

**HIGH COURT OF MADHYA PRADESH: BENCH AT
INDORE**

(Division Bench)

Writ Appeal No. 345/2018

State of Madhya Pradesh Appellant

- V/s -

Dr. Divya Darshan Sharma and others Respondents

Present:

Mr. Pushyamitra Bhargava, Advocate for the appellant.

Shri Vivek Saran, Advocate for the respondents.

Writ Appeal No. 246/2018

M.P. Public Service Commission Appellant

- V/s -

Dr. Divya Darshan Sharma and others Respondents

Present:

Mr. V.P. Khare, Advocate for the appellant.

Shri Vivek Saran, Advocate for the respondents.

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice

Hon'ble Shri Justice S.K. Awasthi, Judge

Whether Approved for Reporting : Yes

Law Laid Down:

- In absence of any definition being provided in the Statute or any statutory rule or instructions supplementing the Khel Sansthaon

Evam Khiladiyon Ko Arthik Sahayata, Khel Vritti, Sammannidhi Niyam, 2006 as to what is “representation in the National games or recognized Senior National championship”, the meaning has to be assigned what is understood by a common citizen.

- The participation in the Zonal or the Inter-university competitions cannot be treated to be a representation in the National level games or the recognized senior national championship.
- The decision of the experts in respect of eligibility of the candidate cannot be interfered with by the High Court in the absence of any allegation of *mala fide*.

Significant Paragraph Nos.: 11 to 21

Order Reserved on: 22.03.2018

ORDER

(Passed on this 23rd day of March, 2018)

Per : Hemant Gupta, Chief Justice:

This order shall decide Writ Appeal No.345/2018 filed by the State and Writ Appeal No.246/2018 filed by the Madhya Pradesh Public Service Commission against the judgment dated 16th February, 2018 whereby the writ petition filed by the respondents was allowed relying upon the Circular dated 20.11.2006 issued by the State Government that the writ petitioners have the eligibility qualification of participation in the "National Games" for the post of District Sports Officer as the writ petitioners have participated in the "Inter University Competitions".

2. The brief facts leading to the present appeals are that an advertisement was issued for filling up of 25 posts of District Sports

Officer on 7th February, 2017. The essential qualifications for appointment of the post are Graduate with MP.Ed./M.P.E. and participation in National Games or in recognized Senior National Championship. The writ petitioners were amongst the 77 candidates who were found eligible for interview but vide communication dated 18.08.2017, the candidature of 47 candidates were rejected for the reason that such candidates do not possess the advertised condition of participation in National Games or recognized Senior National Championship. It is the said order which was challenged successfully by the writ petitioners before the learned Single Bench.

3. The argument of the petitioners is that the petitioners have participated in Inter University Competition, therefore, such Inter University Competitions are to be treated as participation at the National Level and thus, petitioners are eligible for appointment to the posts advertised. The learned Single Bench examined the questions formulated which reads as under:-

“07- The basic controversy involved in the present case is that whether Inter University Competition can be treated as recognized Senior National Level Championship / National Games or not. The State Government way back in the year 2006 has clarified the aforesaid issue and has issued executive instructions as some confusion was created by the recruiting agency and as per the clarification issued by the State of Madhya Pradesh, representation in National Games or Recognized Senior National Level Championship includes participation in Inter University Competition. Undisputedly, all the petitioners have participated in Inter University Competition organized by various Universities recognized by University Grant Commission.”

4. The learned Single Bench has relied upon the Circular issued by Directorate, Sports and Youth Welfare, Madhya Pradesh, Bhopal on 20.11.2006 whereby in respect of appointment of "Sports Instructor" on contract basis, it was communicated that recognized National Level means participation in the National Games; Senior National Championship and All India Inter University Competitions. It is relying upon the said Circular, it was held that the writ petitioners have the requisite qualifications and, therefore, a direction was issued to declare the result of the writ petitioners within 10 days and to issue consequential appointment orders within thirty days. The relevant extract reads as under:-

“14- The circular issued by the State Government dated 20/11/2016 (sic 2006) reads as under:-

xx

xx

xx

In light of the clarification the petitioners are certainly having requisite qualification and the denial to participate in the process of selection on the part of the Madhya Pradesh Public Service Commission was contrary to the statutory provisions as contained under the Recruitment Rules.”

“17- Therefore, in the considered opinion of this Court, the petitioners do have the qualifications for the post in question and as they have participated in the process of selection on account of the interim order passed by this Court, the Madhya Pradesh Public Service Commission is directed to declare the result of the petitioners and in case the name of petitioners find place in the merit list, the consequential appointment orders be issued in respect of the petitioners by the State Government.”

5. Learned counsel for the State pointed out that the decision to reject the candidature of the writ petitioners is an opinion of experts, therefore, this Court will not act as a court of appeal to hold that the writ petitioners were eligible for appointment as a District Sports Officer. The

opinion of the experts in the matters of eligibility has to be respected. In the absence of any allegation of *mala fide*, the decision of the authorities in rejecting the candidature of the writ petitioners could not be interfered with. It is also pointed out that the Sports and Youth Welfare Department has framed the Rules called the Khel Sansthaon Evam Khiladiyon Ko Arthik Sahayata, Khel Vritti, Sammannidhi Niyam, 2006. Such Rules are framed to grant rewards and financial benefits to certain category of players. As Rule 2.3 that recognized National/State Level Competitions means the tournaments conducted by the Federations and Organizations. Therefore, said Rules provide reasonable criteria for interpreting the provisions of the advertisement which is in terms of statutory rules and to supplement such Rules.

6. The Madhya Pradesh (Sports and Youth Welfare Gazetted) Service Recruitment Rules, 1988 have been framed in terms of proviso to Article 309 of the Constitution of India. The Schedule-III in terms of Rule 8 of the said Rules, as amended on 28.01.2012, reads as under:-

“SCHEDULE-III

(See Rule-8)

S.N.	Name of Department	Name of Service	Minimum age limit	Upper age limit	Education/ Qualification prescribed
1	2	3	4	5	6
	Sports and Youth Welfare	1. Sports Officer	21	35	Graduate with M.P. Ed./M.P.E. and Representation in National Games or recognized Senior National Championship.”
		2. Youth Welfare Officer			
		3. District Sports & Youth Welfare Officer			
		4. Assistant Director			

7. It is thus contended that the Circular relied upon by the learned Single Bench was issued prior to the statutory Rules framed, therefore,

such Circular is not relevant for the purposes of the National Level Competitions. Still further, it is submitted that such Circular was issued only for the purposes of Sports Instructors to be appointed on contract basis. Such Circular is not of general application which can be used as a guidelines supplementing the statutory Rules framed, but, was issued for a specific purpose, therefore, such instructions have no universal application in respect of appointments controlled and regulated by the statutory Rules.

8. Learned counsel for the appellants relied upon the Supreme Court judgment reported as **AIR 2015 SC 3643 (Madras Institute of Development Studies & another v. Dr. K. Sivasubramaniyan and others)** to contend that decision of Academic Authorities about suitability of a candidate should not be normally examined by the High Court in its writ jurisdiction. It is also argued that a person who consciously takes part in the process of selection cannot turn around and question method of selection.

9. On the other hand, learned counsel for the writ petitioners relied upon the Supreme Court judgment reported as **(2014) 14 SCC 50 (Renu and others v. District and Sessions Judges, Tis Hazari Courts, Delhi and another)** to contend that an advertisement for the purposes of recruitment should be clear in respect of qualification and another eligibility criteria so that the candidates are aware of the requirements for the posts. The learned counsel for the writ petitioners also relied upon a Division Bench judgment of Rajasthan High Court in **D.B. Special Appeal (Writ) No.642/2016 (Dashrath Lal Meena vs. Ganesh Narayan Mali**

and others) decided on 25.11.2016 whereby, the question as to what is meant by National Level Tournament is explained.

10. We have heard learned counsel for the parties and find that the order of the learned Single Bench cannot be sustained in law.

11. The argument that the writ petitioners are estopped to challenge the selection process is not tenable. The writ petitioners are not challenging any of the eligibility qualifications advertised in the advertisement dated 07.02.2017. The challenge is as to whether the decision of the respondents that the writ petitioners have not participated in National Level Tournament is sustainable in law. The doctrine of estoppel will not be applicable to examine such question as the question of eligibility is required to be determined in terms of the conditions of the advertisement itself. Therefore, the principle of estoppel will not bar the writ petitioners to challenge their disqualification for the reason that petitioners are not participant in the National Level Tournaments.

12. The learned Single Bench relied upon the note appended to the Circular dated 20.11.2006, but, such Circular is limited to appointment of Sports Instructors on contract basis on a fixed monthly salary. After the said Circular was issued, the statutory Rules have been amended prescribing the representation in the National Level Games or recognized Senior National Championship has been introduced.

13. Admittedly, what are the National Games or recognized Senior National Championship, has not been defined under the statutory Rules nor

any other instructions have been issued supplementing the Statutory Rules. Though the learned counsel for the State has relied upon 2006 Rules notified on 28.10.2006, but, such Rules have a limited application for providing financial help, stipend and honorarium to certain category of Sports person. Though, in the absence of any other definition, such Rules may provide reasonable yardstick, but, we find it difficult that the State can rely upon such Rules in the absence of any clause in the advertisement that representation in the National Level Games etc. shall be determined in terms of such Rules. Therefore, we do not find any merit in the argument raised by the learned counsel for the State that 2006 Rules are anyway relevant to determine the question raised.

14. However, the fact remains that the writ petitioners have participated in the Inter University Competitions or the Zonal Inter University Competition or the West Zone Inter University Competitions. The Inter University Competitions are not the National Level Games at the National Level. Some of the certificates like Annexure P-6 produced by the writ petitioners show that petitioner – Divya Darshan Sharma has participated in West Zone University Competition whereas petitioner - Upendra Pandey has participated in Inter Zone University Competition. One certificate of petitioner - Upendra Pandey does show that he participated in All India Inter University Competition. Similarly, petitioner-Kunwarraj has also produced certificate which shows that he has participated in All India Inter University Competition.

15. The participation in the Zonal or the Inter University Competition cannot be treated to be a representation in the National Level Games or the recognized Senior National Championship. The All India Inter University Championship is open to only University students, therefore, it cannot be treated to be a National Games or recognized Senior National Championship. A candidate qualified in Inter University Competition may further participate in National Games but mere participation in Inter University Competition will not make his representation in the National Games.

16. Still further, as to whether a candidate satisfies the eligibility criteria is for the experts to decide. In **Dr. K. Sivasubramaniyan's case** (supra), the Court held as under:-

“18. The contention of the respondent No.1 that the short-listing of the candidates was done by few professors bypassing the Director and the Chairman does not appear to be correct. From perusal of the documents available on record it appears that short-listing of the candidates was done by the Director in consultation with the Chairman and also senior Professors. Further it appears that the Committee constituted for the purpose of selection consists of eminent Scientists, Professor of Economic Studies and Planning and other members. The integrity of these members of the Committee has not been doubted by the respondent-writ petitioner. It is well settled that the decision of the Academic Authorities about the suitability of a candidate to be appointed as Associate Professor in a research institute cannot normally be examined by the High Court under its writ jurisdiction. Having regard to the fact that the candidates so selected possessed all requisite qualifications and experience and, therefore, their appointment cannot be questioned on the ground of lack of qualification and experience. The High Court ought not to have interfered with the decision of the Institute in appointing respondent Nos.2 to 4 on the post of

Associate Professor.”

17. A Division Bench of this Court in **W.A. No.223/2017 (Shani Kumar Bhatt vs. The State of M.P. and another)** decided on 06.12.2017

held as under:-

“19. Bachelor’s Engineering degree in Information Technology is not qualification of Computer. Both are separate degree and courses are also different and the degree is also given separately. Notification/advertisement published by the MPPSC, U.P. for the post of Assistant Conservator of Forest Examination, 2013 cannot be applicable in the State of Madhya Pradesh because publication of notification for the post of Assistant Conservator of Forest Examination 2013 by the PSC in U.P. is based as per their rules for the post in question.

20. Learned Senior Counsel for the appellant has also placed on the decision of the Apex Court in the case of **Mohd. Sohrab Khan vs. Aligarh Muslim University & others** reported in **2009(4) SCC 555**.

21. It is well settled that in the field of education, a Court of law cannot act as an expert. Normally, therefore, whether or not a candidate possesses requisite qualifications, should better be left to the expert committee. Learned Writ Court in our opinion has therefore, rightly dismissed the writ petition.”

18. Some search from the internet shows that the National Games of India comprises various disciplines in which sportsmen from different states of India participate against each other. The earliest National Game was held in 1924 at Lahore then called as Olympic Games. The National Games are organized on the lines of Olympic. The first National Games were held in 1985 in New Delhi and are held at the interval of three years. The 35th National Game was held in the year 2015 in Thiruvananthapuram whereas 36th National Games are proposed to be held in the month of November, 2018 in Goa. A Single Bench of Delhi High Court in a

judgment reported as **2017 SCC OnLine Del 9744 (Arpit Singhmar v. University of Delhi)** while considering the case of Sportsperson wherein, the candidate has participated in All India Junior Badminton Tournament and All India Junior Ranking Badminton Tournament, the candidature of the petitioner for admission in the sports quota for M.Com (Hons) course was rejected for the reason that his certificates do not fulfill the criteria which was necessary for admission to Postgraduate course. The criteria for admission was as under:-

“Position and Participation in Individual Event/Team Event/s in Senior/Junior National/National Games/Federation Cup/Championship/ Other Tournaments at the National Level recognized by IOA, Subject to the candidates secured I, II, III position in Inter College tournament(s).”

In view of the certificates obtained by the writ petitioners in the said case and the conditions for admission, it was held that the “Certificate Marking Criteria” are the certificates which are issued by Indian Olympic Association or the 2 junior level championships i.e. Inter State - Inter Zonal & Junior National Badminton Championship or Sub Junior National Badminton Championship. Therefore, the writ petition for admission against the sports quota was dismissed.

19. On the other hand, the judgment of Rajasthan High Court referred to by the learned counsel for the writ petitioners has no applicability to the facts of the present case as the qualification advertised was Bachelor of Physical Education or certificate or diploma in Physical Education (recognized by the National Council for Teacher Education). Still further,

the Rajasthan Educational Subordinate Service Rules, 1971 has Schedule-II which contemplates award of marks on the basis of certificate of participation and position gained in Sports Competition. Such Schedule describes what is District Level, State Level, National Level and International Level tournaments. The said judgment would not be applicable to the facts of the present case as there is no statutory Rule or Instructions supplementing the Rules as to what is meant by representation in the National Games or recognized Senior National Championship. In the absence of any definition in the statute, the test to be applied is as to what is understood by a common citizen of the expression- representations in the National Games or recognized Senior National Championship. Such expression can never include the Inter University Competitions as they are not representative tournaments at the National Level where that sports person irrespective of any condition as to be a student of University or otherwise is able to participate. Such Inter University sports event are meant only for the Student of the University which are not open to all sports persons of the country. Such tournaments are not same as the National Level tournaments.

20. The candidature of the petitioners has been rejected by the Public Service Commission presumably on the basis of opinion of experts. Generally speaking such decision of the experts cannot be interfered with in the writ petition as in exercise of power of judicial review, this Court does not sit as a court of appeal but only examines the decision making process. The decision making process cannot be said to be wanting in any manner except that the reasons for rejection have not been communicated.

21. Therefore, while setting aside the judgment of the learned Single Bench and allowing the present appeals we direct the respondents to communicate reasons as to why the writ petitioners are not eligible for appointment to the post of District Sports Officer.

22. The writ appeals stand **disposed of** in the above terms.

(HEMANT GUPTA)
CHIEF JUSTICE

(S.K. AWASTHI)
JUDGE

psm/