

HIGH COURT OF MADHYA PRADESH, JABALPUR

W.P. No. : **5258/2016**
Parties Name : Rohani Prasad Kushwaha
and others

Versus

High Court of M.P.

W.P No. : **11630/2016**
Parties Name : Devendra Singh Rana

Versus

High Court of M.P.

Bench Constituted : Hon'ble Shri Justice R.S. Jha &
Hon'ble Smt. Justice Nandita Dubey,
JJ.

Judgment delivered by : **Hon'ble Shri Justice R.S. Jha**

Whether approved for reporting : Yes/No

Name of counsel for parties : **For petitioners:** Shri K. C. Ghildiyal,
Advocate.

For respondent : Shri Anoop Nair &
Shri Raghvendra Kumar, Advocates.

Law laid down :

Significant paragraph numbers :

ORDER
(16.02.2018)

Per: R.S. Jha, J.

As both these petitions involve similar issues, they are heard and decided concomitantly by this common order.

2. Though these petitions have been filed by the petitioners praying for quashing of order of promotion dated 24.09.2015 by which the promotion to the post of

Assistant Grade-III from Class-IV employees has been made with a further direction to promote the petitioners to the post of Assistant Grade-III with effect from 24.09.2015, the learned counsel for the petitioners has confined his prayer to seeking a direction to the respondent/authorities to re-consider the case of the petitioners for promotion on the post of Assistant Grade-III on the basis of the result of the written examination.

3. It is stated by the learned counsel for the petitioners that all the four petitioners are Class-IV employees working in the High Court and have completed the requisite qualifying service of five years' and therefore are eligible for participating in the Departmental Examination for making promotion on the post of Assistant Grade-III in accordance with the High Court of M.P. (Officers and Employees Recruitment and Conditions of Services, Classification, Control, Appeal and Conduct) Rules, 1996 (hereinafter referred as "the Rules of 1996").

4. It is submitted by the learned counsel for the petitioners that the petitioners along with others participated in the Departmental Examination conducted by the respondents on 21.03.2015 and their names were included in the merit list of passed candidates which was forwarded for consideration of suitability by examining the

ACRs to the Departmental Promotion Committee. It is submitted that the Departmental Promotion Committee which was held on 27/28th of August, 2015, fixed an additional higher criteria by enhancing the 40% marks fixed under the examination scheme for adjudging the suitability to 55% and on that basis held the petitioner unsuitable for promotion on the post of Assistant Grade-III whereas those who had obtained more than 55% marks in the Departmental Examination have been granted promotion by the impugned order.

5. The learned counsel for the petitioners submits that the provisions of Rules 8(ii)(b) of the Rules of 1996, provides that promotion among Class-IV employees of the Establishment to the extent of 15% of the posts shall be made on the post of Assistant Grade-III subject to suitability. It is submitted that for the purpose of adjudging suitability, Rule 13 of the Rules of 1996, provides that the Departmental Promotion Committee constituted by Hon'ble The Chief Justice for promotion, on establishment of the High Court, shall hold a Departmental Examination and prepare a selection list according to merit and place it for approval before Hon'ble the Chief Justice.

6. It is submitted that in the instant case though the percentage for adjudging suitability of the candidate under the examination scheme was fixed as 40% minimum marks in the departmental examination, the Departmental Promotion Committee, on its own, enhanced the marks to 55% which has led to disqualification of the petitioners.

7. The learned counsel for the petitioners submits that a perusal of Rule 8 along with Rule 13, of the Rules of 1996, makes it clear that where promotions have to be made on the basis of a Departmental Examination, the Departmental Promotion Committee cannot fix such a criteria over and above the criteria for suitability that has already been prescribed for the purposes of adjudging suitability.

8. The learned counsel for the petitioners submits that the petitioners came to know about the fact that the Departmental Promotion Committee had enhanced the percentage for adjudging the suitability only when the petitioners obtained copies of the minutes of the Departmental Promotion Committee under the Right to Information Act on 29.10.2015, whereafter the petitioners have filed these petitions seeking the reliefs as stated above.

9. The learned counsel for the petitioners submits that in view of the aforesaid facts and circumstances, the respondent be directed to reconsider the case of the petitioners by treating them to be qualified and suitable as per the scheme on account of the fact that they have obtained more than 40% marks and thereafter grant them promotion on the post of Assistant Grade-III moreso as out of 15 posts of Assistant Grade-III that were advertised for being filled up through the process, four posts remain vacant.

10. The learned counsel appearing for the respondent submits that a bare perusal of Rule 8 and Rule 13, of the Rules of 1996, makes it clear that promotions on the post of Assistant Grade-III have to be made by the Departmental Promotion Committee on the basis of the suitability of a candidate for promotion. It is submitted that only 40% marks were prescribed under the examination scheme as passing marks leaving it to the Departmental Promotion Committee to thereafter prescribe and lay down any further criteria for adjudging suitability. It is submitted that the Departmental Promotion Committee, in its minutes, decided to fix 55% marks as the necessary cut off marks for adjudging suitability and in such circumstances no fault can be found with the action

of the Departmental Promotion Committee, more so, as the qualifying percentage of marks for direct recruits on the post of Assistant Grade-III is 55%. The learned counsel for the respondents has placed before us the entire record relating to the preparation of the scheme by the Departmental Promotion Committee for perusal.

11. We have heard the learned counsel for the parties and have perused the record. For deciding the issue raised in this petition it is necessary to first take into consideration the provisions of Rule 13 of the Rules of 1996, which is in the following terms:

“13. Departmental Promotion:-There shall be a Committee to be constituted by the Chief Justice for promotion on the Establishment of the High Court of Madhya Pradesh, Jabalpur including its Benches. The Departmental Promotion Committee shall consist of the following:-

- (i) Chairman
- (ii) Secretary
- (iii) Member(s)

The Committee shall hold departmental Examination for posts for which such examination is prescribed, at least once in a year and prepare a Selection List according to merit and place it for approval before Hon'ble the Chief Justice. The Committee shall also consider suitability for promotion of other promotion post for persons in the Feeder Categories and prepare a Select List and Place it for approval before Hon. The Chief Justice. Departmental Examination shall be held for the following posts:-

- (I) Assistant Grade III
- (ii) Head Translator
- (iii) Section Officers.

The following shall be the criteria for admissibility to the Departmental Examination:-

- (i) **For Assistant Grade III.**-The candidate should have completed 5 years' qualified service as Class IV employee (including service rendered as contingent employee).
- (ii) **For Head Translator.**-5 years' qualified service as a Translator.
- (iii) **For Section Officer.**-5 years' qualified service as Assistant/Translator/Stamp Reporter/Head Translator.

12. A bare perusal of this Rule makes it clear that a Departmental Promotion Committee has to be constituted by Hon'ble the Chief Justice for making promotion in the Establishment of the High Court. Rule 13 of the Rules of 1996, prescribes that the Committee so constituted shall hold a Departmental Examination for post for which such examination is prescribed, atleast once in a year and prepare a selection list according to merit and place it for approval before the Hon'ble the Chief Justice. The Rule also makes it clear that the Departmental Examination for making promotion is a necessary requirement for making promotion to the post of Assistant Grade-III. At the same time, Rule 13 of the Rules of 1996, also provides that the Departmental Promotion Committee shall consider suitability for promotion to be made on such other posts

for which the departmental examination is not prescribed and prepare a select list for approval before Hon'ble the Chief Justice.

13. It is further apparent from an analysis of the Rules of 1996 that Rule 8(ii)(b) of the Rules of 1996 provides that promotion on the post of Assistant Grade-III from Class-IV employees to the extent of 15% is to be made on the basis of "suitability" of the candidates and that Rule 13 provides that Departmental Examination shall be held by the Committee constituted under Rule 13 of the Rules of 1996, for adjudging the suitability of the candidate for promotion on the post of Assistant Grade-III. It is also evident that the first part of the second half of Rule 13 of the Rules of 1996, (which has not been segregated as a sub-section) that the Committee has to prepare a selection list in accordance with the merit of the candidate determined on the basis of the Departmental examination and place the same before Hon'ble the Chief Justice. The normal and usual criteria and the power vested in the Departmental Promotion Committee for fixing its own criteria for promotion, which incidentally has been conferred upon the Committee by the second part of the second half of Rule 13 of the Rules of 1996, has not been mentioned or stated in the first part of the aforesaid Rule.

14. Thus, a perusal of the Rules of 1996 makes it clear that the second part of Rule 13 envisages two eventualities; first is the eventuality relating to promotion through a departmental examination in cases where such a departmental examination has been prescribed and for preparing a selection list in accordance with merit based on the result of the departmental examination for approval before Hon'ble the Chief Justice. The second part of the Rule prescribes the procedure to be followed by the Departmental Promotion Committee in respect of promotions to be made to the posts where a departmental examination has not been prescribed.

15. From a perusal of the Rules as well as the issue raised therein, it is apparent that the present case falls under the first eventuality and part of Rule 13 where promotion has to be made on the post of Assistant Grade-III for which a departmental examination has been prescribed and for which the selection list has to be prepared by the Committee in accordance with the merit determined on the basis of the departmental examination for being placed for approval before Honb'le the Chief Justice.

16. The facts of the present case that are evident from the record which has been placed before this Court are

that the Committee, constituted by Hon'ble the Chief Justice, prepared a scheme for conducting the Departmental Examination for promotion on the post of Assistant Grade-III from Class-IV employees on 29.1.2015 which was subsequently approved by Hon'ble the Chief Justice. A perusal of the Scheme makes it clear that under the scheme the employees/candidates were only required to secure 40% minimum marks for adjudging suitability in the departmental examination for promotion on the post of A.G.-III.

17. It is undisputed and infact admitted by the respondents that the departmental examination was held and conducted by them on the basis of prescription of 40% marks as the suitability criteria for selection and promotion on the post of A.G.-III. The record produced by the respondent further indicates that pursuant to the scheme, the examination for making promotion on the post of A.G.-III was held on 21.03.2015 and the name of the petitioners were included in the selection list of 15 candidates prepared by the examination committee and forwarded to the Departmental Promotion Committee as the petitioners had obtained more than 40% marks as prescribed under the scheme. The minutes of the Departmental Promotion Committee indicate that the selection list was placed before it. The Committee

unanimously resolved to enhance and fix 55% marks as the necessary cut off marks for adjudging the competence of the candidate to discharge duties to be performed by A.G-III and on that basis removed the names of the petitioners and restricted the list to 11 candidates who had obtained 55% and above marks. The DPC thereafter, perusing the ACR's of the 11 employees shortlisted by it and finding nothing adverse against them recommended the names of 11 candidates for promotion on the post of Assistant Grade-III. It is also evident from the record that pursuant to the recommendation of the DPC, the impugned order of promotion dated 24.9.2015 was issued in respect of 11 candidates to the exclusion of the petitioners.

18. It is also evident from a perusal of the record produced by the respondents that the scheme of examination, as approved by Honble the Chief Justice dated 29.1.2015 prescribed 40% as the minimum marks for adjudging suitability of the candidates. It is also pertinent to note that the scheme does not state or mention that 40% are the minimum passing marks as contended by the learned counsel for the respondents but on the contrary, specifically states that 40% would be the minimum marks for adjudging suitability.

19. In such circumstances, as the case of the petitioners fall in the first part of the second half of Rule 13 of the Rules of 1996, relating to the promotion based only on a Departmental examination, the selection of the candidates as far as the suitability is concerned was to be adjudged only on the basis of the marks obtained by them in the Departmental Examination and on the basis of the ACRs and not on the basis of any other prescription, therefore, in the facts and circumstances of this case, the DPC could not have fixed or enhanced the criteria for adjudging the suitability of the candidate over and above the criteria that had already been fixed, notified and approved by Hon'ble the Chief Justice under the Scheme dated 29.1.2015 and the Departmental Committee as per the dictates of the Rules was only required to prepare a selection list on the basis of the marks obtained in the Departmental Examination and thereafter adjudge the suitability of the candidates included in the select/merit list by scrutinizing the ACRs of the candidates concerned.

20. In view of the aforesaid analysis of the provisions of the Rules 8 & 13 of the Rules of 1996, we are of the considered opinion that denial of consideration of the names of the petitioners by the Departmental Promotion Committee by enhancing the suitability criteria to 55% from 40% that had been fixed and notified by the Scheme

dated 29.01.2015 as approved by Hon'ble the Chief Justice, is and was not in accordance with law and is, accordingly, set aside.

21. In view of the aforesaid discussion and conclusion arrived at by this Court and taking into consideration the fact that the Scheme contemplates preservation of the record of the select list even after the lapse of one year in those cases where the Court has issued notice and notices have been received by the Examination Cell as well as the fact that the present petitions have been filed within one year and notices had been issued by this Court within the said period, the petitions filed by the petitioners are allowed to the extent that the enhancement of suitability criteria from 40% to 55% by the Departmental Promotion Committee is quashed and the case of the petitioners is remitted back to the Departmental Promotion Committee for adjudging their suitability in terms of the result of the Departmental Examination and ACRs and, thereafter, take necessary steps in the matter in accordance with law as expeditiously as possible.

22. It is further observed that in case the petitioners are found suitable, necessary orders as may be contemplated by the Rules, may be passed. However, it is made clear that in case the petitioners are granted promotion, they

shall not be entitled to any difference or arrears of salary as the Departmental Promotion Committee proceedings have been set aside by this Court today. However, the petitioners may be accorded seniority beneath the persons who have been promoted and selected on 24.9.2015 notionally for all other purposes.

23. In view of the aforesaid analysis, the petitions filed by the petitioners stand allowed to the extent indicated hereinabove and are disposed of with the directions as aforesaid.

There shall be no order as to costs.

(R.S. Jha)
Judge

(Nandita Dubey)
Judge

msp