

**HIGH COURT OF MADHYA PRADESH : JABALPUR**

**WRIT PETITION No.1507/2015 (S)**

Ashutosh Gumasta

vs.

The State of Madhya Pradesh & others

**WRIT PETITION No.1508/2015 (S)**

Sunil Kumar Sahu

vs.

State of Madhya Pradesh & others

**WRIT PETITION No.2664/2015 (S)**

Vishnath Singh Rajput

vs.

The State of Madhya Pradesh & others

**WRIT PETITION No.2665/2015 (S)**

Diwakant Raghuwanshi

vs.

The State of Madhya Pradesh & others

**WRIT PETITION No.2666/2015 (S)**

Ravendra Singh

vs.

The State of Madhya Pradesh & others

**WRIT PETITION No.1297/2015 (S)**

Shishuvendra Singh Tomar

vs.

State of Madhya Pradesh & others

**WRIT PETITION No.1550/2015 (S)**

Bhanu Pratap Singh Bhadouriya

vs.

State of Madhya Pradesh & others

**WRIT PETITION No.1608/2015 (S)**

Avdhesh Kumar Bhargava

vs.

State of Madhya Pradesh & others

**WRIT PETITION No.1637/2015 (S)**

Rajkumar Dhakad

vs.

State of Madhya Pradesh & others

**WRIT PETITION No.1660/2015 (S)**

Naresh Chandra Sagar

vs.

State of Madhya Pradesh & others

**WRIT PETITION No.2288/2015 (S)**

Mihir Kumar

vs.

The State of Madhya Pradesh & others

**WRIT PETITION No.2918/2015 (S)**

Amit Kumar Singh

vs.

State of Madhya Pradesh & others

**WRIT PETITION No.2926/2015 (S)**

Sandeep Tripathi

vs.

State of Madhya Pradesh & others

**WRIT PETITION No.3850/2015 (S)**

Shailesh Patel

vs.

State of Madhya Pradesh & others

**WRIT PETITION No.3852/2015 (S)**

Krishna Kumar Manyase

vs.

State of Madhya Pradesh & others

**WRIT PETITION No.4235/2015 (S)**

Umesh Pratap Singh

vs.

State of Madhya Pradesh & others

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**PRESENT :**

**Hon'ble Shri Justice Rajendra Menon, J.**

**Hon'ble Shri Justice K.K. Trivedi, J.**

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*Whether approved for reporting ? - Yes/No.*  
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Shri R.N. Singh, learned senior Counsel assisted by Shri Arpan J. Pawar, learned Counsel for the petitioners.

(in W.P. No.1507/2015(S) and W.P. No.1508/2015(S)).

Shri Rajendra Tiwari, learned senior Counsel assisted by Shri Thaman Khadka, learned Counsel for the petitioners.

(In W.P. No.2664/2015(S), W.P. No.2665/2015(S)  
& W.P. No.2666/2015(S)).

Shri Ritwik Parashar, learned Counsel for the petitioners.

(In W.P. No.1297/2015(S), W.P. No.1550/2015(S)  
& W.P. No.1660/2015(S)).

Shri Atul Choudhary, learned Counsel for the petitioners.

(In W.P. No.1608/2015(S) & W.P. No.1637/2015(S)).

Shri Ajay Kumar Shukla, learned Counsel for the petitioner.

(In W.P. No.2288/2015(S)).

Shri Sanjay Kumar Singh, learned Counsel for the petitioners.

(In W.P. No.2918/2015(S) & W.P. No.2926/2015(S)).

Shri Rahul Singh Thakur, learned Counsel for the petitioners.

(In W.P. No.3850/2015(S) & W.P. No.3852/2015(S)).

Shri Abhishek Gulatee, learned Counsel for the petitioner.

(In W.P. No.4235/2015(S)).

Shri P.K. Kaurav, learned Additional Advocate General for respondents-State.

Shri Aditya Khandekar, learned Counsel for respondents No.3 & 4.

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**Reserved On : 01.12.2015**

**Date of Decision : 07.12.2015**

**J U D G M E N T**

**(07/12/2015)**

***Per : K.K. Trivedi, J.***

1. This bunch of writ petitions seek to challenge the order dated 19.01.2015 commonly issued for all the petitioners by the Madhya Pradesh Vyavsayik Pariksha Mandal (Madhya Pradesh Professional Examination Board) (herein after referred to as 'VYAPAM') cancelling the result of the examination of the petitioners for appointment on the post

of Junior Supply Officer and Inspector, Weights & Measures, held in the year 2012 and in each petition the consequential order issued by the departmental authorities cancelling the appointments of the petitioners and their termination are also called in question. Since the main source of termination of services of all the petitioners is the common order passed by the VYAPAM cancelling the results of the petitioners, all these writ petitions were heard together. For the convenience, the facts are taken from W.P. No.1507/2015(S), which are much or less common in all cases. This order will govern disposal of all the writ petitions.

2. The petitioner was the candidate in the Junior Supply Officer and Inspector, Weights & Measures Examination, 2012 conducted by the VYAPAM. He secured first position in the select list. After the declaration of result and completing the other formalities, an order of appointment was issued on 10.01.2013 by the department appointing him as Junior Supply Officer in the Directorate of Food, Civil Supply and Consumer Protection. Consequential posting of the petitioner was made on which post he joined.

3. A scam of making unfair selection by the officials of the VYAPAM came to the light and an investigation of the same was done. Since from the material collected by the Investigating Agency it was found that large number of irregularities in making the selection was committed by the officials of the VYAPAM, under the direction of the State, Special Task Force (STF) was constituted to conduct the investigation in respect of the examinations conducted by the VYAPAM in the matter of recruitment in Civil Services of the State. Certain irregularities were found by the STF, intimation of which was given to the State authorities and

on being informed by the Investigating Agency aforesaid, VYAPAM took a decision to cancel the examination conducted for the aforesaid post and passed an order. As a result of cancellation of the result of few candidates as a natural corollary, they were removed from the service and the orders were issued in that respect.

4. The persons like petitioners approached this Court by filing different writ petitions and the present petitioner also filed W.P. No.9817/2014. The common order dated 13.06.2014 passed by the VYAPAM was challenged in the aforesaid writ petition. It was contended that out of the total selected candidates, few were picked up on the report of the STF and their results were cancelled without even affording them an opportunity of hearing or conducting any enquiry by the VYAPAM. Such writ petitions were entertained and the same were heard by a coordinate Bench of this Court. A defence was taken by the respondents, more particularly by VYAPAM, in the said cases that there was no necessity of granting any opportunity of hearing to the persons like petitioners in view of the fact that on the basis of the material made available by the STF, it was clear that a fraud was committed by the candidates and rightly their examination was cancelled.

5. It is the case of the petitioners that considering the law laid-down in that respect by the Apex Court as also noting down the objections raised by the respondents, ultimately the coordinate Bench of this Court reached to the conclusion that in the facts and circumstances available in the said case, an opportunity of hearing was required to be granted to them and without conducting an enquiry in that respect by the VYAPAM, cancellation of the examination result of such candidates was not justified. It is contended

that the matter was relegated back to the VYAPAM inasmuch as opportunity was granted to VYAPAM to conduct independent enquiry on the basis of the information received from the STF and to proceed in the matter on the basis of the view formed in that enquiry. It is further contended that the said enquiry was to proceed on its own merits and in accordance to law. However, the petitioners were issued the show cause notices, the same were served on some of the petitioners and thereafter some of them have made the application for supply of documents so as to file a proper reply of the said show cause notice refuting the allegations made and meeting out the objections indicated by the STF officials in some of the documents. It is the case of the petitioners that though the application was received by the respondents but without granting them an opportunity to examine the record or even supplying the copies of the documents sought by the petitioners, holding that they have no say in the matter, the common order impugned as is indicated herein above was issued again cancelling the examination results of few persons. It is the case of the petitioners that since the enquiry was not conducted in the manner directed by this Court in earlier round of litigation, the order impugned in the present writ petition passed by the VYAPAM is not sustainable in the eye of law. Any consequential order of removal of service of the petitioners passed on the basis of the said order is also bad in law and is liable to be quashed.

6. Upon service of notices of the writ petitions, the return has been filed by the respondents reiterating the stand, which they have taken on earlier occasion. However, at a later stage further returns have been filed by respondents No.2 and 3 adopting the very same return, which the respondents have filed in one of the writ petition. The

petitioners' assertion is denied by the respondents contending inter alia that from the opinion formed by the expert of the State Examiner of Questioned Documents of Government of Madhya Pradesh, certain facts were found proved against the petitioners. These facts were taken into consideration by the Committee. As the criminal prosecution of the petitioners was also launched and change in the OMR sheet was also found, the Committee came to the conclusion that there was sufficient material available to hold that a fraud was committed by the persons like petitioners and ultimately the opinion was given for cancellation of the examination of the persons like petitioners. It is emphatically contended in the return that in view of the aforesaid findings recorded by a High Power Committee of the specialized persons constituted by the VYAPAM since fraud was found proved, it was not necessary to grant any opportunity of hearing in view of the law well settled by the Apex Court, made applicable in several cases. Heavy reliance has been placed by the respondents in the case of ***Pratibha Singh Ku. (Minor) vs. The State of Madhya Pradesh & others***<sup>1</sup>, ***Neetu Singh Markam and others vs. State of M.P. and others***<sup>2</sup> and in the case of ***Ram Preeti Yadav vs. U.P. Board of High School and Intermediate Education and others***<sup>3</sup>. Further placing reliance in several other cases, it is contended by the respondents that in such circumstances it was not necessary even for conducting an enquiry by giving an opportunity of hearing to the persons like petitioners and as such the claim made in the writ petitions is misconceived.

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1 2014 (III) MPJR 178

2 2014(4) MPHT 393

3 (2003) 8 SCC 311

It is claimed that the writ petitions are devoid of substance and deserve to be dismissed.

7. A rejoinder has been filed by the petitioners and it is contended that from the fact narrated in the return as also the documents, which are now filed, it is clear that there was discrepancy in the matter in giving opinion by the State Examiner of Questioned Documents of the State Police and, therefore, a second opinion was being asked for. From this also it is clear that a definite opinion could not be formed in respect of any misconduct said to be committed by a particular candidate. In such circumstances, to explain such a situation, an opportunity of hearing should have been granted to the individual candidate and independent enquiry in respect of each and every candidate should have been conducted. The finding reached by the committee and the conclusion ultimately drawn cannot be said to be just and proper, in view of the law laid-down by the Apex Court in the case of **State Bank of India and others vs. Palak Modi and another**<sup>4</sup>. It is contended by learned senior Counsel for the petitioners in other cases that somewhat similar was the situation when the application of rule of natural justice and requirement of hearing and following the rule of *audi alteram partem* was said to be necessary by the Apex Court in the case of **Nagarjuna Construction Company Limited vs. Government of Andhra Pradesh and others**<sup>5</sup>. It is the vehement contention of learned senior Counsel for the petitioners that in view of the well settled law that where specific allegations are made, not in respect of all candidates but in respect of few, those shortlisted candidates were required to be heard before cancelling their examination result. It is further contended

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4 (2013) 3 SCC 607

5 (2008) 16 SCC 276

that unless the fraud is established against individual, it cannot be said that the entire examination was fraudulent and that selected candidates were not required to be granted opportunity of hearing and as such the petitioners would be entitled for the relief claimed in the petitions.

8. We have heard learned Counsel for the parties at length and have carefully gone through the law relied by the learned Counsel for the parties and also perused the record minutely.

9. Admittedly when the advertisement was issued on 25.06.2012, vacancies of 60 posts of Junior Food Supply Officer through direct recruitment were indicated. As against the said advertisement, according to the statement supplied by learned Counsel for the respondents, total 13165 applications online were received. Five forms were rejected and total 13157 admit cards were issued. On 07.10.2012, total 10189 candidates appeared in the examination of which the result was declared on 18.10.2012. Out of the aforesaid, 60 candidates were selected and orders of appointment were issued. The first information report was registered against the VYAPAM officials, middlemen and beneficiaries on 22.11.2013 based on certain information retrieved from hard-disc of Nitin Mohindra, System Analyst of VYAPAM and from his statement including the statements of other VYAPAM officials. This information was examined by the STF and after the report of the State Examiner of the Questioned Documents dated 24.04.2014, the first order of cancelling the result of 16 candidates whose roll numbers or ink were mis-matched, was issued. This order was called in question before this Court in bunch of writ petitions referred to herein above on first instance and as has been pointed out, the

decision was rendered in the case of the present petitioner and others being W.P. No.9817/2014 and other analogous writ petitions by a coordinate Bench of this Court on 24<sup>th</sup> September, 2014. Before this date the decision was already rendered by this Court in the case of **Pratibha Singh Ku.** (supra). However, the case of **Neetu Singh Markam** (supra) was decided on the same day on which the decision was rendered in the first writ petition of the petitioners. Notably, the Pre-Medical Test Examination held by the VYAPAM for the years 2008 to 2012 was called in question in the case of **Neetu Singh Markam** (supra) and there was ample material available to hold that such was a tainted examination, in fact a mischief of giving admission in the Professional Medical Courses to the students by the officials of the VYAPAM in connivance with certain racketeers, who were either running the coaching institutes or the private medical colleges. The Court was of the opinion that in such circumstances, cancellation of the result of such candidates was just and proper. Similar was the situation in the case of **Pratibha Singh Ku.**(supra) where again the specific findings were recorded by this Court in relation to the conduct of examination for admission in the Professional Medical Courses and taking note of certain facts as were gathered in the said case, this Court has opined that the cancellation of result of such examination was just and proper and was within the competence of the authorities of VYAPAM. However, in the present case the situation is wholly distinguishable.

10. The distinguishable features have already been noted down by this Court while considering the first writ petition of the persons like petitioners. The VYAPAM, respondent herein, had taken similar stand before this Court and has placed reliance in the case of **Pratibha Singh Ku.** (supra).

Considering those aspects while dealing with such a submission of the respondents, findings were recorded by this Court in the earlier order passed in the case of the present writ petitioners in paragraphs 10 to 19. Reproduction of the same as a whole is not necessary. Suffice it to say that dealing with all the cases referred to herein above the Division Bench of this Court held that enquiry was necessary. It would be enough for us to reproduce the operative part of the order passed by this Court in the said case, which reads thus :

“26. Taking over all view of the matter, therefore, we have no hesitation in quashing and setting aside the impugned common order dated 13.06.2014 passed by VYAPAM and also direct the respondents not to give effect to the said order against the petitioners. At the same time, VYAPAM is granted liberty to commence independent inquiry on the basis of information received from the Investigating Agency (Special Task Force) and to proceed in the matter on the basis of the view formed in that inquiry. That inquiry will have to proceed on its own merits and in accordance with law. All questions in that behalf are left open.”

11. With reference to the aforesaid, we have to note down that the respondents have chosen not to challenge the order passed by this Court in the earlier writ petitions of the petitioners, rather they have accepted the correctness of the same and have proceeded further. Initially even the show cause notice was not issued to the persons like petitioners but thereafter on 19.12.2014 the show cause notices were issued to the petitioners making specific allegation with regard to the mischief committed in securing more marks. The reference has been made with respect to the OMR sheets. Naturally this was done in terms of the order passed by this Court in the earlier writ petition of the petitioners and reference to certain documents available with the VYAPAM was made in the show cause notice. The

petitioners thereafter demanded copy of the said documents so as to file an effective reply of the same. This fact that such a prayer was made for supply of documents is not denied by the respondents.

12. Instead of making available any document to the petitioners, it appears that some committee was constituted and the said committee ultimately took up the matter for consideration and giving a report. All findings are recorded in common in respect of all the candidates and in paragraph 4 it is categorically recorded in the impugned order that though the prayer for grant of document and some more time to file reply was made but committee decided not to extend any such opportunity to the persons like petitioners for the simple reason that the committee was of the opinion that the documents were available with the VYAPAM on the basis of which allegations made against the persons like petitioners were found proved. In respect of some of the candidates, fact was recorded that by making application it was informed that the particular candidate has not received the show cause notice but only because the show cause notice was sent by speed post, it was deemed to be served and committee did not deem it necessary to extend any further opportunity. Almost in all cases in paragraph 4, such facts have been recorded in the impugned order and thereafter a common finding is recorded that since material evidence is available against the persons like petitioners, no purpose would be served by giving them opportunity of hearing, the committee recommended action against the petitioners. The final orders, which have been passed in the said case, specifically say that there is mischief found in the OMR sheets and the increase of numbers for a particular candidate was because of the aforesaid mischief and, therefore, holding that the reply to the show cause notice

submitted by the persons like petitioners was not satisfactory, it was recommended that their result of examination is liable to be cancelled.

13. This cannot be said to be an act done in compliance of the specific directions issued by this Court in the earlier round of litigation as has been quoted herein above. We are of the considered view that it was impermissible to hold that the petitioners reply to the show cause notice was not satisfactory. Virtually there was no occasion to file a reply to the said show cause notice as the demand of documents referred to in the show cause notice was made but the same was not accepted and in some of the cases even the show cause notices were not served on the persons like petitioners. The Apex Court has dealt with such a situation in the case of **State Bank of India and others vs. Palak Modi and another** (supra), drawing the distinction the Apex Court has categorically held that holding of an enquiry in particular circumstances after granting an opportunity of hearing would be necessary. If the findings are to be based on certain documents, such documents are required to be shown to the person concerned. The findings recorded in this respect in paragraph 37 of the report read thus :

“37. The use of unfair means in the evaluation test/confirmation test held by the Bank certainly constitutes a misconduct. The Bank itself had treated such an act to be a misconduct (Para 10 of advertisement dated 1.7.2008). It is not in dispute that the services of the private respondents were not terminated on the ground that there was any deficiency or shortcoming in their work or performance during probation or that they had failed to satisfactorily complete the training or had failed to secure the qualifying marks in the test held on 27.2.2011. As a matter of fact, the note prepared by the Deputy General Manager, which was approved by the General Manager makes it crystal clear that the decision to dispense with the services of the private respondents was taken solely on the ground that

they were guilty of using unfair means in the test held on 27.2.2011. To put it differently, the foundation of the action taken by the General Manager was the accusation that while appearing in the objective test, the private respondents had resorted to copying. IBPS had relied upon the analysis made by the computer and sent report to the Bank that 18 candidates were suspected to have used unfair means. The concerned authority then sent for the chart of seating arrangement and treated the same as a piece of evidence for coming to the conclusion that the private respondents had indeed used unfair means in the examination. This exercise was not preceded by an inquiry involving the private respondents and no opportunity was given to them to defend themselves against the charge of use of unfair means. In other words, they were condemned unheard which, in our considered view, was legally impermissible.”

14. Similar was the view expressed by the Apex Court in the case of ***Nagarjuna Construction Company Limited*** (supra) where application of rule of natural justice and compliance of principles of *audi alteram partem* was indicated. In paragraphs 31 and 32 of the report the Apex Court has categorically held that it is immaterial whether any prejudice is caused or not, adherence to the rule of natural justice is must in such circumstances.

15. As we have already held that while dealing with the first writ petition of the present petitioners, the Division Bench has taken note of each and every material available with the respondents to reach to the conclusion that few persons have committed misconduct or mischief or have adopted malpractice in succeeding in the examination or securing a position and it was held that without giving an opportunity to the petitioners to explain the said material or facts, no order against them could have been passed by the respondents, we are not required to re-examine the said aspect as has been vehemently contended by learned

Counsel for the respondents. We refrain to do so because of the fact that we have consciously held that the action taken by the respondents was not in conformity to the directions issued in paragraph 26 of the order passed in earlier writ petition of the petitioners. However, we are not required to restrict the rights of the respondents to re-examine the matter, which is required to be done after extending full opportunity of hearing to the petitioners. Therefore, we deem it proper to quash the order passed by the respondents, impugned in the present writ petitions and to remit back the matter to the respondent VYAPAM to conduct an enquiry independently in terms of the directives issued by this Court in the order passed in earlier writ petitions of the petitioners, after affording full opportunity of hearing to the petitioners from the stage of the issuance of show cause notice. If some of the petitioners have not received the show cause notice, they be served with the notice and if applied, they be provided the entire documents on which the reliance is placed by the respondents. The VYAPAM would be at liberty to commence the independent enquiry on that basis including the information received from the Investigating Agency, provided the said information is also served on the petitioners and, their response is received. The order passed in the present writ petition will not come in the way of respondent VYAPAM to conduct the enquiry afresh.

16. As far as the order passed by the departmental authorities is concerned, it simply says that since the result of the examination is cancelled by the VYAPAM, the services of the persons like petitioners are dispensed with. This order cannot stand any longer in view of the fact that foundation on the basis of which this order is issued has already been quashed by us today. The departmental

authorities would be at liberty to pass fresh orders after receiving the report of enquiry to be conducted by the VYAPAM in terms of this order.

17. Consequently, the writ petitions are allowed. The order dated 19.01.2015 and consequential order dated 21.01.2015 and the orders of like nature issued on different dates are hereby quashed. The respondents would be at liberty to take action in accordance to law after conducting the enquiry as is directed herein above. The petitioners, who are said to have been removed from the post, be reinstated in service forthwith. The question of grant of consequential benefits is left open to be decided after the conclusion of enquiry, if conducted by VYAPAM and action taken by the department.

18. In the peculiar facts and circumstances of the case, there shall be no order as to costs.

**(Rajendra Menon)**  
Judge

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

Skc