also does not deserve acceptance as the issue involved in this case is not of amendment of Rules by an executive order.

In this regard reference may be made to Fundamental Rules 9(28) and 9(31)(a) , which read as under:-

“9(28). “Substantive pay” means the pay inclusive of special pay sanctioned in lieu of higher time-scale of pay, other than special pay, personal pay or emoluments classed as pay under Rule 9(21)(a)(iii) to which a Government servant is entitled on account of a post to which he has been appointed substantively or by reason of his substantive position in a cadre.

9(31)(a). “Time-scale pay” means which, subject to any

condition prescribed in these rules, rises by periodical increments from a minimum to a maximum. It includes the class of pay hitherto known as progressive.”

A conjoint reading of Fundamental Rule 9(31)(a) and Fundamental Rule 9(28) would make it clear that mere appointment in time scale of pay does not entail an automatic rise in pay necessarily adding periodical increment unless a person becomes entitled to draw substantive pay. The non-compliance of condition of passing Hindi Tying Test makes the appointment temporary and not substantive. Therefore, such temporary employee is not entitled to draw increment as per Fundamental Rule 22(b). Thus, the contention that benefit of increment cannot be denied to an employee who is appointed on time scale of pay also cannot be accepted.”

20. Not only this, learned Writ Court after considering the judgment of Apex Court in the case of **M.P. Chandoria Vs. State of M.P. and others, (1996) 11 SCC 173** interpreted rule 8 and 12 of the Rules of 1961. Rule 8 provides for Probation and rule 12 provides for Seniority and rule 8 itself stipulates that a Probationer has to pass such Departmental Examination as prescribed. While interpreting rule 8, the Apex Court in the case **M.P. Chandoria (supra)** held as under:

“4.Rule 8 prescribes probation. Rule 8 (1) envisages that a person appointed to a service or post by direct recruitment shall ordinarily be placed on probation for such period as may be prescribed. The appointing authority may, for sufficient reasons, extend the period of

probation by a further period not exceeding one year. The probationer has to undergo such training and pass such departmental examination during the period of his probation as may be prescribed. Sub-rules (4) and (5) are not relevant and are omitted. Sub-rule (6) of Rule 8 is relevant for the purpose of the case which envisages that on successful completion of probation and passing the prescribed departmental examination, if any, the probationer shall, if there is a permanent post available, be confirmed in the service or post to which he has been appointed. Otherwise a certificate shall be issued in his favour by the appointing authority to the effect that the probationer would have been confirmed but for the non-availability of the permanent post. As soon as a permanent post becomes available, he will be confirmed. Under sub-rule (7), a probationer, who has neither been confirmed nor a certificate issued in his favour under sub-rule (6), nor is he discharged from service under sub-rule (4), he shall be deemed to have been appointed as a temporary Government service w.e.f. the date of expiry of probation and his conditions of service shall be governed by the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960.”

21. So far as Seniority is concerned, petitioner nowhere sought the relief of Seniority in specific term. He sought increment from the date of completion of probationary period of two years (since 2006) treating completion of probation as automatic.
22. Cleverly appellant/petitioner tried to incorporate question of

Seniority at appellate stage but even if issue is seen from this vantage point, even then it is clear that when petitioner was confirmed w.e.f. 28-04-2017 and was held to be entitled for increments after acquisition of qualification then his seniority may also be computed accordingly.

23. So far as other candidates are concerned, petitioner is seeking negative parity and that aspect has already been taken care of by learned Writ Court, directing the respondents to ensure that all other candidates are getting increments and benefits after acquisition of qualification only, not before that. Since it was a special drive for filling up Backlog vacancies, therefore, the Relaxation was given but it cannot be construed as mechanism to *dehors* the law settled by Full Bench of this Court in the case of **Manoj Kumar Purohit (supra)**. All Assistant Professors etc. would only be entitled to get benefit of completion of Probation and grant of increments after the date of acquisition of qualification and not before. If any anomaly and aberration exists, then it does not entitle the petitioner to claim benefit on the basis of discrimination. Respondents shall have to take care in this regard and ensure that no Assistant Professor gets undue benefit from an early date. They all will get benefit from date of acquisition of qualification.
24. In cumulative analysis, no case for interference is made out. Learned Writ Court in its judgment from para 10 to 19 has rightly analyzed the facts situation and decided accordingly, hence affirmed. Respondents are already directed to take care of the employees who are granted undue benefits. Therefore, no grievance of petitioner left to be adjudicated.
25. Appeal sans merits and is hereby **dismissed**.

26. Copy be sent to Principal Secretary, Higher Education & Commissioner, Higher Education, Govt. of Madhya Pradesh for information/compliance.

Anil*

(ANAND PATHAK)
JUDGE

(ANIL VERMA)
JUDGE