



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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

WRIT PETITION No. 12082 of 2024

MS. KRITIKA MANDLOI AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri L.C. Patne, learned counsel for the petitioners.

Shir Ajay Raj Gupta, learned Government Advocate for the respondent/State.

Shri Shashank Shrivastava, learned counsel for the respondent [R-3].

Reserved on : 05.11.2024

Pronounced on : 09.01.2025

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This petition having been heard and reserved for orders, coming on for pronouncement this day, the court passed the following:

ORDER

- 1] With consent of the parties, heard finally.
- 2] This petition has been filed by the petitioners being aggrieved by the order dated 16.08.2023, which is an order of cancelling the entire selection process for the post of Fisheries Inspector, on the ground that the seats were not reserved for the specially abled persons.



3] The brief facts of the case are that on 21.11.2022, the respondents issued an advertisement for appointments on the post of Fisheries Inspector, and all the petitioners also applied for the same and they were also got selected. Copies of the result have also been filed alongwith the petition. Thereafter, process of document verification has also been completed by the respondents, however, the respondents have also issued the impugned order (Annexure-P/6) and informing the petitioners that the selection process has been cancelled.

4] Counsel for the petitioners has also relied upon the reply filed by the respondents in W.P. No. 26820/2023, which has been filed at Principal Seat at Jabalpur wherein the respondents have taken plea that the selection process has been cancelled on account of noncompliance of the provisions as prescribed under the Rights of Persons with Disabilities Act, 2016 (hereinafter referred as "Act, 2016"). Counsel for the petitioners has further submitted that the mandate which is prescribed under the Act, 2016 could also have been followed without cancelling the entire selection process. He has submitted that the respondents have complied with the circular dated 03.07.2018, issued by the State Government, wherein reservation to disabled persons has been provided in horizontal compartment. Counsel for the petitioners has also relied upon the judgment **Dinesh Kumar Kashyap Vs. South Eastern Central Railways (2019) 12 SCC 798** passed by Hon'ble Supreme Court.

5] Counsel for the respondent No. 3 has opposed the prayer.

6] Counsel for the respondent /State has opposed the contentions and reply has also been filed. It is contended that no case of interference is made out in the advertisement dated 21.11.2022 (Annexure-P/1), and has



also relied upon the condition No. 5.2 of the advertisement which clearly provides that a candidate shall not have any right to be appointed and the right of appointment shall be the sole discretion of the employer.

7] In rebuttal, Shri Patne, learned counsel for the petitioners has submitted that this aspect of the matter has already been taken care of in the case of **Dinesh Kumar Kashyap (supra)** by the Supreme Court in paragraphs 24 to 38, and it is submitted that the petition be allowed. Shri Patne has also relied upon paragraph 13(3) of the GAD Circular dated 18.12.2014, which clearly provides that the appointment orders are to be made within three months after issuance of selection list.

8] Heard counsel for the parties and perused the documents filed on record.

9] The case is not disputed, that the petitioners were selected for the post of Fisheries Inspector and their documents have also been verified. However, entire process of selection has been cancelled for the reasons as mentioned above, to provide reservation to the persons suffering from disabilities as provided under Act, 2016.

10] So far as the objections raised by the respondents are concerned, following averments have been made in para 5 of the reply which reads as under:-

“5. That, the answering respondent most respectfully submits before this Hon'ble that the merely qualifying the advertisement dated and becoming (Annexure P/1) 21.11.2022 a successful candidate confers no inherent right to the petitioners to obtain an appointment order from the respective department if the respondent department is abstaining themselves from issuing the appointment orders as the process undertaken itself was not in accordance with the law as enumerated aforementioned. Even the clause 5 (2) of the advertisement reserves the right and prerogative with the respondent department for the same. The clause 5 (2) reads as under:-



(2) इन नियमों के अधीन संचालित परीक्षा के परिणामों में, अर्हकारी सूची में केवल मात्र अभ्यर्थियों को ही रखा जाएगा परंतु पात्र अभ्यर्थियों को नियुक्ति का कोई अधिकारी नहीं होगा जब तक कि—

(क) कोई विभाग/उपक्रम रिक्त पद के लिए से कोई मांग नहीं करता है,

(ख) अभ्यर्थी का नाम मांगकर्ता विभाग/उपक्रम को भेज नहीं दिया जाता है:

(ग) अभ्यर्थी ने नियुक्ति के लिए मण्डल द्वारा निर्धारित समस्त पात्रता को पूर्ण न कर लिया हो: और

(घ) विभाग ने अभ्यर्थी के पक्ष में नियुक्ति आदेश जारी न कर दिया हो।”

The aforementioned clause was duly accepted by the petitioners as a rider while filing up the forms pursuant the advertisement. Therefore by virtue of the doctrine of estoppels petitioner are not entitled to claim a right which otherwise they are not entitled for in light of the cancellation order dated 16.08.2023.Taking into consideration the aforementioned facts and circumstances and bonafied act of the respondents the instant petition deserves to be dismissed.”

11] It is trite that a candidate has no legal right to claim appointment even if he has been selected, but this court can certainly consider the reasons assigned for cancellation of the entire selection process, and if the same is found to be arbitrary or unjust and not based on any sound reasoning, the court can certainly exercise its powers of judicial review. In the present case, it is not the stand of the Government that there is no further requirement/demand for filling up any vacancy, or that for any other reasons, they are not inclined to make any fresh appointment, but their reason for cancelling the entire selection process is due to non-compliance of the provisions of the Act of 2016, which, in the considered opinion of this court is a curable defect and if cured, would not cause any prejudice to any of the candidates of the reserved class.

12] In the considered opinion of this Court, the Government vacancies are already hard to come by, and even if they are advertised, there are many factors affecting a person's eligibility to participate in the same,



the most important of which is the age limit, and once a person has crossed the requisite age, notwithstanding his competence, his dream of obtaining a government job is shattered. Thus, once a selection process has culminated into the process of document verification after selection of a candidate, it should not be normally cancelled citing technical infirmities in the original advertisement which are curable and can still be remedied. Thus, this court sees no justifiable reason to cancel the entire selection process when the respondents can very well issue a fresh advertisement for the seats reserved for specially abled candidates by reducing the exact number of seats from the originally advertised seats in the advertisement dated 21.11.2022, which ought to have been reserved in the first place in the said advertisement for the specially abled candidates.

13] This court is of the considered opinion that the respondents could have continued with the selection process and could have issued the appointment orders also by keeping aside/reserving the seats for the persons with disabilities as prescribed under Act, 2016. As the respondents, despite not having issued the advertisement for disabled persons could have issued separate advertisement for their appointments by reducing the number of seats already advertised and also taking into account the circular dated 03.07.2018 (Annexure-P/9) and the judgment dated 06.07.2023 (Annexure-P/8) and also decision rendered by Co-ordinate Bench of this Court in the case National Federation of Blind, M.P. Branch Vs. State of M.P. & Others, passed in W.P. No. 7275/2019.

14] In view of the aforesaid, present petition stands allowed and impugned order dated 16.08.2023 is hereby quashed and respondents are



directed to issue appointment orders to the petitioners in accordance with law, and in the light of the observations made hereinabove.

15] Let the aforesaid exercise be completed by the respondents within a further time of 2 months.

16] Petition stands *allowed* and *disposed of* accordingly.

(SUBODH ABHYANKAR)
JUDGE

Vindesh