



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

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 30<sup>th</sup> OF APRIL, 2025**

**WRIT PETITION No. 36342 of 2024**

**NEHA BARUA D/O V.S. BARUA**

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

*Shri Anand Agrawal - Advocate for the petitioner.*

*Shri Raghav Shrivastava- G.A. for the State.*

*Shri Vindhyavashini Prasad Khare- Advocate for the  
respondent No.2 through V.C. with Shri Vijay Gulani- Advocate for  
the respondent No.2.*

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**ORDER**

Heard finally, with the consent of the parties.

**2]** This petition has been filed by the petitioner under Article 226 of the Constitution of India, seeking the following reliefs:-

“A. To direct the respondents to include the names of the petitioner in selection list/main list issued on 23/10/2024 (P/2).

B. To direct the respondent no.1 to issue the appointment order of the petitioner for the post of Assistant Professor (Rog Nidan) alongwith consequential benefits.

C. Any other writ, direction or order that the Justice of this case may require.”

**3]** The petitioner is aggrieved by the inaction on the part of the respondent No.2 M.P.P.S.C. in not including the name of the petitioner in the main select list for the post of Assistant Professor (*Rog Nidan*).

**4]** The petitioner's case is that the respondent No.2 had issued the advertisement dated 27.06.2023 (Annexure-P/3) wherein, six posts were advertised, out of which, one post was for unreserved category, to which the petitioner belongs. The petitioner's case that in the merit



list, the name of the petitioner was mentioned at Serial No.2, under the unreserved category, however, her name has been excluded from the select list, and when the petitioner enquired about the omission of her name, she was informed that since the said seat was reserved for handicapped person, and there was no candidate under the handicapped category, hence, the post has been carried forward.

5] Counsel for the petitioner has submitted that in the advertisement, only six posts were advertised, and there was no reference of any post being specifically reserved for handicapped category. Counsel has also submitted that even otherwise, reserving one seat belonging to the unreserved category for the handicapped person would amount to 100% reservation, which runs contrary to the order passed by the Supreme Court in the case of *Chebrolu Leela Prasad Rao Vs. State of A.P.*, reported as *AIR ONLINE 2020 SC 488* para 134 and 141. Thus, it is submitted that the impugned select list be directed to be modified, and the name of the petitioner be directed to be included in the same.

6] The prayer is opposed by the counsel for the respondent No.2 M.P.P.S.C., and Shri V.P. Khare, learned counsel for the respondent No.2 has also drawn the attention of this Court to the circular dated 07.11.2000, issued by the State Government, wherein, it is directed that the reserved category candidates shall be adjusted against the unreserved category candidates when they obtain the marks at par with the unreserved category candidates, and since in the present case, no handicapped person has applied for the post, the aforesaid post has been carried forward as per the circular dated 14.06.2002 wherein, it is clearly provided that those vacancies of the handicapped person, which could not be filled up, shall be carried forward, and such



vacancies shall be carried forward from the unreserved category. Thus, it is submitted that since the petitioner has not challenged the aforesaid circular, no case for interference is made out. Counsel has also referred to Annexure-1 of the advertisement, wherein, it is clearly provided that one post is reserved for handicapped person.

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

8] From the record, it is found that so far as the advertisement is concerned, the same provides for six vacancies, one under the UR category, one under the SC category, two under ST category and two under OBC category. The table of vacancy as produced in the Appendix-1 of the advertisement is reproduced herein, for ready reference:-

**“परिशिष्ट-1**

भारत के नागरिकों तथा भारत के संविधान के तहत मान्य अन्य श्रेणियों के आवेदकों में 8, मध्य प्रदेश निम्नलिखित पद हेतु ऑनलाइन आवेदन पत्र आमंत्रित किए जाते हैं:-

क्र.	पद का नाम	रिक्त पदों की संख्या						रिक्तियों से मध्य प्रदेश की मूल निवासी महिला अभ्यर्थियों हेतु आरक्षित पदों की संख्या					रिक्तियों में से मध्य प्रदेश के निवासी दिव्यांगजन अभ्यर्थियों हेतु आरक्षित पदों की संख्या			
		UR	SC	ST	OBC	EWS	कुल	UR	SC	ST	OBC	EWS	OH	VH	HH	MD
1	व्याख्याता रोग निदान (Lecturer rog nidan)	1	1	2	2	0	6	0	0	1	1	0	0	0	1	0
मध्यप्रदेश शासन आयुष विभाग के पत्र क्रमांक 1-18/2019/-18/2019/1-59 दिनांक 25.04.2023 के अनुसार व्याख्याता रोग निदान (Lecturer rog nidan) का पुनरीक्षित पद विवरण निम्नानुसार रखा गया है-																
मुख्य भाग (87%)		1	1	2	2	0	6	0	0	1	1	0	0	0	1	0
प्रावधिक भाग (13%)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

9] A perusal of the aforesaid table would reveal that admittedly, there are six vacancies, out of which, five have already been reserved for SC, ST and OBC category, and one seat is kept under the UR (unreserved) category, however, simultaneously, one seat has also been reserved under the HH category, i.e., Hearing Handicapped. It is also found that as per the Circular dated 14.06.2016 those vacancies reserved for handicapped persons, which could not be filled, shall be



carried forward, and such vacancies shall be adjusted from the unreserved category. The said circular is also reproduced herein for ready reference:-

“क्रमांक 472/904/2016/आ.प्र./एक,  
प्रति,

दिनांक 14/06/2016

सचिव,  
लोक सेवा आयोग  
इंदौर (म.प्र.)

**विषय:-** नि:शक्तजन श्रेणी हेतु विज्ञापित पदों के संबंध में।

**संदर्भ:-** आपका पत्र क्रं- 2648/01/2016/चयन दिनांक 18.05.2016

उपरोक्त विषयान्तर्गत मुझे यह सूचित करने का निदेश हुआ है कि नि:शक्तजन श्रेणी के जो पद भरने से रिक्त रह जाएंगे वे कैरीफारवर्ड किये जाएंगे और अनारक्षित वर्ग से कम किये जाएंगे। अर्थात् नि:शक्तजनों के रिक्त पदों के लिए अनारक्षित वर्ग के पद रिक्त रखे जाएंगे।

(के.के.कातिया)

अपर सचिव

मध्यप्रदेश शासन

सामान्य प्रशासन विभाग “

**10]** The aforesaid circular would also reveal that it has been issued by the Additional Secretary, without referring to any other rules, Circulars or enactment, and there is also no justification provided anywhere else as to why such vacancies which are kept for unreserved category shall be carried forward by adjusting the said vacancy towards the handicapped category. It is also found that the respondents have also relied upon the circular dated 07.11.2000, which reads as under:-

“ मध्यप्रदेश शासन

सामान्य प्रशासन विभाग

मंत्रालय वल्लभ भवन, भोपाल-462004

क्रमांक एफ 7-46/99/आ.प्र./एक,  
प्रति

भोपाल, दिनांक 7 नवम्बर, 2000,

शासन के समस्त विभाग  
अध्यक्ष, राजस्व मंडल, म.प्र. ग्वालियर,  
समस्त संभागीय आयुक्त,  
समस्त विभागाध्यक्ष  
समस्त कलेक्टर,  
मध्यप्रदेश



**विषय :-** आरक्षित वर्गों के आवेदकों द्वारा सामान्य वर्गों के स्थान पर उन्हें अनारक्षित पदों पर समायोजित किया जाना,  
**सन्दर्भ-** इस विभाग का परिपत्र क्र. एफ 7-11/94/आ.प्र./एक, दिनांक 22-10-94, 6/10-7-95 एवं दिनांक 19-5-97.

1 जुलाई, 1994 से प्रभावशील " मध्यप्रदेश लोक सेवा )(अनुसूचित जातियों, अनुसूचित जनजातियों और अन्य पिछड़े वर्गों के लिये आरक्षण ) अधिनियम , 1994" (क्रमांक 21 सन् 1994) की धारा 4(4) में निम्नानुसार प्रावधान है:-

" यदि उपधारा (2) में उल्लेखित प्रवर्ग मे से किसी प्रवर्ग के संबंध में कोई व्यक्ति सामान्य अभ्यर्थियों के साथ खुली प्रतियोगिता में योग्यता के आधार पर चयनित हो जाता है तो उसे उपधारा (2) के अधीन ऐसे प्रवर्ग के लिए आरक्षित रिक्तियों के प्रति समायोजित नहीं किया जाएगा."

अधिनियम के उक्त प्रावधान अनुसार कागवाही सुनिश्चित करने हेतु सन्दर्भित परिपत्रों द्वारा निर्देश जारी किये गये हैं.

2. अतः पुनः इस संबंध में निर्देशों को और स्पष्ट करते हुए, यह निर्देशित किया जाता है कि आरक्षित वर्ग के उम्मीदवारों की अनारक्षित पदों के विरुद्ध तभी समायोजित किया जाएगा जब वे हर प्रकार से सामान्य वर्ग के उम्मीदवार के समान ही बिना किसी रियायत के योग्यता प्राप्त करेंगे.

3. प्रत्येक नियुक्तकर्ता अधिकारी की यह जिम्मेदारी है कि जिन पदों पर प्रतियोगी परीक्षा द्वारा नियुक्ति होती है उनमें नियुक्ति के समय शासन के उक्त निर्देशों का कड़ाई से पालन सुनिश्चित किया जावे.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार  
हस्ता./-

(ओ.पी.चौधरी)

अवर सचिव,

मध्यप्रदेश शासन,

सामान्य प्रशासन विभाग"

***(Emphasis Supplied)***

**11]** The aforesaid circular provides that the reserved category candidate shall be adjusted against the unreserved category only when his/her performance is at par with the unreserved category candidate.

**12]** In the considered opinion of this Court, when there is only one seat available for unreserved category out of the total number of seats, and one seat is also kept for reserved category, namely handicapped category, but without assigning any particular seat out the total number of seats (six in all)and when the candidate of unreserved category is available and selected, and there is no candidate of the handicapped



category, the seat assigned to the unreserved category cannot be carried forward. Had it been a case where the seat was reserved for handicapped category only, then there was no reason for the respondent to also show it as a vacancy under the unreserved category, whereas, it is now a trite law that there cannot be 100% reservation in public employment, whereas, in the advertisement which has been issued by the respondent showing one vacancy for unreserved category, and also the same to be of handicapped category, and contending that the vacancy was actually for handicapped category only, amounts to bypassing the settled law that there cannot be 100% reservation. In this regard, reference may also be had to the decision rendered by the Supreme Court in the case of ***Chebrolu Leela Prasad Rao (Supra)***, paras 134 and 141 of the same, read as under:-

“134. A reservation that is permissible by protective mode, by making it 100 percent would become discriminatory and impermissible. The opportunity of public employment cannot be denied unjustly to the incumbents, and it is not the prerogative of few. The citizens have equal rights, and the total exclusion of others by creating an opportunity for one class is not contemplated by the founding fathers of the Constitution of India. Equality of opportunity and pursuit of choice under Article 51A cannot be deprived of unjustly and arbitrarily. As per the Presidential Order, the citizens of the locality and outsiders were entitled to 15 percent of employment in the district cadre in terms of clause 10 of Article 370(1) (d) of the Constitution. Thus, the G.O. does not classify but deals with reservations. It was contrary to the report sent to the President by the Governor, which indicated even the posts which were reserved for scheduled tribes teachers, they were not available as such Tribes Advisory Council decided to fill them from other nonlocal tribals.

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141. The incumbents of various categories have the right to stake a claim for the employment of which they have been deprived. Thus, it is not a matter of classification. The reservation under Article 16(4) was made. By way of 100% reservation, the employment to others was illegally deprived and they have no chance of employment as against the post of teachers elsewhere because of the order under Article 371D in



which district/zone is a unit. It is a clear case of tinkering with reservation.”

***(Emphasis Supplied)***

**13]** In view of the aforesaid decision, and under the facts and circumstances of the case, this Court has no hesitation to come to a conclusion that the respondents have erred in depriving the petitioner of her rightful claim to the post of Assistant Professor (Rog Nidan) and to carry forward the aforesaid post only on the ground that it was reserved for handicapped persons, despite that fact that no person/candidate of handicapped category was available.

**14]** Resultantly, the petition stands allowed and the respondents are directed to include the name of the petitioner in the main list, Annexure-P/2 as a candidate belonging to unreserved (UR) category, and proceed further accordingly. Let the aforesaid exercise be completed positively within a further period of three weeks.

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

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

Bahar