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

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 12th OF MARCH, 2024

WRIT PETITION No. 12393 of 2014

BETWEEN:-

**RAJESH KUMAR MISHRA S/O SHRI BHAILAL SHARMA,
AGED ABOUT 25 YEARS, R/O VILLAGE SEMARI, TAH.
SIHAWAL, DISTT. SIDHI, (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SANJEEV KUMAR SINGH - ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH, THROUGH THE
PRINCIPAL SECRETARY, PANCHAYAT ANA
DEVELOPMENT, MANTRALAYA, VALLABH
BHAWAN (MADHYA PRADESH)**
- 2. COLLECTOR, SIDHI, DISTT. SIDHI (MADHYA
PRADESH)**
- 3. CHIEF EXECUTIVE OFFICER, JILA PANCHAYAT,
SIDHI DISTT. SIDHI (MADHYA PRADESH)**
- 4. CHIEF EXECUTIVE OFFICER JANPAD
PANCHAYAT, SIHAWAL DISTT. SIDHI (MADHYA
PRADESH)**
- 5. ANIL KUMAR VERMA S/O SHRI KUNJLAL
VERMA, AGED ABOUT 26 YEARS, R/O VILLAGE
SEMRI, TEHSIL SIHAWAL DISTT. SIDHI (MADHYA
PRADESH)**

.....RESPONDENTS

***(BY SHRI MANAS MANI VERMA - GOVT. ADVOCATE FOR RESPONDENTS
NO.1 AND 2)***

***(BY SHRI SANJAY RAM TAMRAKAR - ADVOCATE FOR RESPONDENT
NO.5)***

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This petition coming on for orders this day, the court passed the

following:

ORDER

This petition is filed challenging the order dated 29th March, 2014 passed by Additional Collector, Sidhi in Case No.46/A-89-A(15)/2012-13 whereby an appeal filed by the petitioner in the matter of appointment of Gram Rojgar Sahayak has been dismissed.

2. Brief facts leading to the present case are that petitioner and respondent No.5 -Anil Kumar Verma, both were candidates for selection to the post of Gram Rojgar Sahayak, Village Semari, Tah. Sihawal, Distt. Sidhi. Petitioner had admittedly secured higher marks than the private respondent as is evident from the order of the Additional Collector wherein petitioner was given 133.83 marks with the break up of 53.83 marks for higher secondary examination, 50 marks for computer examination and 30 marks for B.Com. examination whereas private respondent had secured 117.33 marks with the break up of 67.33 marks for high secondary and 50 marks for computer qualification, yet petitioner's claim for appointment was rejected on the ground that petitioner had completed diploma in computer application and B.Com degree, both as a regular student in the year 2001 and 2002 respectively.

3. It is submitted that petitioner has filed I.A. No.1516/2024, an application under Order 7 Rule 14 CPC for taking documents on record. Along with this application he has enclosed a certificate from the Registrar of Makhanlal Chaturvedi Vishwavidyalaya pointing out that diploma in computer application which was passed by the petitioner in the year 2001 is a part-time course. In view of such certification, it is submitted that petitioner was entitled to obtain diploma in computer application along with his B.Com. degree as it is a part-time course.

4. Shri Tamrakar, learned counsel for respondent No.5, in his turn, submits that firstly petitioner had not produced any material before the competent authority or the Additional Collector to point out that diploma was a part-time course and secondly, in the light of the judgment of Hon'ble Supreme Court in the case of **Buddhi Nath Chaudhary and others Vs. Abhahi Kumar and others, (2001) 3 SCC 328**, it is pointed out that interference with the improper appointment after long lapse of time is not required to be disturbed.

5. Shri Manas Mani Verma, learned Govt. Advocate, supports the order of Additional Collector.

6. After hearing learned counsel for the parties and going through the record, it is apparent that Additional Collector was so ignorant of the fact that in the impugned order while discussing the comparative merits as were drawn by the Project Officer, Janpad Panchayat, Sihawal, Distt. Sidhi, it is mentioned that petitioner had obtained two degrees from two educational institutions, therefore, he was not entitled to obtain two degrees from two educational institutions simultaneously, therefore, the objection committee has rightly rejected his objection and given appointment in favour of private respondent.

7. This naivety of Additional Collector exposes his actual intention of doing justice with the parties. Additional Collector, being a senior revenue officer in the State hierarchy was not even aware of the fact that there is a difference between degree and diploma. Diploma in computer application as was obtained by the petitioner from Makhanlal Chaturvedi Vishwavidyalaya is a different certificate which cannot be termed to be "degree" inasmuch as degree is to be given in terms of the specification made by the UGC or the AICTE/Medical Council, as the case may be.

8. This naivety of the Additional Collector has costed appointment in

favour of the petitioner. Once Additional Collector failed to distinguished that there was no embargo on obtaining a diploma along with a degree as has been pointed out by Shri Sanjeev Kumar Singh, learned counsel for the petitioner, while referring to document Annexure-P/9 wherein UGC in its proposal had admitted that a diploma can be obtained along with a degree, this matter stands closed. It is proceeded on incorrect premises that diploma in computer application is a degree. Such incorrect factual appreciation cannot be given a seal of approval. The fact of the matter is that petitioner was arbitrarily discriminated and without understanding the difference between a degree and diploma, impugned order having been passed on a faulty matrix, deserves to be set aside and is hereby set aside.

9. As far as plea put forth by Shri Tamrakar, learned counsel for respondent No.5, placing reliance on the judgment of Hon'ble Supreme Court in the case of **Buddhi Nath Chaudhary and others (supra)** is concerned, an illegal appointment does not create a right or a lien on a post in favour of a private respondent inasmuch as he was admittedly less meritorious than the petitioner, therefore, that judgment having not taken into consideration this aspect that more meritorious candidate cannot be sidelined only on account of pendency of the litigation or time gap which has taken place because of pendency of litigation, will not cause any undue prejudice to the parties, this judgement having no application to the facts and circumstances of the case and in light of the judgment of Hon'ble Supreme Court in the case **Dulu Deka Vs. State of Assam and others, (2023) 9 SCC 749**, petition deserves to be allowed.

10. Accordingly, this petition is allowed. Additional Collector or the

Programme Officer, as the case may be, is directed to issue appointment order in favour of the petitioner within 15 days of receipt of certified copy of this order being passed today and allow him to join. There will be no need to give any opportunity of hearing to the private respondent as he is already represented before this Court and admittedly he was less meritorious than the petitioner. However, with a view to balance equity, it is directed that though this Court has held appointment of private respondent to be illegal, but no recovery may be made from him as he was allowed to work under some conspicuous circumstances.

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(VIVEK AGARWAL)
JUDGE