

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 3rd OF NOVEMBER, 2023

WRIT PETITION No. 5093 of 2022

BETWEEN:-

**LALIT NARAYAN SHARMA S/O SHRI BABULAL SHARMA, AGED ABOUT
35 YEARS, OCCUPATION: SERVICE SENIOR AGRICULTURE
DEVELOPMENT OFFICE BLOCK JAWAD (MADHYA PRADESH)**

.....PETITIONER

(SHRI AVIRAL VIKAS KHARE, ADVOCATE.)

AND

**M.P. PROFESSIONAL EXAMINATION BOARD THROUGH THE
1. SECRETARY CHAYAN BHAWAN MAIN ROAD NO. 1 CHINAR PARK
(EAST) BHOPAL (MADHYA PRADESH)**

**STATE OF M.P. THR THE PRINCIPAL SECRETARY FARMER WELFARE
2. AND AGRICULTURE DEPARTMENT VALLABH BHAWAN (MADHYA
PRADESH)**

.....RESPONDENTS

(SHRI KOUSTUBH PATHAK, GOVERNMENT ADVOCATE.)

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

ORDER

01- The petitioner has filed seeking appointment to the post of
Agriculture Extension Officer under the 20% posts reserved for
contractual employees to be filled by way of direct selection. According

to the petitioner, he has been denied the said benefit because he is not a domicile of the State of Madhya Pradesh which is violative of Articles 14, 15, and 16 of the Constitution of India.

02- The petitioner was appointed to the post of Assistant Technology Manager (ATM) on a contractual basis on 15.07.2013 in the Farmer Welfare and Agriculture Department. Respondent No.2 issued an advertisement to fill the posts of Rural Agriculture Extension Officer and Senior Agriculture Extension Officer (Executive) in the Farmer Welfare and Agriculture Department. The petitioner submitted his application for both the post and the result was declared. The petitioner secured 105.84 marks for the post of Senior Agriculture Extension Officer in the Un-reserved / Nil / Open category and secured 124.1 marks for the post of Rural Agriculture Extension Officer and he was kept on the waiting list on serial number 1211 of Un-reserved / Nil / Open category.

03- According to the petitioner, his name has wrongly been considered in the Un-reserved / Nil / Open category whereas he secured qualifying marks and more than cut-off marks for the post of Senior Agriculture Extension Officer, under the quota of 20% posts reserved post for contractual employees. The cut-off mark for the said Agriculture Extension Officer (Samvida) is 123.46 marks whereas he has secured 124.1 marks. The petitioner served a legal notice and filed the present petition before this Court.

04- Learned counsel for the petitioner submits that the State Government issued a circular dated 05.06.2018 to all the Government departments that all the contractual employees be given an opportunity

for regularization by way of 20% reservation in direct selection along with the relaxation in age. Another letter dated 25.07.2018 was issued for strict compliance of the circular dated 05.06.2018. Respondent No.1 / M.P. Professional Examination Board (for brevity "MPPEB") issued an advertisement in which 20% of posts were reserved for contractual employees in light of the circular dated 05.06.2018, therefore, the respondents are denying this benefit of 20% reservation to him by wrongly applying Clause No.1.4 and 1.5 i.e. domicile and reservation respectively. It is further submitted by the learned counsel for the petitioner that the reservation applies to SC, ST, OBC, and EWS candidates who are domicile of this State but 20% reservation which is vertical reservation is not restricted to the domicile of M.P. especially those who applied under Open Category

05- It is further submitted that 20% reservation is given to the contractual employees only in the UR/open category hence as per Clause No.1.4 (ii) the candidates who are not permanent residents of Madhya Pradesh can apply under Un-reserved / Open category, therefore, the action of the respondent is wholly unjustified and the direction be issued to appoint the petitioner.

06- After notice, respondent No.1 / MPPEB alone has filed the return by submitting that the petitioner submitted a form for both the posts namely Rural Agriculture Extension Officer and Senior Agriculture Extension Officer (Executive) in the **Un-reserved / Open category**, and did not disclose that he is a contractual employee. It is submitted by the learned counsel for the MPPEB that for both posts he did not secure cut-off marks or more in UR / Open category, therefore,

he is not entitled to any appointment. Since the petitioner did not opt for an appointment in 20% reservation nor he is a domicile of Madhya Pradesh, therefore, he is not entitled to claim an appointment in the Samvida category. The petitioner ought to have disclosed that he comes under the Samvida category in the form. Since he could not secure the marks in the UR / Open category, therefore, he has now changed his stand and is claiming an appointment in the Samvida category hence, the petition is liable to be dismissed on this ground alone. Learned Government Advocate argued in support of MPPEB and prayed for dismissal of the Writ Petition.

07- Admittedly in the copy of the form submitted by the petitioner for both the posts i.e. Rural Agriculture Extension Officer and Senior Agriculture Extension Officer (Executive) which is filed as Annexure R/1 disclosed that he is not a permanent resident of M.P. and submitted a form in UR / Open category. Thereafter in the column that “क्या आप संविदा कर्मी (नियम पुस्तिका के नियम क्रमांक 1.6 के अनुसार) सीट एवं आयु में आरक्षण लेना चाहते हैं ?” the petitioner opted “No”. (whether you want to take a reservation in Contract employee seat and age as Rule No. 1.6 of Rule book).

08- Shri Aviral Vikas Khare, learned counsel for the petitioner submits that the moment the petitioner opted “No” in a column of the domicile of M.P., all the entries related to reservation were blocked, even for Samvida Category “No” was filled automatically. Meaning thereby by filling in the option “No” in the domicile entry, all the entries relating to the reservation including the 20% reservation for contractual employees were automatically marked as “No”. He immediately

contacted the toll-free number 1800-233-7899 and the person who attended the call said that the software had been designed in this way and assured the petitioner that his application shall be considered in 20% reserved post, therefore, in such circumstances, he was prevented to opt for appointment in Samvida category.

09- The respondent/ MPPEB filed the rejoinder and did not deny the aforesaid pleading of the rejoinder but stated that even otherwise, the petitioner is not eligible for the benefit of the Samvida category as per Krishi Kalyan Department Rulebook, 2020.

10- It is not in dispute that the petitioner does not have a certificate of domicile of the State of M.P. but he has been serving in the State of M.P. since 2013 as a contractual employee in the scheme of Sub-mission of Agriculture Extension of Farmer Welfare and Agriculture Department. Clause 1.4 is reproduced below:

1.4 प्रत्येक विभाग के भर्ती किए जाने वाले पदों में 20 प्रतिशत पद संविदा पर नियुक्त अधिकारियों/कर्मचारियों के लिए आरक्षित रहेंगे, किन्तु इस नीति के अंतर्गत आरक्षण सुविधा का एक बार लाभ लेकर नियुक्ति प्राप्त कर लेने (**joining**) उपरांत पुनः लाभ की पात्रता नहीं होगी।

11- Clause No.1.4 (ii) says that the candidate who is not a domicile of M.P. can submit an application under the Un-reserved / Open category and they shall not be entitled to the benefit of reservation and age relaxation. For the post in question, the candidate should be a citizen of India and have a certificate under M.P. Civil Services Recruitment Rules, 1961, therefore, there is no requirement that only the

candidate having a certificate of domicile of M.P. can apply for the posts in question. So far as the reservation is concerned, Clause No.1.5 deals with the reservation, there is a reservation for 4 categories, namely, Scheduled Caste, Scheduled Tribes, Other Backward Classes, and Economically Weaker Sections. The Clause No.1.5 is reproduced below:

1.5 इस आरक्षण का लाभ प्राप्त करने के लिए निम्न संविदा सेवक पात्र होंगे :-

1.5.1 सीधी भर्ती का रिक्त पद जिस श्रेणी का है उसी श्रेणी में आवेदक न्यूनतम 05 वर्ष तक संविदा पर नियुक्त रहा हो। 05 वर्ष की यह अवधि रिक्त पद पर आवेदन करने की दिनांक को पूर्ण होना चाहिए। इस आशय का प्रमाण पत्र उसे प्रस्तुत करना होगा। यह प्रमाण-पत्र यथास्थिति जिला स्तर पर अथवा राज्य स्तर के सक्षम अधिकारी द्वारा जारी किया जाएगा।

1.5.2 सेवा नियमों में प्रश्नाधीन नियमित पद के लिए निर्धारित शैक्षणिक अर्हता तथा अन्य सुसंगत अनुभव जो वांछित है, उन्हें वह पूर्ण करता हो।

12- As per Clause No.1.4 (ii), those who are not domicile of M.P. shall not be entitled to the vertical reservation, therefore, M.P. domicile candidates are only entitled to reservation only in these 5 categories and those who do not have a domicile certificate of M.P. or resident of another part of the country are permitted to fill the form but under only reservation of UR / Open category, therefore, the petitioner is right in submitting that the moment he opted “No” for domicile column the entry in reservation 1.6 has already been filled as “No”. Clause No.1.6 is reproduced below:

1.6 यदि किसी संविदा सेवक ने विभिन्न पदों पर कार्य किया है तो उसकी कुल संविदा सेवा 05 वर्ष की होना चाहिए। अगर

उसने विभिन्न श्रेणी के पदों पर संविदा पर कार्य किया है तो 05 वर्ष की उपरोक्त अवधि की गणना पूर्ण होने पर वह उस श्रेणी के पद पर नियुक्ति के लिए आवेदन कर सकेगा जो इस 05 वर्ष में निम्नतम श्रेणी का था।

13- The above clause provides 20% reservation to the contractual employees in direct selection by way of a one-time arrangement and the said reservation will be available to the non-domicile category of a candidate if he/she fills the form under the UR/Open category as per Clause No.1.4 (ii). Therefore, a conjoint reading of Clause No.1.4 (ii) with Clause No.1.5.1 and 1.6. The contractual employee of a general category can claim 20% reservation in the Un-reserved / Open category. The vertical reservation of SC, ST, OBC, and EWS categories is available as per Clause No.1.5.1 to the candidates of domicile of M.P.

14- The non-domicile candidates of any category are permitted to apply but they shall not be entitled to get selection in vertical reservation but they can apply in UR/Open Category even under Samvida Category. There is no denial by the respondent to the affidavit given by the petitioner that the moment he filled "No" in the form in front of the domicile of M.P. category, in the reservation column "No" was been automatically filled. This is the problem in the online submission form where there is no scope of application of mind by any authority. The computer accepts the form as per the programming, the authorities have no discretion to consider the case on merit in exceptional circumstances.

15- Therefore, the candidature of the petitioner cannot be

rejected on the ground that he did not claim the appointment in the Samvida category. According to Shri Pathak learned counsel for the respondents, the petitioner did not submit any objection in writing for correction in the form, therefore, the respondent had no occasion to examine his problem now same cannot be considered as it is an afterthought.

16- It is correct that the petitioner did not submit any objection or submit an application for correction in the form that he wanted to apply in the Samvida category but the option “No” has been filled automatically. According to the petitioner, he contacted the call center and the person who attended his call has assured him that his form will be considered. The call center employees are not the employees of MPPEB as well as the Government Department, they are not the competent authority to consider or reject the form, they only attend the call to guide the candidate to fill the form or give information in respect of the queries relating to their problems. The petitioner was required to submit an objection in writing for correction in the form. The time was given to the candidates for correction in the form from 10.11.2020 to 29.11.2020 but the petitioner did not submit any application for correction in the form, therefore, it can be presumed that the petitioner attempted in the selection as UR/Open category for which 80% posts were there and when he did not get the requisite cut-off marks and found that he has secured more marks to qualify in the reserved category i.e. 20%, he approached this Court by filing this petition.

17- In view of the above, since it is a mistake on both sides i.e. the petitioner as well as the respondents, therefore, if any post of Rural

Agriculture Extension Officer (Samvida) is vacant within the validity of the selection list, then the candidature of the petitioner be considered for appointment.

18- With the aforesaid, this Writ Petition is disposed of to the extent indicated above. No order as to cost.

(VIVEK RUSIA)
JUDGE

Divyansh