



IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE JAI KUMAR PILLAI

WRIT PETITION No.41494 of 2025

HARENDRA SINGH TOMAR

Versus

THE STATE OF MADHYA PRADESH AND OTHER

WITH

WRIT PETITION No. 33943 of 2025

SANDEEP MEENA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 34365 of 2025

SHISHUPAL SINGH KIRAR

Versus

COMMERCIAL TAXES DEPARTMENT AND OTHERS

WRIT PETITION No. 34366 of 2025

SANJAY KUMAR DAWAR

Versus

COMMERCIAL TAXES DEPARTMENT AND OTHERS



W.P. No.41494/2025

WRIT PETITION No. 34367 of 2025

DINESH CHOUDHARY

Versus

COMMERCIAL TAXES DEPARTMENT AND OTHERS

WRIT PETITION No. 34368 of 2025

HEMANT CHAUBEY

Versus

COMMERCIAL TAXES DEPARTMENT AND OTHERS

WRIT PETITION No. 41487 of 2025

PRAVEEN KUMAR GUPTA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 41504 of 2025

PRIYANKA SHARMA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 41509 of 2025

POORVI JAIN

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Vibhor Khandelwal - Advocate for the petitioners.

Shri Kushal Goyal - Dy. A.G. for the respondents/State.



Reserved on : 02/12/2025

Post on : 12/12/2025

ORDER

Regard being had to the similitude of controversy involved in the aforementioned petitions, therefore, they are being heard analogously and disposed of by this common order.

2. The petitioners have approached this Court under Article 226 of the Constitution of India seeking following relief:-

“7.1 That, the instant petition may kindly be allowed and the impugned order dated 05/08/2025 passed by the respondent No.1, being illegal and arbitrary, may kindly be set aside.

7.2 That, the cost of this petition may kindly be awarded to the petitioner and any other relief, which this Hon’ble Court may consider appropriate in the light of equity, justice and good conscience, may also be granted in favour of the petitioner and for that the petitioner shall ever be obliged.”

3. It is the case of the petitioners that they are serving as a Commercial Tax Inspector (CTI) in the Madhya Pradesh Commercial Tax Department. They were directly and permanently recruited to the post of CTI under Rule 6 of the Madhya Pradesh Commercial Tax Department Subordinate Taxation Service (Class-



III Executive) Recruitment Rules, 2007 after clearing the Madhya Pradesh State Civil Services Examination 2008/2015 conducted by the Madhya Pradesh Public Service Commission.

4. It is further the case of the petitioners that they are eligible for promotion to the post of Assistant Commercial Tax Officer (ACTO). As per Schedule-II of the Madhya Pradesh State Taxation (Gazetted) Service Recruitment Rules, 2008 and 50% of the total 432 sanctioned posts of ACTO are to be filled by promotion from the cadre of CTI and the remaining 50% from the cadre of Taxation Assistants (TA). The posts of CTI and TA constitute the feeder cadre for the post of ACTO under Schedule-IV of the Rules of 2007. There is no provision for direct recruitment to the post of ACTO by any mode of examination, selection, or otherwise.

5. It is also the case of the petitioners that since there is no permanent post of TA in the Department, permanent recruitment on the post of TA under Rule 6 of the Rules of 2007 is not possible. Despite this, the Department temporarily selected 35 TAs through a limited departmental competitive exam in 2010, directly recruited 243 candidates through a special examination in 2010, 87 candidates in 2012, 74 candidates in 2022, and further 82 candidates through the Lower Department Competitive Examination (LDCE) in 2023. Thus, around 423 temporary TAs are presently working, governed by the Madhya Pradesh Government



Servants (Temporary and Quasi-Permanent Service) Rules, 1960. These temporary government servants are not entitled to promotion to the permanent gazetted post of ACTO. The petitioners are in the gradation list of CTIs and with 312 posts of ACTO lying vacant, they are eligible and entitled to promotion, as well as entitled to preference for officiating higher charge under Rule 9 of the Rules of 1961 in comparison to temporary TAs.

6. Lastly, it is the case of the petitioners that despite these facts, respondent No.1 has wrongly and illegally passed the impugned order dated 05/08/2025 granting officiating higher post charge of ACTO to 171 temporary TAs, enabling them to discharge duties of a permanent gazetted post. This action amounts to creating an unlawful substitute for promotion and results in permanent CTIs, including the petitioners, being placed under the subordination of temporary TAs. The impugned order dated 05/08/2025 has caused grave prejudice to the petitioners, compelling them to approach this Court by filing the present writ petitions.

7. The Counsel for the petitioners submits that the respondent No.1 has illegally passed the impugned order dated 05/08/2025 by granting officiating higher post charge of ACTO to 171 temporarily appointed Taxation Assistants (TAs), despite their ineligibility to hold or perform duties of a permanent gazetted post. This action creates a substitute for promotion and compels permanently



appointed CTIs, including the petitioners, to work under the subordination of temporary TAs, causing grave prejudice to their service rights.

8. The Counsel for the petitioners further asserts that the impugned order violates Articles 14 and 16 of the Constitution of India, discriminates against eligible CTIs and has been passed in a colourable exercise of power by extending undue favour to temporary TAs while ignoring the petitioner's legitimate right to be considered for promotion or for officiating charge under the Rules. The action also amounts to back-door entry into a permanent gazetted post, violates seniority, equality of opportunity, natural justice, and the doctrine of legitimate expectation. The petitioners submits that temporarily appointed TAs are governed by the Rules of 1960 and cannot be granted promotion or officiating charge under the Rules of 2007 and therefore the impugned order is arbitrary, illegal, and unsustainable.

9. *Per contra*, learned counsel for the respondents/State submits that the higher officiating charge was assigned strictly on the basis of batch wise seniority and such assignment has been given equally to both TAs and CTIs. It is argued that the petitioner's claim of violation of natural justice or discrimination is wholly misconceived, as seniority has been maintained uniformly to ensure smooth functioning of the Department. Although an earlier



notification provided for 50% posts to be filled by CTIs and 50% by T.A.s, the Hon'ble Apex Court has stayed the M.P. Public Service (Promotion) Rules, 2002, due to which no promotions have been made under those Rules.

10. It is further emphasized that the higher officiating charge granted under the order dated 05/08/2025 is merely a working arrangement without conferring any monetary benefit. Learned counsel for the respondents/State further submits that the impugned order has been passed strictly in accordance with law and the seniority list, and the petitioners have challenged it on wholly misconceived grounds. The petitioners have failed to appreciate the amendment in Rule 12(A) of the 2007 Rules, which places CTIs and T.A.s at par. It is also clarified that no temporary posts exist in the Department and the post of T.A. is permanent in nature, hence, assigning higher officiating charge to T.A.s based on seniority cannot be termed illegal. The impugned action is neither arbitrary nor contrary to Articles 14 and 16, particularly when the petitioners have not challenged the relevant Rules or Gazette Notification.

11. Learned counsel for the respondents/State also submits that CTIs and TAs are treated at par under the applicable notifications, and therefore the petitioner's assertion that only CTIs are entitled to higher officiating charge is untenable. Both categories are eligible for promotion to the post of ACTO, and ordinarily 50% of posts are



to be filled from each category. However, due to the subsisting stay order, the State Government assigned quasi-judicial duties as higher officiating charge purely on the basis of batch-wise seniority to ensure administrative continuity. Therefore, assigning higher officiating charge does not amount to promotion and does not grant any monetary or promotional benefits. The petitioner's allegations of colorable exercise of power or temporary/promotional appointments are wholly baseless. The respondents/State also reserve the right to raise additional grounds at the time of final arguments.

12. Having heard both parties at length and examined the entire record available.

13. This Court observes that, for the just and proper adjudication of the present *lis*, the pivotal question that arises for consideration is whether Respondent No.1 acted within the bounds of law in issuing the impugned order dated 05/08/2025, whereby higher officiating charge of the post of ACTO has been conferred upon 171 Taxation Assistants appointed only on a temporary basis, notwithstanding their temporary status and the allegations of their ineligibility under the Recruitment Rules of 2007 as well as the Rules of 1960 as submitted by the petitioner.

14. This Court has carefully examined the statutory framework governing the posts of Commercial Tax Inspector (CTI) and



Taxation Assistant (TA). In this regard, reference may first be made to the Gazette Notification of the Government of Madhya Pradesh dated 15/12/2008, as amended on 06/04/2013. The said amendment clearly stipulates that in Schedule-II, Column (2), against Serial No.7 relating to the post of “Assistant Commercial Tax Officer (ACTO)”, the existing provision of “100%” is substituted by the words “50 percent from Commercial Tax Inspectors and 50 percent from Taxation Assistants”. Likewise, in Schedule-IV, Column (2), against Serial No.6, the expression “Commercial Tax Inspector” is substituted by the words “Commercial Tax Inspector and Taxation Assistant”. These amendments unequivocally reflect the legislative intent to treat both CTI and TA as parallel feeder cadres for promotion to the post of ACTO. The said amendment reads as follows:-

“(1) अनुसूची दो के कॉलम (2) में, अनुक्रमांक 7 पर उल्लिखित पद "सहायक वाणिज्यिक कर अधिकारी" के सामने, कॉलम (5) में, अंक 100 प्रतिशत" के स्थान पर, अंक तथा शब्द "50 प्रतिशत वाणिज्यिक कर निरीक्षक से तथा 50 प्रतिशत करधान सहायक से" स्थापित किए जाएं,

(2) अनुसूची चार के कॉलम (2) में, अनुक्रमांक 6 के सामने, शब्द "वाणिज्यिक कर निरीक्षक" के स्थान पर, शब्द "वाणिज्यिक कर निरीक्षक तथा करधान सहायक स्थापित किए जाएं.”

15. Upon further perusal of the Madhya Pradesh Commercial Tax Department Subordinate Taxation Service (Class-III – Executive) Recruitment Rules, 2007 (hereinafter "Rules of 2007"), this Court finds that Schedule-I places both CTI and TA in the



identical pay scale of ₹5200-20200 with Grade Pay ₹2800. Schedule-IV of the said Rules further clarifies that both CTI and TA are eligible for promotion to the post of ACTO upon completion of five years of minimum service. These provisions, when read conjointly, leave no manner of doubt that the two posts are placed on an equal footing by the rule-making authority.

16. This parity also flows from Rule 6 of the Rules of 2007 which prescribes a uniform mode of recruitment applicable to all posts within the service, including CTI and TA. Rule 6 provides for recruitment by (a) direct recruitment through competitive examination or interview or both; (b) promotion in accordance with Schedule-IV; (c) selection under Schedule-V; and (d) transfer / absorption / deputation as determined by the Government. The rule does not draw any distinction in the applicability of these recruitment methods between CTI and TA, thereby further reinforcing the legislative intention to place both cadres on the same platform.

17. The petitioners have submitted that CTIs are appointed upon clearing the Madhya Pradesh State Civil Services Examination conducted by the Madhya Pradesh Public Service Commission, whereas TAs were initially appointed pursuant to the cadre restructuring of 2008. However, the mere difference in the channel or mode of initial recruitment does not result in a legal inference that TAs are subordinate to CTIs, nor can it be construed to mean



that TAs are ineligible for being granted charge or promotion to ACTO when the governing statutory rules place both cadres at par.

18. The Hon'ble Supreme Court in **Union of India v. Atul Shukla, (2014) 10 SCC 432 : (2015) 1 SCC (L&S) 81 : 2014 SCC OnLine SC 762** has categorically held that once the Rules treat different categories as part of a common cadre or place them on equal footing for the purposes of seniority, promotion or other service benefits, the source of recruitment cannot be a ground for differential treatment. The Hon'ble Court held that-

“so long as to two employees are part of same cadre/rank, they cannot be treated differently either for purposes of pay and allowances or other conditions of services including the age of superannuation. ”

19. Thus, the governing framework unmistakably places CTIs and TAs on an equal footing for purposes of promotion and discharge of higher responsibilities. The amendments to the Recruitment Rules, coupled with Schedule-I and Schedule-IV of the Rules of 2007, clearly recognize both cadres as parallel feeder posts to ACTO. The distinction in the mode of their initial recruitment cannot, in law, be a ground to deny TAs the benefit of officiating charge when the rules expressly envisage parity. Accordingly, the challenge to the impugned order must be viewed in light of this established legal parity between CTIs and TAs.



20. This Court has considered the submissions advanced on the issue relating to the nature of the post of Taxation Assistant (TA). The petitioners have argued that the TAs are merely temporary appointees and, therefore, cannot be extended benefits such as higher officiating charge. It is submitted that there exist a total of 488 posts of TAs in the respondent department, of which approximately 423 are currently occupied. The appointments to the said post have been made on multiple occasions twice through the Limited Departmental Competitive Examination and thrice through direct recruitment, wherein special examinations were conducted by the MPPSC. According to the petitioners, since the post of TA is described as temporary in nature, the incumbents do not hold any lien over the post.

21. However, upon perusal of the reply filed by the respondents/State, this Court finds that the stand of the Department is materially different. The respondents/State have clarified that seniority has been assigned to CTIs and TAs strictly on the basis of their tenure of service, i.e., batch-to-batch seniority. The higher officiating charge of the post of ACTO was extended only for ensuring the smooth functioning of the State machinery in view of administrative exigencies. It is further stated that the nature of these posts cannot be construed as temporary, as such an interpretation would run contrary to the settled position contained in the GAD Circular dated 16/03/1993, which specifies that none of the



sanctioned positions are temporary in nature. The said circular is also referred to in the communication dated 02/02/2024 issued by the Deputy Commissioner, Commercial Tax Department.

22. Significantly, this Court observes that neither the approval granted by the Cabinet/Finance Department nor the subsequent orders issued by the administrative department contain any indication that the posts of TAs were sanctioned for a limited period. There is no reference to any tenure restriction or temporary character attached to these posts. In the absence of such a condition and in view of the statutory definition contained in Rule 9(22) of the Fundamental Rules, the posts must be construed as permanent posts.

23. Thus, the petitioner's description of the post of Taxation Assistant as temporary is not supported by any statutory or administrative record. The respondents/State have demonstrated that seniority and officiating arrangements were made strictly on the basis of batch-wise service requirements and administrative necessity. The GAD Circular dated 16/03/1993, along with the communication dated 02/02/2024, clearly negates the contention that these are temporary posts. Further, the absence of any tenure limitation in Cabinet approvals or departmental orders reinforces their permanent character. Accordingly, the posts of Taxation Assistants must be construed as permanent in nature for all legal and administrative purposes.



24. This Court has considered the stand of the petitioners in respect of the impugned order dated 05/08/2025, whereby officiating higher post charge of Assistant Commercial Tax Officer (ACTO) has been entrusted to 171 Taxation Assistants (TAs). From the reply filed by the respondents, it emerges that the arrangement in question is purely temporary and does not partake the character of promotion. The respondents/State have stated that the validity of the M.P. Public Service (Promotion) Rules, 2002 was challenged before this Court in the year 2016, and the Hon'ble Supreme Court has passed an interim order of stay, in consequence whereof the amended Rules cannot presently be acted upon.

25. The respondents/State have further submitted that the post of ACTO is quasi-judicial in nature and that there exist 432 sanctioned posts of ACTO across the State, out of which 317 posts were lying vacant at the time when the proposal was processed. It is the specific case of the department that owing to large scale vacancies and administrative exigencies, it became necessary to assign temporary charge of the higher post to eligible employees in order of seniority.

26. This Court notes that paragraphs 3 to 6 of the order dated 05/08/2025 have been reproduced by the respondents/State to clarify that the officiating charge may be withdrawn at any time without prior notice and that the assignment shall not be treated as promotion or regular posting and that the officer entrusted with



such charge shall continue to draw the pay of his substantive post and it has also been stated that no financial upgradation or monetary advantage has been extended to any of the Taxation Assistants who have been given such charge, the relevant part order is reads as follows:-

“3. कार्यभार प्रभार दिये जाने का आदेश किसी भी समय बिना किसी पूर्व नोटिस । सूचना के सक्षम प्राधिकारी द्वारा निरस्त किया जाकर संबंधित को उनके मूल पद पर वापस किया जा सकता है।

4. उक्त प्रभार वर्तमान व्यवस्था को सुचारू रूप से संचालन हेतु दिया जा रहा है, इसे पदोन्नति । पदस्थापना न माना जाये।

5. कार्यवाहक उच्च प्रभार" के साथ पदस्थ अधिकारी का वेतनमान वही रहेगा, जो उन्हें अपने वास्तविक कनिष्ठ पद पर प्राप्त हो रहा”

27. In view of the above, the stand of the respondents/State is that, in the absence of operative Promotion Rules due to the subsisting stay of the Hon’ble Apex Court, no statutory framework presently governs the conferral of officiating charge. Hence, such assignment is necessarily to be regulated by administrative convenience and departmental necessity. According to the respondents/State, therefore, the petitioner’s challenge to the said arrangement is devoid of merit.

28. In view of the foregoing discussion, this Court finds no merit in the challenge laid by the petitioners. The applicable statutory framework unequivocally places CTIs and TAs on equal footing as feeder cadres for ACTO, thereby validating the grant of officiating



charge to eligible TAs. The petitioner's contention regarding the temporary character of the post of Taxation Assistant stands contradicted by the documentary record, which establishes its permanent nature. Further, in the absence of operative Promotion Rules owing to the subsisting stay of the Hon'ble Supreme Court, the assignment of officiating charge is a matter of administrative necessity. Consequently, the impugned order dated 05/08/2025 suffers from no illegality or infirmity.

29. Consequently, the Writ Petition being devoid of substance, stands **dismissed.**

30. All pending applications, if any, shall be **disposed of** accordingly.

31. A copy of this order be kept in the record of connected case.

(Jai Kumar Pillai)
Judge

Aiver*PS