

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA
ON THE 14th OF MARCH, 2023

Writ Petition No.6664/2022

Between: -

Dr. Sharad Kumar Choudhary S/o Shri R.K. Choudhary,
Age: 63 years, Occupation: Service,
College of Agriculture, Indore, District Indore (MP)

.....PETITIONER

(By Shri Manoj Manav, learned counsel)

AND

1. **The State of Madhya Pradesh**
Through the Principal Secretary,
Farmer Welfare & Agriculture Development Department,
Vallabh Bhawan, Bhopal (MP)
2. **Ramjata Vijayraje Scindia Krishi Vishwa Vidyalaya, Gwalior**
Through the Registrar,
Raja Pancham Singh Marg,
Near Akashwani, Gwalior (MP)

.....RESPONDENTS

*(Shri Nitin Singh Bhati, learned Government Advocate
appearing on behalf of the Advocate General AND
None appears on behalf of respondent No.2 / Rajmata Vijayraje Scindia
Krishi Vishwa Vidyalaya, Gwalior)*

Dr. Ashok Kumar Sharma S/o Late Dr. Bal Mukund Sharma,
Age: 63 years, Occupation: Service,
R/o: Dean Bungalow, Krishi Nargar, College of Agriculture,
Indore, District Indore (MP)

.....CAVEATOR

(By Shri Aviral Vikas Khare, learned counsel in Caveat Application No.285/2022)

Reserved on: - 27.02.2023

Delivered on: - 14.03.2023

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

ORDER

Heard finally, with consent of the learned counsel for the parties.

The petitioner has filed this petition under Article 226 of the Constitution of India being aggrieved by order dated 14.03.2022 (Annexure P/1) passed by Additional Secretary, Farmer Welfare & Agriculture Development Department, State of Madhya Pradesh, Bhopal, whereby his appointment vide order dated 29.12.2021 (Annexure P/6) on the post of Dean, College of Agriculture, Indore has been cancelled.

2. According to the petitioner, he belongs to an Other Backward Class (OBC) Category. On 17.01.1986, the petitioner was initially appointed as Research Associate in Jawarlal Nehru Krishi Vishwa Vidyalaya; and thereafter, appointed as a Professor / Junior Scientist (Agronomy) in Indira Gandhi Krishi Vishwa Vidyalaya. In the year 2007, he was promoted to the post of Professor / Principal Scientist in Rajmata Vijayraje Scindia Krishi Vishwa Vidyalaya Gwalior (respondent No.2).

3. The State of Madhya Pradesh (Respondent No.1) issued an advertisement on 11.06.2021 (Annexure P/2) inviting applications for appointment on four vacant posts of Dean in the Colleges of Agriculture / Horticulture affiliated with Rajmata Vijayraje Scindia Krishi Vishwa Vidyalaya Gwalior (respondent No.2).

4. The petitioner applied for the post of Dean of the College under the OBC Category. The petitioner was found eligible amongst the other applicants / candidates in the interview conducted by the Selection Committee. Respondent No.2 issued an appointment order dated 29.12.2021 (Annexure P/6) in favour of the petitioner for the post of Dean, College of Agriculture, Indore; and pursuant thereto, the petitioner gave his joining report on 30.12.2021 (Annexure P/7).

5. Vide Annexure R/-1/1 a question was raised in the Madhya Pradesh State Legislative Assembly (*Vidhan Sabha*) in respect of illegality in the appointment of the present petitioner under the OBC Category. As per the questionnaires, the petitioner belongs to Creamy Layer of the OBC Category, hence, he was disqualified to be appointed as a Dean, College of Agriculture, Indore, under the OBC Category.

6. Therefore, respondent No.1 vide impugned order dated 14th March, 2022 (Annexure P/1) has cancelled the entire selection process on the ground of non compliance of provisions of reservation under OBC Category; and hence, this petition before this Court.

7. Vide order dated 25.03.2022, this Court has stayed the impugned order and permitted the petitioner to work on the post of Dean, Agriculture College, Indore (MP) till further orders.

8. The State of Madhya Pradesh (Respondent No.1) has filed its reply, justifying the impugned action by submitting that the petitioner was placed at Serial No.18 in the list of eligible candidates for interview. In the advertisement, there was no mention regarding the provisions of Creamy Layer for OBC Candidate. There is provision of Annual Income up to Rs.8,00,000/- (rupees eight lakhs) per annum for a candidate of OBC Category, as per circular dated 02.11.2017 (Annexure R-1/2) issued by the General Administration Department, Government of Madhya Pradesh, Bhopal; and since the petitioner, at the time of his selection, was working as Professor, therefore, his income was more than Rs.8,00,000/- (rupees eight lakhs) per annum, hence, he does not fall under the Category of OBC. Therefore, he has no authority to work on the post of Dean of the College, which is reserved for a candidate of OBC Category and his appointment is illegal and *void ab initio*; and therefore, has rightly been

cancelled.

9. Shri Manoj Manav, learned counsel appearing for the petitioner submits that in order to examine the status of Creamy Layer of any candidate, the income of his / her parents is liable to be considered and not the income of the candidate. The aforesaid GAD Circular has been clarified by the State Government itself vide Circular dated 07.02.2014 (Annexure P/8).

10. A specific query was made that if any candidate who himself / herself is an Officer of Class-II Category (and aged 40 years & above under OBC Category) has become a Class-I Officer, whether he can be considered under the Creamy Layer. A clarification has been given in the above circular, that in case of selection of any candidate, whether he / she is in Creamy Layer or not, the status is to be made on the basis of financial condition of his / her parents, rather than the status of an income of the candidate or his wife or spouse.

11. Shri Manoj Manav, learned counsel for the petitioner further submits that the father of the petitioner was getting pension below Rs.8,00,000/- (rupees eight lakhs) per annum. Therefore, considering the status and financial condition of the parents, the petitioner has rightly been appointed on the said post under OBC Category.

12. In the State of Madhya Pradesh for the purpose of reservation in selection and appointment, the provisions of Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (herein after referred to as the Act of 1994) are applicable.

Section 2 (g) of the Act of 1994 defines the 'Other Back Classes', which means the Other Backward Classes of citizens, as specified by the State Government vide Notification dated 26.12.1994, as amended from time to time.

Section 2 (c) of the Act of 1994 defines 'Reservation', which means

reservation of a posts in services for the Members of Scheduled Castes, Scheduled Tribes and Other Backward Classes. Therefore, 'reservation' is given to a Member of OBC Category, who wants to secure an appointment on a particular post in the Government Services.

As per Proviso to Sub Section (iii) of Section 4 of the Act of 1994, a reservation shall not apply to such categories of persons who belong to OBC Category as are notified by the State Government as belonging to Creamy Layer from time to time.

This Act of 1994 applies to all employments in Government Department of State of Madhya Pradesh except employment under the Government of India on a post to be filled by transfer or deputation; and appointment made to Madhya Pradesh Higher Judicial Services, as per Section 3. This Act applies to a candidate who is securing employment in the MP State Government Services. Therefore, status of the candidate is liable to be examined whether he / she belongs to ST, ST or OBC category, which now includes OBC Category and excludes the Creamy Layer of OBC Category.

13. Undisputedly, at the time of participation in the selection process, the petitioner was already holding a post of Professor having income of more than Rs.8,00,000/- (rupees eight lakhs), which is prescribed by the MP State Government for deciding Creamy Layer upper limit from which the Creamy Layer starts. Therefore, the petitioner comes under the Category of Creamy Layer of OBC Category. Hence, he is not entitled for reservation in OBC Category under Section 4 of the Act of 1994, because of his own financial status at the time of selection.

14. The impugned order dated 14.03.2022 (Annexure P/1) passed by Additional Secretary, Farmer Welfare & Agriculture Development Department,

State of Madhya Pradesh, Bhopal is **upheld**; and interim order dated 25.03.2022 passed by this Court is hereby **vacated**.

15. Accordingly, Writ Petition No.6664/2022 being devoid of merits is hereby **dismissed**.

Pending interlocutory application, if any, shall stands **disposed of**.

(Vivek Rusia)
Judge