

## **WP-19986-2016**

*(SATENDRA NATH VISHWAKARMA Vs THE STATE OF MADHYA PRADESH)*

**07-12-2016**

Shri S.K. Shrivastava, learned counsel for the petitioner.

Shri Deepak Awasthy, learned G.A. for the State.

Heard on the question of admission.

The petitioner has filed this petition being aggrieved by the clarification/amendment issued by Director of Skilled Development, M.P. Bhopal dated 24.09.2016 which was published/notified on the website of the Professional Examination Board amending the previous advertisement issued by them on 13.09.2016 by which the eligibility qualification regarding age has been clarified to be determined as on 01.01.2017.

The learned counsel for the petitioner submits that the petitioner had applied for appointment on the post of Training Officer in the I.T.I. situated in M.P. pursuant to the online advertisement issued by the respondents on 13.09.2016. It is submitted that the petitioner being below of 45 years of age as on 01.01.2016, had applied for the said post. It is submitted that subsequently after 9 days, the respondents/authorities have issued the impugned clarification/amendment stating that the eligibility requirement regarding age would be determined as on 01.01.2017 and not as on 01.01.2016 on account of which the petitioner has been rendered ineligible as he would have crossed the age of 45 years on 01.01.2017.

The learned counsel for the petitioner submits that pursuant to the initial advertisement issued by the

respondents dated 13.09.2016, the petitioner being eligible had applied and had also deposited fees of Rs.1750/-. However, in view of the subsequent clarification which has changed the rules of the game during the process of selection, he has been rendered ineligible and therefore the impugned clarification/amendment be quashed.

The learned government advocate appearing for the State submits that the advertisement in question was issued in exercise of the powers under the provisions of M.P. Industrial Training (non-gazetted) Class-III, Service Recruitment, Rules, 2009 published in M.P. Gazette extraordinary dated 27.06.2009.

It is submitted that as per rule 8(1)(a) of the said rules, the eligibility in respect of the age of the persons applying for the appointment, has to be determined on the first day of January falling immediately after the date of the examination/selection being undertaken by the authorities. It is submitted that in view of the statutory provisions as the selection process was initiated in the year 2016, therefore, as per rule 8(1)(a) of the Rules, 2009 the eligibility of the candidate regarding age has to be determined as on 01.01.2017 in view of the provisions of the aforesaid rules.

It is submitted that as by oversight and mistake in the original advertisement, date for determining eligibility regarding age had wrongly been mentioned as 01.01.2016, therefore, the authorities immediately within 9 days of the issuance of original advertisement, have

notified the impugned amendment/clarification which is in terms of the statutory provision of the rules have have been framed in exercise of power under Article 309 of the Constitution of India.

It is submitted that in view of the provisions of the Rules, 2009, the eligibility requirement regarding age had to be determined as on 01.01.2017 from the very beginning itself, however, it was on account of mistake in the advertisement issued by the authorities on 13.09.2016 that the reference date was wrongly mentioned as 01.01.2016, therefore, the impugned clarification/amendment has been issued which is in term of the statutory provisions and does not change the rules of the game during the process of selection, as stated by the petitioner.

The learned Government Advocate for the State further submits that the aforesaid clarification was issued within 9 days of the issuance of the initial advertisement which was well before the last date for submitting the forms which has been prescribed on 12.10.2016. It is submitted that in such circumstances, the contention of the learned counsel for the petitioner is misconceived and does not merit any consideration.

Having heard the learned counsel for the parties and having perused the provisions of the Rule 8(1)(a) of the Rules, 2009, we are of the considered opinion that the statutory provisions clearly prescribes that the eligibility regarding the age has to be determined with reference to the age of the applicant as on 1<sup>st</sup> January of the year

subsequent to the date of admission/selection undertaken by the authorities and in such circumstances, in view of the statutory provisions of Rule 8 (1)(a) of the Rules, 2009, the impugned clarification/amendment cannot be said to be illegal nor does it change the rules of the game during the process of selection, as alleged by the petitioner as this statutory eligibility criteria was existing since 2009 well before the date of the initial advertisement and therefore any selection after coming into force of the Rules has to be in conformity with the statutory rules and the statutory qualifications have to be read as part of the advertisement even if the same are not mentioned therein or if mentioned, are not in terms of the statutory requirements as the statutory provisions will prevail over the requirements mentioned in the advertisement.

We are also of the considered opinion that in view of the clear and specific statutory provision of Rule 8(1)(a) of the Rules, 2009, no vested right or relief on the basis of principle of promissory estoppel etc. can be claimed by the petitioner as it is settled law that no such right or claim can be made against the statutory provision which was existing and was known to all even on the date when the first advertisement dated 13.09.2016 was issued simply on the basis of the fact that the advertisement mentioned a wrong reference date for determining the age which was apparently contrary to the statutory rule and has therefore, rightly been rectified and clarified by the respondents/authorities by impugned amendment in the initial advertisement dated 24.09.2016.

Apparently, as the clarification/amendment is in tune and in line with the statutory provisions the same does not call for any interference by this court.

The petition being meritless is accordingly dismissed.

It is however, submitted by the learned counsel for the petitioner that he had applied for being considered for selection on the post between 13.09.2016 and 24.09.2016, in other words, it is submitted that he had applied considering himself to be eligible in accordance with the initial advertisement issued on 13.09.2016 but has now been rendered ineligible in view of the amendment/clarification issued by the respondents in terms of the provisions of rules 8 (1) (a) of the Rules, 2009. It is submitted that had he been informed at the very beginning about the eligibility requirement, he would not have applied for the same at all. It is submitted that as he has done so, he may be permitted to withdraw his form along with fees deposited by him.

The contention of the petitioner appears to be justified and therefore, while the petition filed by the petitioner is dismissed, it is observed that in case the petitioner approaches the respondents/authorities for refund of Rs.1750/- which has been deposited by him, along with an application for refund of the same, the authority concerned shall take steps to refund the same as expeditiously possible.

With the aforesaid observation, the petition stands disposed of.

**(RAVI SHANKAR JHA)**  
**JUDGE**

**(VIJAY KUMAR SHUKLA)**  
**JUDGE**

MSP