

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

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 18<sup>th</sup> OF MARCH, 2024**

**WRIT PETITION No. 18212 of 2023**

**BETWEEN:-**

**DR. MRS PRIYANKA KIYAWAT W/O DR  
MAYANK JAIN, AGED ABOUT 36 YEARS,  
OCCUPATION: SERVICE ASSISTANT  
PROFESSOR IN PATHOLOGY MGM MEDICAL  
COLLEGE INDORE DILPASAND TOWER FLAT  
NO. 411 RACE COURSE ROAD, DISTRICT  
INDORE (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI L. C. PATNE – ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH  
DEPARTMENT OF MEDICAL EDUCATION  
THROUGH PRINCIPAL SECRETARY  
VALLABH BHAWAN, MANTRALAY BHOPAL  
(MADHYA PRADESH)**
- 2. THE COMMISSIONER OF MEDICAL  
EDUCATION SATPURA BHAWAN, BHOPAL  
(MADHYA PRADESH)**
- 3. THE COMMISSIONER (REVENUE)  
CHAIRMAN, GOVERNING BODY  
GOVERNMENT AUTONOMOUS MGM  
MEDICAL COLLEGE INDORE DIVISION,  
INDORE (MADHYA PRADESH)**
- 4. THE DEAN AND CHIEF EXECUTIVE  
OFFICER GOVERNMENT AUTONOMOUS  
MGM MEDICAL COLLEGE A.B. ROAD,  
INDORE (MADHYA PRADESH)**

5. **DR. MS POONAM NANWANI OCCUPATION:  
ASSISTANT PROFESSOR IN PATHOLOGY  
GOVERNMENT AUTONOMOUS MGM  
MEDICAL COLLEGE, A.B. ROAD INDORE  
(MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI BHUWAN DESHMUKH – G.A. FOR THE RESPONDENT NOS.1 TO 4/STATE AND SHRI ANAND AGRAWAL – ADVOCATE FOR RESPONDENT NO.5.)**

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

**ORDER**

- 1] Heard finally, with the consent of the parties.
- 2] This petition has been filed by the petitioner Dr. (Mrs.) Priyanka Kiyawat under Article 226 of the Constitution of India seeking the following reliefs:-

- (a) to call for the relevant records of the case;
- (b) to command the Respondents to reject the candidature of Respondent No. 5 for appointment on the post of Associate Professor in Pathology in MGM Medical College, Indore by a writ of MANDAMUS or any other appropriate writ, direction or order;
- (c) to command the respondents to consider the claim of the petitioner for grant of appointment on the post of Associate Professor in Pathology Subject in Government Autonomous MGM Medical College, Indore by giving due credence to the experience earned by her in SAIIMS, Indore and also the 6 months' training undertaken by her with Unipath Specialty Laboratory, Indore and by declaring the result of selection process for appointment on the post of Associate Professor in Pathology and by granting him all consequential and monetary benefits including arrears of salary and allowances together with interest @ 12% p.a., by a Writ of CERTIORARI or any other appropriate writ, direction or order;
- (d) to allow this petition with costs;
- (e) to pass such other order(s) as this Hon'ble Court may

deem fit in fact and circumstance of the case to grant relief to petitioner.

- (f) to quash the impugned select list dated 21.09.2023 (Annexure P/20) issued by Respondent No.4 by a writ of CERTIORARI or any other appropriate writ, direction or order.”

3] The grievance of the petitioner is that she had participated in the recruitment drive for the post of Associate Professor in Pathology. The advertisement regarding which was issued on 21.04.2023, and the result of which was declared on 21.09.2023, wherein the respondent No.5 was declared as the successful candidate, whereas the petitioner was placed at serial No.1 in the waiting list.

4] This petition has been filed on the ground that the respondent No.5 has suppressed the material information regarding a criminal case pending against her in the trial Court under the provisions of Prevention of Corruption Act, 1988 and also on the ground that the respondent No.5 was not even eligible to participate in the aforesaid selection process again on the ground that a criminal case was pending against her.

5] A reply to the petition has also been filed by the State. It is submitted that no information has been suppressed as the respondent No.5 has submitted her Form without suppressing any material fact including the lodging of the FIR against her, which is also apparent from the Form, which was submitted by her and filed as Annexure R/2, in which she has stated that an FIR is registered against her, and also that no departmental enquiry is pending against her in para 2 of the declaration. It is also

submitted that the respondent No.5 was more meritorious than the petitioner and she was the natural choice for the selection. It is also submitted that even though the FIR was lodged against the respondent No.5, the advertisement itself does not debar her from participating in the selection process. Thus, it is submitted that no case for interference is made out.

6] Respondent no.5 Dr. Ms. Poonam Nanwani has also filed her reply. Shri Anand Agrawal, leaned counsel for the respondent No.5 has opposed the petition, and the attention of this Court has been drawn to para 4.7 of the advertisement in which it is provided that such candidate shall not be appointed, who has been terminated from service on account of his/her conviction and in the present case, admittedly, there is no conviction recorded against the respondent No.5, and in fact the Police has already filed a closure report against her, hence it cannot be said that a criminal case is pending against her, and thus, it is submitted that no case for interference is made out.

7] Heard counsel for the parties and perused the record.

8] From the record, it is found that so far as the respondent No.5 is concerned, she has been selected on the post of Associate Professor for pathology subject as she has secured higher marks than the petitioner, whose name appears in the waiting list of only one person. Thus, if this petition is finally allowed, the petitioner would be entitled to claim her candidature for the post of Associate Professor for pathology subject.

9] So far as the facts of the case are concerned, they are not disputed. It is not disputed that against the respondent No.5 an FIR at Crime No.64 of 2017 under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act has been registered although the Lokayukt Police has already submitted a closure report before the Special Judge, but the same is still pending consideration since 2021.

10] Respondent No.5's contention is that she had already applied for permission to participate in the selection process by submitting an application on 28.04.2023 to the Dean, Mahatma Gandhi Memorial Medical College, Indore seeking permission to submit the application for the said post in which it was also stated that the FIR lodged against her in the year 2017 has already culminated into a closure report which is still pending, and it is likely to take some time before it is finally decided.

11] Whereas, the M.G.M. Medical College, Indore in its reply has stated that while submitting her application for the Associate Professor pathology, the respondent No.5 Dr. Poonam Nanwani has not suppressed any material information and the attention of this Court is also drawn to the declaration attached along with the application Form in which the petitioner has scored out "*Nahi*" and thus, she has clearly stated that an FIR has been lodged against her and also that no departmental enquiry is pending against her. The MGM Medical College has also pleaded that no charge-sheet has been filed against the respondent No.5 in any

Court of law, and in fact the Lokayukt Police has filed its closure report on 22.02.2021 before the Competent Court and, therefore, virtually there is no criminal case pending against the respondent No.5. It is also submitted that otherwise also the criminal case is regarding the respondent no.5's private practice while in government service, so the criminal case is not regarding any corruption etc., and after a scrutiny of the documents, the petitioner has not been found to be fit enough to be appointed on the post of Associate Professor, whereas the respondent No.5 has been found by the selection committee to be more suitable having secured higher marks, than the petitioner.

**12]** In the aforesaid backdrop, if we see the conditions of eligibility in the advertisement as also the application Form, it would reveal that the respondent No.5 has gone one step ahead in changing the declaration Form itself, which has been accepted by the respondent M.P. Medical College.

**13]** Necessary conditions of the advertisement as also the format of application *viz. a viz.*, the format which the respondent No.5 has submitted are reproduced herein below:-

“महत्त्वपूर्ण टीप :- यह सुनिश्चित करने की जिम्मेदारी स्वतंत्र आवेदक की होगी कि वे अपने आवेदित पद के लिये निर्धारित समस्त अर्हतायें और शर्तों को पूरा करते हैं। अतः आवेदन करने के पहले आवेदक अपनी अर्हता की जांच स्वयं करे ले ओर अर्हता की समस्त शर्तें पूरा करने पर ही आवेदन पत्र भरे। चयन के किसी भी स्तर पर आवेदक के अनर्ह पाये जाने पर उसका आवेदनपत्र निरस्त कर उसकी उम्मीदवारी समाप्ता की जायेगी। आवेदक के विरुद्ध पुलिस अथवा किसी भी प्रकार की जांच न हो जिसके कारण

आवेदक की नियुक्ति प्रभावित होती हो, इस आशय से संबंधित घोषणा पत्र जो की आवेदन के प्रारूप में दिया गया है। यह शर्त की उसमें समाहित रहेगी।

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//घोषणा पत्र//

1. मैं प्रमाणित कस्त/करती हूँ कि मेरे द्वारा दी गई उपरोक्त जानकारी पूर्ण एवं सत्य है। जानकारी असत्या होने की दशा में मेरा आवेदन पत्र /नियुक्ति पत्र निरस्ती किया जा सकेगा।
2. मेरे विरुद्ध पुलिस प्रकरण में एफ.आई.आर. दर्ज नहीं है, और मेरे विरुद्ध कोई विभागीय जाँच प्रचलन में नहीं है।
3. मैं प्रमाणित कस्त/ करती हूँ कि मुझे नैतिक पतन के किसी अपराध में किसी न्यायमयालय द्वारा न तो दोषी पाया गया है और न ही मेरे विरुद्ध इस प्रकार का कोई प्रकरण किसी भी न्यायालय में विचाराधीन है।
4. मप्र. स्वाशासी चिकित्साय महाविद्यालय, शैक्षणिक आदर्श सेवा नियम 2018 मुझ पर पूर्णरूपेण बंधनकारी होंगे।

Sd/-

आवेदक का पूरा नाम एवं हस्ताक्षर  
Dr. Poonam Nanwani”

*(Emphasis supplied)*

**14]** A perusal of the aforesaid advertisement, especially the *Mahatvapuran teep (Important Point)* clearly reveals that any person submitting his application in the requisite Form is also required to submit the undertaking in the given format only, because any police case registered against the applicant or any enquiry pending against him or her, affects his or her appointment and, hence, the undertaking (*Ghoshna Patra*) which is appended along with application format is the term and condition of the advertisement.

**15]** In such facts and circumstances of the case, the contentions as advanced by the counsel for the State as also the respondent No.5 that the advertisement does not contains any condition regarding ineligibility of a candidate on account of the lodging of the FIR against him or her, cannot be countenanced and is liable to be rejected.

**16]** Resultantly, the petition stands **allowed** for the reason that the petitioner has not submitted her application in the requisite Format, leading to its alteration, which cannot be allowed. Thus, the **selection order dated 21.09.2023 depicting the respondent No.5 as the select candidate is hereby quashed**, and in its place the petitioner is declared to be the successful candidate being the only person in the waiting list, w.e.f. the date on which the respondent no.5 was appointed.

**17]** The respondents are also directed to accord to the petitioner all the consequential benefits, except the monetary benefits as the petitioner is already in employment and has earned continuously since 21.09.2023.

**18]** With the aforesaid direction, the petition stands allowed and **disposed of**.

**(SUBODH ABHYANKAR)**  
**JUDGE**

**Pankaj**