

HIGH COURT OF MADHYA PRADESH AT JABALPUR
WRIT PETITION NO.8069/2017

PETITIONER : RAJESH KUMAR GOYAL

Vs.

RESPONDENTS : M.P HIGH COURT
AND ANOTHER.

Present : Hon'ble Shri Justice R.S. Jha,
Hon'ble Justice Smt. Nandita Dubey.

For the petitioner : Shri Amitabh Gupta, Advocate.

For the respondents: Ms. Neelam Goel, Advocate.

ORDER
(16/08/2017)

Per R. S. Jha, J.

The petitioner, who had participated in the preliminary examination conducted by the respondents for making appointments to 42 posts in the M.P. Higher Judicial Service (Entry Level) direct recruitment posts, whereby recruitment from advocates practicing in the State were sought to be made, has filed this petition being aggrieved by the fact that he has not been called or permitted to participate in the main examination by the respondents.

2. The learned counsel for the petitioner submits that in the present petition, the petitioner has assailed the act of the respondents on the ground that the same is in

violation of the provisions of Rule 6 of the M.P. Higher Judicial Service Recruitment and Conditions of Service Rules, 1994 and the terms of the advertisement issued by the respondents on 09.03.2017 inasmuch as though the petitioner is eligible for being called for the main examination by applying the ratio of 1:10 of the available posts, the respondents/authorities have not done so.

3. The contentions of the learned counsel for the petitioner are that the respondent/authorities, in the present case, have advertised a total of 42 posts out of which 6 posts have been reserved for the OBC category candidates, 6 for SC category and 8 for ST category candidates, while 22 seats are available for being filled up by unreserved category candidates. It is stated that as per the terms of the advertisement after the preliminary examination, the candidates were to be called for the main examination in the ratio of 1:10 of the number of posts available on the basis of the merit list of the preliminary examination.

4. It is stated that as 42 posts were advertised, the respondents were required to call 420 candidates for participating in the main examination but the respondents, instead of doing so, have only called 337

candidates. It is submitted that as per the result of the preliminary examination posted by the respondents on the web site (Annexure P/2) for the total number of 6 seats reserved for SC candidates, only 42 candidates have qualified and obtained more marks than the cut off marks prescribed in the advertisement, while against the 8 seats reserved for ST category candidates only 3 candidates have secured more than the minimum qualifying marks. It is submitted by the learned counsel for the petitioner that as sufficient number of candidates in the ST and SC category in the ratio of 1:10 as provided by the respondents are not available, therefore, in view of the proviso to Rule 6 of the Rules of 1994, the posts should have been treated as unreserved and by adding them to the seats of the unreserved category, unreserved category candidates should have been called in place of the reserved category candidates to fill up the deficit so that a total number of 420 candidates are available for the main examination as per the stipulation contained in the advertisement and the proviso to Rule 6 of the Rules of 1994.

5. The learned counsel for the petitioner submits that as sufficient number of SC and ST candidates in the ratio

of 1:10 as prescribed by the respondents were not available, therefore, the posts should have been treated as unreserved and should have been added to the seats available for the unreserved category candidates and after adding these seats to the unreserved posts available the ratio of 1:10 should have been calculated by the respondents.

6. The learned counsel for the petitioner submitted that the respondents having not done so, they have violated Rule 6 of the Rules of 1994 as well as the specific and clear terms and conditions of the advertisement and, therefore, the entire process of selection undertaken by them be quashed and they be directed to conduct the main examination again after calling the petitioner also to participate in the same.

7. The learned counsel for the petitioner, in support of his submission, has relied on the decision of the Supreme Court rendered in the case of **Prafulla Kumar Swain vs. Prakash Chandra Misra and others, 1993 AIR SCW 671** and the Full Bench decision of this Court in the case of **Usha Narwariya vs. State of Madhya Pradesh and others, 1993 MPLJ 969**, wherein the

Supreme Court and this Court have clearly defined the difference between the word 'recruitment' and 'appointment'.

8. The learned counsel for the petitioner submits that as the Rules of 1994 relate to recruitment, therefore, the respondents have wrongly interpreted the same and denied the petitioner's right to participate in the main examination.

9. The learned counsel appearing for the respondents, per contra, submits that as per the advertisement and the Rules, the respondents/ authorities were required to call the candidates for the main examination category wise in the ratio of 1:10 of the candidates having obtained minimum qualifying marks and, therefore, even if less number of candidates are qualified for the reserved category, the respondents/ authorities cannot call more than the ratio of 1:10 candidates as specified and mentioned for the unreserved category.

10. The learned counsel appearing for the respondents submits that even otherwise the proviso to Rule 6 of the Rules of 1994, which provides for treating those posts of the reserved category which remained vacant as

unreserved for the purposes of appointment, has to be applied and comes into operation only at the stage of final selection and preparation of the select list and cannot be applied at the initial stage as that would lead to an anomalous situation where unreserved category candidates would be called for and permitted to participate in the main written examination against the posts that are otherwise reserved for reserved category candidates which is not permissible under the Rules.

11. We have heard the learned counsel for the parties at length and have carefully perused Rule 6 of the Rules of 1994 as well as the terms of advertisement issued by the respondents on 09.03.2017 (Annexure P/1).

12. The proviso to Rule 6 of the Rules of 1994, lays down that if sufficient number of suitable candidates belonging to SC/ST/OBC do not qualify for the posts reserved for them, such posts shall be treated as unreserved. Clause 4(ii) of the advertisement (Annexure P/1) provides that the minimum qualifying marks for the unreserved and OBC category candidates would be 55% i.e., 82 marks out of 150 marks whereas the minimum qualifying marks for the SC and ST category candidates

would be 50% i.e., 75 marks out of 150 marks, but the number of candidates eligible to apply for the main examination would not exceed 1:10 of the total number of candidates who obtain the minimum qualifying marks. The same Clause of the advertisement also provides that the preliminary examination being a screening test, no reservation shall be given to the candidates, however a separate merit list of the successful candidates of each category would be prepared.

13. Before we interpret and apply the aforesaid proviso of the Rules to the facts of the present case, it is necessary to take into consideration the facts of the present case. As stated earlier 42 posts were advertised out of which 6 posts have been reserved for the OBC candidates, 6 for SC and 8 for ST category candidates, whereas 22 posts were reserved for unreserved candidates. It is an undisputed fact that against the 22 posts of unreserved category, 230 candidates have been called by applying the provision providing for calling the candidates in the ratio of 1:10 of the number of vacancies in view of the fact that the advertisement also stipulates that those candidates who have secured marks equal to the cut off marks shall also be included in the

list. As far as the OBC candidates are concerned, 62 candidates have been found to be eligible for the main examination as against 6 posts, whereas only 42 candidates have been found eligible for the main examination against the 6 posts reserved for SC category candidates and only 3 candidates belonging to the ST category have secured more than the minimum qualifying marks against the posts reserved for ST candidates. It is also an undisputed fact that as per Annxure P/2 the respondents have called 62 candidates for the main examination under the OBC category, 42 under the SC category and 3 under the ST category i.e., a total number of 337 candidates including 230 unreserved category candidates by applying the ratio of 1:10 to each of the categories.

14. At this stage, it is pertinent to note that the petitioner, who is an unreserved category candidate, has obtained 97 marks in the preliminary examination and has been shown at serial No.411 in the select list of unreserved category candidates and at serial No.459 in the combined list of all categories.

15. If the contention of the learned counsel for the petitioner is accepted then the 5 seats for which no ST

candidates is available would have to be added to the list of unreserved category candidates at the stage of the preliminary examination by applying the proviso to Rule 6 of the Rules of 1994, and thereafter as per the 1:10 ratio an additional 50 candidates belonging to the unreserved category would have to be called for the main examination.

16. After due consideration, we are of the considered opinion that the contention of the learned counsel for the petitioner cannot be accepted for the simple reason that the proviso to Rule 6 of the Rules of 1994, clearly stipulates that those "posts" belonging to the reserved category candidates for which sufficient number of candidates belonging to the reserved category candidates are not available, shall be treated as unreserved. Apparently, the aforesaid eventuality of the posts remaining vacant would arise only at the time of final selection as the fact as to whether the seat remains unfilled can be determined only thereafter as in normal circumstances the posts may remain vacant or unfilled even in cases where the number of candidates of the reserved category are more than the number of vacancies at the stage of the main examination.

17. We also find substance in the submissions of the learned counsel for the respondents that Clause 4(ii) of the advertisement clearly provides that the maximum number of candidates to be called for the posts that are advertised for the various categories would be in the ratio of 1:10 and, therefore, as far as the unreserved category candidates are concerned, as against 22 posts available for them 230 candidates have been called and in view of the stipulation in the advertisement post reserved for the other categories cannot be added to the seats available for the unreserved category for the purposes of determining the number of candidates to be called for the main examination at the stage of the preliminary examination as the post of the reserved category have not been declared to be vacant.

18. The main purpose of calling candidates in the ratio of 1:10 for the main examination is that, for the 22 posts available for the unreserved category, the best among them may be selected for the purposes of appointment and apparently in the facts of the present case, even after selecting 22 unreserved category candidates for the posts available and advertised, more than 208 candidates of the unreserved category would be available for

appointment, if so required, against the posts of reserved categories that are remaining vacant and apparently all these 208 candidates that are available are undisputedly more meritorious than the petitioner and those who have not been called for the main examination.

19. We are, therefore, of the considered opinion that on a conjoint reading of the provisions of Rule 6 of the Rules of 1994, along with the terms of the advertisement, it becomes apparent that the proviso to Rule 6 of the Rules of 1994, would come into operation only at the time of final preparation of the select list for making appointment and at that time those seats of reserved category candidates, for which no reserved category candidate is available, may, in certain conditions if any, be treated as unreserved and thereafter candidates belonging to the unreserved category would be appointed against such available posts from the list of unreserved candidates already called for the main examination strictly in accordance with merit.

20. It is also apparent that in the present case, the petitioner would not get the benefit of the relief claimed

by him in the facts and circumstances of the present case inasmuch as the petitioner has obtained only 97 marks in the preliminary examination which is more than the minimum qualifying marks prescribed in the advertisement i.e., 82 but is less than the minimum cut off marks that have been determined by the respondents by applying the Clause relating to calling candidates in the ratio of 1:10 i.e., 104, as is evident from Annexure P/2 and, therefore, even if the contention of the learned counsel for the petitioner is accepted no benefit would accrue to the petitioner as the last candidate, who would fall within the ratio of 1:10 would be at serial No.112 of the list of unreserved category candidates and would be a candidates who has obtained 101 marks.

21. In view of the aforesaid analysis and peculiar facts prevailing in the present case, we are of the considered opinion that no fault can be found in the act of the respondents in calling candidates in the main examination in the ratio of 1:10 in their respective categories and by proposing to apply the proviso to Rule 6 of the Rule 1994 to the selection concerned at the time of preparation of the final select list.

22. We are also of the considered opinion that in the present case the decisions of the Supreme Court and the Full Bench decision of this Court have no applicability to the facts of the present case inasmuch as in the present case we are dealing with the interim stage of selection and recruitment under the Rules of 1994.

23. The petition, filed by the petitioner, being meritless is accordingly dismissed.

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

(R.S. Jha)
Judge

(Nandita Dubey)
Judge

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