

HIGH COURT OF MADHYA PRADESH : JABALPUR**WRIT PETITION No.10891/2010**

Suryakant Tiwari & another

Vs.

State of Madhya Pradesh & others

Shri K.C. Ghildiyal, learned Counsel for the petitioners.

Shri Divesh Jain, learned Govt. Advocate for the respondents-State.

Present : Hon'ble Shri Justice K.K. Trivedi

O R D E R**(24/09/2015)**

1. By this petition under Article 226 of the Constitution of India, the petitioners have sought direction against the respondents to issue order of appointment in respect of the petitioners on the post of Patwari and to send them for training. It is the case of the petitioners that after passing the qualifying examination, the petitioners took part in the selection initiated by the Madhya Pradesh Professional Examination Board for appointment on the post of Patwari, as was notified vide advertisement dated 05.06.2008. 52 posts were concerning the Revenue District Rewa and to become eligible for appointment on the post of Patwari, the candidate required to have passed Higher Secondary and High School examination and also to possess 'O' Level Computer Certificate from the recognized institution or one year diploma in Computer Application from an institution affiliated/recognized/registered by UGC or higher education in Computers. According to the petitioners, since they were possessing a certificate to that effect, they submitted their

application. They were allowed to take part in the examination. The result of the examination was declared and petitioners were shown at S.No.1 and 15 respectively in the merit list issued in respect of Rewa district.

2. It is the case of the petitioners that they were called upon to furnish certain original documents before the Collector, vide memo dated 20.06.2009 and when they produced the certificate of Computer Training, it was stated by the respondents that the petitioners were not having the requisite qualification in Computer Training from the recognized institution, therefore, the same was not to be accepted. Since there were large number of persons, who were denied the appointment, several writ petitions were filed before this Court. A bunch of such cases was decided by this Court and the same was dismissed vide order dated 05.10.2009, as a result the writ petition filed by the petitioners being W.P. No.8105/2009 was also dismissed on 22.12.2009. During pendency of the said litigation certain directions were issued by the respondents and those, who were having the qualification of 'O' Level Computer Certificate etc. were asked to be sent for Patwari training. The benefit was not extended to the petitioner, therefore, they were required to approach this Court by way of filing present writ petition. It is also the case of the petitioners that during the aforesaid period the petitioners have obtained Post Graduate Diploma Certificate in Computer Science and application from the University on 24.07.2010 and accordingly they have become eligible to be appointed on the post. Since the appointment was not granted to them, the present writ petition was filed.

3. By filing a return the respondents have contended that from the statement made in the petition itself it is clear that

the petitioners have obtained the qualification of computer training and application only on 24.07.2010 and since such a qualification was obtained much after the cutoff date prescribed in the advertisement, the subsequent obtaining the qualification would not make the petitioners eligible to take part in the selection as on the cutoff date prescribed in the advertisement, the petitioners were not having the requisite qualification. By way of additional reply it is contended that the process of selection has already been completed long back and since instructions were already issued by the State Government and its authorities giving details of those certificates, which were to be treated equivalent to the qualification prescribed in the advertisement, which the petitioners were not possessing at the relevant time, they would not be entitled to claim the benefit of appointment. Their petition is, thus, liable to be dismissed.

4. Heard learned Counsel for the parties at length and perused the record.

5. It is not in dispute that while issuing the advertisement, the qualifications required to become eligible to take part in the said selection process were indicted. It is also not in dispute that a last date for filling the form for taking part in the said examination was also mentioned in the advertisement. The Professional Examination Board was simply an agency appointed by the State Government to conduct the selection and it was not the competent authority to verify any certificate produced by any candidate to test whether the candidate was eligible or ineligible to take part in the selection. That was the job of the appointing authority as in all selections it is invariably notified that candidates have to satisfy the appointing

authority about their eligibility to be appointed on the post. Mere allowing them to take part in the selection by the Professional Examination Board would not constitute as if the petitioners were eligible on the date when they filled the form to take part in the selection. Apart from the aforesaid, by filing several documents the petitioners themselves have admitted the fact that the earlier certificate of computer training obtained by the them was not to be treated as recognized qualification because afterward the petitioners themselves have obtained the diploma certificate of computer training from a recognized university. If the petitioners were allowed to take part in the examination held by the Professional Examination Board, that by itself will not mean that the petitioners were eligible on the date they filled the form for taking part in the selection.

6. The 'theory of relation back' propounded by the Apex Court has been tested in the case of ***Council of Homeopathic System of Medicine, Punjab and others vs. Suchintan and others***¹, wherein while dealing with almost the same situation the Apex Court refused to make applicable the doctrine of relation back. The Apex Court in the said case has laid-down the principle in para 33 of the report, which reads thus :

“33. Supposing the passes in that subject or subjects in the supplementary examination he is declared to have passed at the examination as a whole. This should obviously be so; because once he completes all the subjects, he has to necessarily be declared to have passed. Merely on this language, “declared to have passed at the examination as a whole”, we are unable to understand as to how the “doctrine of relation back” could ever be invoked. The invocation of such a doctrine leads to strange results. When a candidate completes the subjects only in the supplementary examination, then alone, he

1 AIR 1994 SC 1761

passes the examination. It is that pass which is declared. If the “doctrine of relation back” is applied, it would have the effect of deeming to have passed in the annual examination, held at the end of 12 months, which on the face of it is untrue.”

This aspect has been considered by the Division Bench of this Court in the case of ***Smt. Draupati Tiwari vs. State of M.P. and others***², and it has been held that if on the cutoff date a candidate was not eligible to take part in the examination as was not having the requisite qualification, even when the qualification is subsequently obtained, he/she would not become eligible to take part in the said selection.

7. The same is the situation available in the present petition. The petitioners were ineligible to take part in the selection on the cutoff date prescribed in the advertisement and as such even when they have obtained the qualification at a later stage, they would not become eligible to take part in the selection and consequent appointment on the post in question. The relief claimed in the writ petition cannot be granted to the petitioners in view of the aforesaid pronouncement of law by the Apex Court as also by the Division Bench of this Court.

8. As a result, the writ petition fails and is hereby dismissed. However, there shall be no order as to costs.

(**K.K. Trivedi**)
Judge

Skc