

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

**BEFORE**

**HON'BLE SHRI JUSTICE SANJAY DWIVEDI**

**ON THE 3<sup>rd</sup> OF MAY, 2023**

**WRIT PETITION NO.15668 / 2017**

**BETWEEN:-**

**GANESH SINGH THAKUR, S/O SHRI SHAIL  
SINGH THAKUR, AGED ABOUT 33 YEARS,  
UNEMPLOYED, RESIDENT OF VILLAGE  
MUGDARA, TEHSIL NAINPUR, DISTRICT  
MANDLA (M.P.)**

**.....PETITIONER**

***(BY SHRI ASHISH SHROTI - ADVOCATE)***

**AND**

- 1. STATE OF M.P. THROUGH PRINCIPAL  
SECRETARY, GENERAL ADMINISTRATION  
DEPARTMENT, VALLABH BHAWAN,  
MANTRALAYA, BHOPAL (M.P.)**
- 2. PROFESSIONAL EXAMINATION BOARD,  
THROUGH ITS DIRECTOR, "CHAYAN  
BHAWAN" MAIN ROAD NO.1, CHINAR PARK  
(EAST), BHOPAL – 462 011 (M.P.)**
- 3. COLLECTOR, DISTRICT BETUL (M.P.)**

**.....RESPONDENTS**

***(BY SHRI L.A.S. BAGHEL – GOVERNMENT ADVOCATE)***

.....

*This petition coming on for hearing this day, the Court passed the following:*

**ORDER**

Apparently, the petition is pending since 2017 and is listed today for final disposal at motion stage under caption "Top of the list". Indeed, the pleadings are complete and the learned counsel for the parties are ready to argue it finally. Accordingly, the petition is heard finally.

2. This petition is filed under Article 226/227 of the Constitution of India asking for the following reliefs:-

"i. Certiorari quashing the impugned communication dated 17.08.2017, (Annexure P/4);

ii madamus directing the respondents to posting to the petitioner in Betul District and if the post is not available there, he be allotted post in any other District. Any other order or orders that this Hon. Court deems fit and proper in the circumstances of the case may also be kindly passed."

3. Albeit, the foremost reason for approaching this Court by way of instant petition is that the petitioner had applied for the post of Assistant Grade-III (unreserved category) pursuant to an advertisement and got selected therein but astoundingly at the time of joining, while apprising the petitioner about non-availability of unreserved category post, his joining was not accepted.

4. Succinctly, the facts of the case are that an advertisement (Annexur-P/1) was issued in 2016 by respondent No.2 inviting applications for the posts advertised therein, whereunder, two posts of unreserved category of Assistant Grade-III have also been advertised for District Betul. As per the advertisement, in all, eight posts were

advertised, out of which, four posts for unreserved category (in which two posts were for open and two posts for women category); one post of ST category (open) and three posts for ST (Women). The petitioner who had applied for the post of Assistant Grade-III, got selected, but when he tendered his joining, the Collector Betul refused to accept the joining and informed by way of communication dated 17.08.2017 (Annexure-P/4) that there is no post of unreserved category for Assistant Grade-III in District Betul and only posts pertaining to reserved category are lying vacant. After being shaken by the communication about the position shown by the Collector Betul, the disgruntled petitioner made a representation (Annexure-P/5) to respondent No.1 and when no heed was paid, then left with no option, the petitioner in the pursuit of justice, has knocked the doors of judiciary by filing the instant writ petition.

5. Of a note, after the petition was filed, the petitioner also moved an application i.e. I.A.No.1104/2019 for taking documents on record appending a letter dated 18.05.2018 (Annexure-A/1) issued from the office of Collector, Betul, in that, the Collector has apprised the Principal Secretary of the Revenue Department that in District Betul, two posts of Assistant Grade-III are lying vacant and as per selection, the petitioner and one Vishal Sahu (petitioner in connected petition) can be appointed against those vacant posts. Further, a document dated 12.11.2018 (Annexure-A/2) made appendage to the application, also strengthens the case of the petitioner inasmuch as this document bespeaks about the mistake committed by the officers of the department by showing two posts for unreserved category and two posts for women unreserved category. The letter also contains that in the face of mistake committed by the officers, it is proposed that procedure for sanctioning new posts be also initiated.

6. The respondents have filed their reply disputing the averments made in the petition. Instinctively, they have denied the claim of the petitioner saying that the petitioner cannot be given benefit inasmuch as under some misconception the posts of unreserved category were shown in the advertisement of 2016, conversely there was no such post available for general category candidate. According to the stand taken by the respondents, the information was provided to respondent No.2 showing the vacant posts of Assistant Grade-III in district Betul, but total eight posts were advertised, in which, two belong to SC (open); two for SC (women); one for ST (open) and three belong to ST (women). Ostensibly, according to the respondents, there was no post of general/unreserved category. It is averred in the reply that respondent No.2 - an agency conducted the examination, has committed mistake and owing to some miscalculation, two posts of unreserved category were advertised whereas factual position was otherwise. By way of additional return, the respondents have averred that the life of select list is only for a year and since that period is gone-by, no right accrues in favour of the petitioner to claim appointment on the post of Assistant Grade-III.

7. Shri Shrotri, learned counsel for the petitioner sanguinely focuses on the memo dated 27.09.2016, communicated by Joint Collector Betul to the Controller, Professional Examination Board, appended with a sheet showing no post of unreserved category, but the Tehsildar in pursuance to the instructions of Collector forwarded the position of vacant posts in which he has shown four posts for unreserved category; two post for open and two posts for women and on the basis of this communication, the advertisement (Annexure-P/1) was issued. He submits that the documents available on record very categorically

contain that the posts of unreserved category were advertised and lying vacant against which petitioner can very well be appointed. He vigorously submits that when advertisement was issued showing unreserved category posts, the petitioner participated in the selection and finally declared successful therein, then there was no reason to deny the appointment. Rooting out the averment of respondents that life of select-list was for a year and since that period is over, therefore, petitioner cannot claim appointment on the basis of said select list, Shri Shrotri by imprecating such stand, submits that it is wholly unsustainable and in fact *de hors* the law inasmuch the Supreme Court *in re State of U.P. v. Ram Swarup Saroj* (2000) 3 SCC 699 has dealt with such issue. Furthermore, he relies on the decision of Division Bench of this Court *in re Smt. Rekha Dhurve (Markam) v. State of Madhya Pradesh and others* 2009(1) M.P.H.T. 284 (DB). Bolstered with the citations, Shri Shrotri submits that when petition is pending before this Court and issue is sub-judice, the life of select list cannot be said to be over due to lapse of time.

8. I feel it expedient to extract the law from the above canons. The Supreme Court *in re Ram Swarup Saroj* (supra) has observed as under:-

“10. Similarly, the plea that a list of selected candidates for appointment to the State services remains valid for a period of one year only is primarily a question depending on facts and yet the plea was not raised before the High Court. Secondly, we find that the select list was finalised in the month of November, 1996 and the writ petition was filed by the respondent in the month of October, 1997, i.e., before the expiry of one year from the date of the list. Merely because a period of one year has elapsed during the pendency of litigation, we cannot decline to grant the relief to which the respondent has

been found entitled to by the High Court. We may place on record that during the course of hearing of SLP before this Court, on 29.9.1999 we had directed the learned Additional Advocate General for the State of U.P. to bring on record on affidavit the status of present recruitment of the judicial officers and the present vacancy position in the subordinate judiciary. In the affidavit of Joint Secretary, Department of Appointment, State Government, Uttar Pradesh sworn in on 4.11.1999 and filed before this Court it is stated that as on 14.10.1999 there were 231 vacancies existing in the cadre of Munsif Magistrates (now Civil Judge, Junior Division/Judicial Magistrates). That being the factual position we see no reason why the direction made by the High Court should be upset in an appeal preferred by the State of Uttar Pradesh.”

(emphasis applied)

The Division Bench *in re Smt. Rekha Dhurve* (supra) has observed as under:-

“8. We are of the considered opinion that had respondent Nos.3 and 4 not been selected for appointment to the posts reserved for Scheduled Tribe candidates, the name of the petitioner would have found place in the select list and not in the supplementary list and had her name found place in the select list, she would have been entitled for consideration for appointment to an available vacancy for Scheduled Tribe candidate in accordance with the provisions of sub-rule (2) of Rule 10 of the Rules, 1994. It is not disputed that during the validity period of the select list, the petitioner has approached this Court in the present writ petition and, therefore, we cannot decline relief to the petitioner on the ground that the validity period of the select of the Scheduled Tribe candidates has expired because of the pendency of the writ petition.”

(emphasis applied)

9. Keeping in mind the settled legal position and taking note of the documents available on record, I find no reason to digress from the view already set at rest. Accordingly, the petition is allowed. Respondent No.3 is directed to accept the joining of the petitioner from its original date and grant him seniority to the post of Assistant Grade-III. However, claim of salary and other monetary benefits for the intervening period shall not be admissible for the reason that he did not perform the duties on the said post. If for any reason, the post is not vacant, then respondent No.1 shall create a supernumerary post for accommodating the petitioner. The joining of the petitioner should be made immediately subject to approval for creation of supernumerary post in case situation so demands. The aforesaid exercise shall be completed within a period of 45 days from the date of receipt of copy of this order.

10. With the aforesaid directions, petition is allowed and disposed of.

**(SANJAY DWIVEDI)**  
**JUDGE**