

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV

ON THE 14th OF MARCH, 2022

WRIT PETITION No.6376 of 2003

Between:-

**DR. GOPI KRISHNA AGRAWAL S/O
SHRI B.D.AGRAWAL, AGED ABOUT 40
YEARS, R/O BHOPAL**

.....PETITIONER

(BY SHRI SHREYAS DUBEY - ADVOCATE)

AND

1. **STATE OF MADHYA PRADESH, THROUGH
THE SECRETARY IN THE DEPARTMENT
OF PUBLIC HEALTH & FAMILY
WELFARE, VALLABH BHAWAN, BHOPAL
(M.P.).**
2. **SECRETARY, M.P. PUBLIC SERVICE
COMMISSION, RESIDENCY ROAD,
INDORE.**
3. **DR.SMT. JAISHRI NADKARNI, AGED
ABOUT 55 YEARS. OCCUPATION-
ASSISTANT PROFESSOR, PEDIATRIC
DEPARTMENT, GANDHI COLLEGE,
BHOPAL R/O E-7/27, CHAAREMALIYA,
BHOPAL (M.P.)**

4. **THE STATE OF M.P. THROUGH ITS
PRINCIPAL SECRETARY, DEPARTMENT
OF MEDICAL EDUCATION, MANTRALAYA
VALLABH BHAWAN, BHOPAL (M.P.).**

...RESPONDENTS

(BY SHRI B.D.SINGH – GOVERNMENT ADVOCATE)

*This appeal coming on for hearing this day, Hon'ble Shri
Justice Purushaindra Kumar Kaurav, passed the following:*

ORDER

The petitioner has filed the instant petition seeking quashment of appointment of respondent No.3 to the post of lecturer (Pediatrics) in Gandhi Medical College, Bhopal and alternatively, for a direction to respondent No.1 to appoint the petitioner on the said post with effect from the date of appointment of respondent No.3. He has also prayed for other consequential reliefs.

2. This petition was originally filed before the erstwhile M.P.State Administrative Tribunal at Jabalpur in the year 1990. On abolition of the erstwhile State Administrative Tribunal, the matter

has been transferred to this court and renumbered as W.P.No.6376/2003.

3. The facts of the case as can be seen from the pleadings are that petitioner is M.D. (Pediatrics) and was working as Assistant Surgeon under the respondent No.1. On the request of respondent No.1, the Madhya Pradesh Public Service Commissioner (in short "MPPSC") issued an advertisement for appointment of 83 temporary lecturers in different subjects including three posts of Pediatrics (Medicine). Out of three posts, one post was available for General quota and two posts were reserved for Scheduled Caste and Scheduled Tribe candidate. The petitioner applied against the post available for general quota. On 07.07.1989, MPPSC published the list of selected candidates and one Dr.Bajaj was recommended for appointment on the post of lecturer in Pediatrics (Medicine) against general quota. The appointment order was issued in favour of Dr. Bajaj and he joined in the month of August, 1989. The MPPSC also prepared a supplementary list and the name of respondent No.3 was placed at S.No..1. The name of the petitioner was in the reserve list

at S.No.1. Since during the said time, the world's largest Industrial Gas Tragedy occurred in Bhopal, the State Government had taken various measures to provide the timely medical help to the victims. In order to deal with the situation, several posts were created including three posts of lecturer in Pediatrics in Gandhi Medical College, Bhopal. It is stated that respondent No.1 issued an appointment order only in favour of respondent No.3 and the other posts of lecturer in Pediatrics remained vacant. Since the petitioner was fulfilling the qualification and was fully eligible to hold the said post, therefore, appropriate order ought to have been issued in his favour. It is pleaded that by keeping the other posts vacant and, only allowing respondent No.3 to work against one post out of three posts, the respondents have discriminated the petitioner, hence the petitioner has approached this court in the instant writ petition.

4. The respondent-State in its reply has stated that vide letter dated 10.07.1989, they received the list of selected candidates from MPPSC. In the general category, the original list comprised the name of Dr. Naresh Bajaj and the supplementary list contained the

name of respondent No.3 - Dr. Smt. Jayshree Nadkarni, whereas, for the post reserved for Scheduled Caste, name of only one candidate Dr. Shivnath Prasad Verma was selected. No scheduled caste candidate was placed in the supplementary list and no one was selected for the post reserved for Scheduled Tribe category. The two candidates selected for the post of lecturers in Pediatrics were duly appointed by the Government. It has also been stated that on account of Bhopal Gas Tragedy, the new department known as Bhopal Gas Tragedy Relief and Rehabilitation was created. Various posts were sanctioned including three posts of lecturer in Pediatrics. There was immediate need for filling-up those posts. Looking to the extraordinary urgency and in order to avoid delay in going through the mode of selection through the Public Service Commission, the department decided to appoint respondent No.3-Dr. Smt. Jaishree Nadkarni against one of the newly created posts. Since, her name was already in the supplementary list prepared by the Public Service Commission for the purposes of selecting the suitable candidate pursuant to the earlier advertisement; the Respondent No.3-Dr. Smt.

Jaishree Nadkarni was appointed vide order dated 05.02.1990 on a probation of two years and on 30.05.1991, the Public Service Commission was requested to grant *ex post facto* consent. It has been specifically stated that except one name of respondent No.3, no reserved list was received from the Public Service Commission. It is stated that there is no discrimination and unless the petitioner is able to establish his vested right, no relief can be granted to him and secondly, there is no illegality in the appointment of respondent No.3.

5. The respondent No.2- MPPSC has also filed its reply stating therein that the name of respondent No.3 - Dr. Smt. Jayshree Nadkarni was placed as the only candidate in the supplementary list. It is stated that it is the presumption of the petitioner that some reserve list has been prepared. However, as a matter of fact, no such reserve list was prepared. The Public Service Commission has also relied on the Division Bench decision of this court in the matter of

*Dr. B.P.Pawar and 4 others Vs. State of M.P. and two others*¹. In the said case, selection was undertaken for two posts of Reader in Anatomy and appointment of respondent No.3 in that case was made on the basis of some reserve list of three candidates. This court while relying on the earlier decision in the case of *V.K.Seth Vs. State of M.P. and another*² quashed the order of appointment of respondent No.3 in that case.

6. The respondent No.3 also filed its return justifying her appointment. It has been stated that her name was at S.No.1 in the supplementary list. She further states that no cause of action has arisen in favour of the petitioner to file the instant petition for the reason that his name does not figure in any list prepared and notified by the Public Service Commission

7. We have heard the learned counsel for the parties and perused the record.

¹ M.P.No.1368-1982 decided on 22.06.1983.

² 1980 MPLJ 287.

8. The recruitment on the post of lecturer Pediatrics is governed by the Madhya Pradesh Health (Gazetted) Service Recruitment Rules, 1967 (in short “Rules of 1967”) framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution. Rule 11 of the Rules of 1967 prescribes selection for recruitment to the service by the Commission on the requisition in that behalf by the State Government. Rules 12 of the Rules of 1967 prescribes that list of candidates for selection is to be sent by the Commission.

9. The Hon’ble Supreme Court in the case of *State of Haryana Vs. Subhash Chander Marwaha and others*³ has held that the mere fact that the candidate’s name appears in the list recommended by the Commission does not entitle him that he should be appointed. In the instant case, even the name of the petitioner does not find place in the select list or the supplementary list. Instead, his case is that some reserve list was prepared and his name finds place at S.No.1 in the said list. The said position is disputed by the Public Service Commission and the State. There is no material available on

³ AIR 1973 SC 2216.

record to substantiate the case of the petitioner. The alleged select list has not been placed on record and is non-existent. The argument of the petitioner that according to practice, reserve list is prepared for future vacancies has been considered by the Division Bench of this Court in the case of *V.K.Seth*². In para-11 of the said decision, it has been held that any practice of preparation of reserve list is contrary to the statutory rules cannot be given effect to and cannot also form the basis of any argument of violation of Article 14 of the Constitution which guarantees equality before the law and equal protection of the laws and not equality before a practice which is violative of the law.

10. In view of the aforesaid, we do not find any substance in the submission of learned counsel for the petitioner, hence the instant writ petition is dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MKL.

