

HIGH COURT OF MADHYA PRADESH: JABALPUR**(Division Bench)****R.P. No.682/2018****Amit Kumar Mishra**

.....Petitioner

Versus

State of Madhya Pradesh & others

.....Respondents

CORAM :**Hon'ble Shri Justice Hemant Gupta, Chief Justice****Hon'ble Shri Justice Vijay Kumar Shukla, Judge****Present:**Smt. June Choudhary, Senior Advocate with Shri Kartikeya
Kumar, Advocate for the Petitioner.

Shri P. Yadav, Dy. Advocate General for the respondents/State.

Shri Anil Lala, Advocate for Respondent No.6.

Shri Sanjay K. Agrawal, Advocate for Respondent No.18

Whether Approved for Reporting: Yes**Law Laid Down:**

✓ The scheme circulated by Madhya Pradesh State Employment Guarantee Council for appointment of Gram Rojgar Sahayak does not prescribe any condition that Gram Panchayat can add, modify or delete any of the conditions in the guidelines so framed and circulated. Though the Gram Panchayat is an independent juristic entity and third tier of governance but the funds are to be released by the State/M.P. Employment Guarantee Council. Therefore, the responsibility of the Gram Panchayat is to engage Gram Rojgar Sahayaks in terms of the scheme circulated in the year 2012 and the advertisement for employment can be issued only in terms of the scheme framed and not contrary to the scheme so formulated. Hence, the condition of Computer Efficiency Test introduced by the Gram Panchayat is not legally sustainable.

Significant Paragraphs: 8 to 20**ORDER {Oral}****(6th August, 2018)**

The present is the second review petition of an order dated 8.8.2016 whereby the Writ Appeal No.479/2016 (Amit Kumar Mishra vs. State of M.P. and others) preferred by the petitioner was dismissed. The first review petition bearing R.P. No.612/2016 (Amit Kumar Mishra vs. State of M.P. and others) was dismissed on 17.10.2016, when the Court after dismissing the appeal, recorded the following order:-

“14. Before parting, we may indicate that we are informed by Shri Swapnil Ganguly, Government Advocate that in the district in question i.e. Rewa, the entire selection process was done, merit list was prepared strictly in accordance with the scheme contained in annexure P-2 dated 2.6.2012 and based on the merit list prepared the computer efficiency test was conducted and 703 candidates who passed the computer efficiency test have been appointed. It is stated that all these 703 persons are meritorious, their name appear in the original merit list and their selection being strictly in accordance with policy dated 2.6.2012, therefore, the meritorious candidates from selection list, who have passed the computer efficiency test and have been appointed, need not to be disturbed. We find much force in the aforesaid submissions of Shri Swapnil Ganguly, Government Advocate. Such of the candidates who found place in the merit list prepared as per scheme dated 2.6.2012 and if have been appointed after passing computer efficiency test, their appointments need not be disturbed as they have gone through selection process as contemplated under the scheme dated 2.6.2012 and their names find place in the final merit list prepared as per the scheme. That apart, this order shall be applicable only to the set of the petitioners who have approached this and it shall not to be applicable to such persons, who have not approached this Court.”

2. The petitioner as well as aggrieved candidates filed SLP No.3239-3242/2017 (Upendra Kumar Chaturvedi etc. vs. Collector, Rewa and others) before the Supreme Court against the above-said order passed in the first review petition which was dismissed on 23.3.2018. It is thereafter, the petitioner has filed the present review petition relying upon an order passed

by this Court on 4th April 2018 in W.A. No.206/2017 (Nagendra Prasad Kol vs. State of M.P. & others) and W.A. No.207/2017 (Diwaker Singh Gond vs. State of M.P. & others), whereby an order was passed that services of 703 candidates who have qualified in the Computer Efficiency Test are protected and thus, cannot be terminated.

3. At this stage, it would be advantageous to reproduce certain basic facts. A scheme was circulated for appointment of Gram Rojgar Sahayak by the *Madhya Pradesh Rajya Rojgar Guarantee Council* (Madhya Pradesh State Employment Guarantee Council). Such guidelines or scheme has certain essential conditions and certain desirable conditions required to be satisfied by the candidates for appointment. The essential condition is possession of qualification of 10+2 examination either from the Board of Secondary Education Madhya Pradesh or the Central Board of Secondary Education. The desirable condition *inter alia* includes six months' ITI certificate either in Computer Applications or Data Entry Operator. Clause 6 of such scheme is that the appointed Gram Rojgar Sahayak will be an employee of Gram Panchayat but the Gram Panchayat would be bound by the various instructions issued by M.P.State Employment Guarantee Council from time to time. Condition No.10 is that the appointment shall be made by the Gram Panchayat in the manner specified therein including the marks allotted under the different heads. As per Condition No.11, the provisional merit list prepared has to be approved by Janpad Panchayat.

4. After the said scheme was circulated on 12th June, 2012, different advertisements were published; one of such advertisement was published on 26th August, 2014 is part of record. In such advertisement, the candidates were required to qualify the Computer Efficiency Test on or before 18th of

September of the said year. In pursuance to the different advertisements issued, 703 candidates who qualified Computer Efficiency Test were appointed as Gram Rojgar Sahayaks.

5. The appointments of such candidates were challenged before this Court in a bunch of writ petitions; the first one being W.P. No.17183/2014 (Ashutosh Mishra Vs. State of M.P. & others). The said writ petition was allowed on 15th July, 2016 wherein, it was held that additional condition could not have been introduced after the start of the selection process and that the candidates who have remained unsuccessful in the Computer Efficiency Test cannot be estopped to challenge the condition of Computer Efficiency Test as there cannot be any estoppel against the law. The petitioner aggrieved against the said order filed W.A. No.479/2016 (supra), which was dismissed on 8th August 2016. It is thereafter, the first review petition was dismissed. The Special Leave Petition was also dismissed.

6. Learned counsel for the petitioner admits that the petitioner was number 2 in the merit list prepared and No.1 in the waiting list prepared on the basis of the marks obtained in 10+2 examination either of the State Board or the Central Board. The merit list was to be prepared on the basis of such qualification alone. The qualification in the Computer Efficiency Test was the only other condition.

7. Before this Court, learned counsel for the petitioners has raised the following arguments:-

- (i) That the petitioners were not impleaded as respondent in the writ petition, wherein, the non-selection of the writ petitioners on the post of Gram Rojgar Sahayak was an issue. Such writ petition could not have been entertained without impleading

the necessary party, whose rights were likely to be affected adversely.

- (ii) The Gram Panchayat as an institution of local self-governance in terms of Part IX of the Constitution, consequent to 73rd amendment has a right to employ Gram Rojgar Sahyak as it considers appropriate. Therefore, the condition of Computer Efficiency Test introduced by the Gram Panchayat falls within the jurisdiction of the Gram Panchayat. Therefore, the same could not have been said to be illegal condition for the reason that the scheme does not contemplate such efficiency test.
- (iii) It is also contended that the findings recorded by the learned Single Bench and learned Division Bench that the selection process has been altered after the same was set in process, is incorrect as the selection process started only with advertisement published on 26th August, 2014. Thus, the candidates such as writ petitioners were aware of the condition of Computer Efficiency Test and therefore, the very basis that the selection process has been altered after the same was set in motion is factually incorrect.
- (iv) It is also argued that since the condition of Computer Efficiency Test was a condition in the advertisement dated 26th August 2014, therefore, the petitioners having responded to such advertisement are estopped to dispute the condition of Computer Efficiency Test. Reliance is placed upon the decisions of the Supreme Court reported as **(2010) 12 SCC 576 (Manish Kumar Shahi vs. State of Bihar)** and **(2016) 1**

SCC 454 (Madras Institute of Development Studies vs. K. Sivasubramaniyan & others).

- (v) It was also argued that the findings recorded by the learned Single Bench that the Collector could not introduce additional condition, is incorrect as the Collector was competent to frame conditions which he considers suitable keeping in view the duties to be carried out by the Gram Rojgar Sahayak. It is contended that the Collector as a delegatee of the State Government is competent to incorporate other conditions, as it may be necessary in the interest of the administration. Reliance is placed upon a judgment of the Supreme Court reported as **AIR 1963 SC 1503 (Roop Chand vs. State of Punjab & Another)**.
- (vi) That this Court in its order dated 4th April, 2018 has held that if a candidate is part of 703 selected candidates, then, services of such candidates cannot be terminated. In view of the said fact, it is argued that petitioner is one of 703 of those candidates, therefore, his services could not have been terminated.
- (vii) Another argument of learned counsel for the petitioner is that in the return filed in the writ petition, the State Government has supported that the Computer Efficiency Test was rightly introduced. Therefore, the same could not have been interfered with in the writ petition.

8. We do not find any merit in the argument raised by the learned counsel for the petitioner that the petitioner was not a party to the Writ

Petition No.10350/2015 (Dileep Kumar Shukla vs. State of M.P. and others) and therefore, the order passed by the learned Single Bench cannot be sustained. The petitioner was party in the said writ petition though he is not reflected to be represented in the order passed by the learned Single Bench. The petitioner has filed an appeal aggrieved by an order passed by the learned Single Bench, which was entertained and decided on merits. The learned Division Bench has dealt with the arguments raised by the petitioner herein on merits and negated the same in its order dated 8th August, 2016. Therefore, the argument is not sustainable when they have filed an appeal against an order passed by the learned Single Judge and that such appeal has been decided on merits.

9. The petitioner filed review petition which was also entertained along with certain writ appeals against the same order passed by the Single Bench and both writ appeal and review petition was dismissed on 17.10.2016. Therefore, the petitioners have not been deprived of the right of hearing before passing an adverse order against them.

10. We do not find any merit in the second argument that Gram Panchayat as an institution of local self-governance in terms of Constitutional amendment has a right to prescribe conditions of employment. The entire funds for engaging Gram Rojgar Sahayak are being provided by the Madhya Pradesh State Employment Guarantee Council. The scheme has been circulated which prescribes not only the essential conditions, the desirable conditions, number of posts, the process of selection, age, conditions for the grant of relaxation in age and preparation of the merit list. There is no condition in the said scheme that Gram Panchayat can add, modify or delete any of the conditions in the guidelines

so framed and circulated. Therefore, though the Gram Panchayat is an independent juristic entity and third tier of governance but the funds are to be released by the State/the M.P. Employment Guarantee Council. The responsibility of the Gram Panchayat is to engage Gram Rojgar Sahayaks in terms of the scheme circulated in the year 2012. The scheme is categorical that the Gram Panchayat will be bound by the circular or the directions which will be issued by the Council from time to time. The appointments have to be made by the Gram Panchayat after approval from Zila Panchayat. Therefore, though Gram Panchayat is the employer but such right of employment is regulated and governed by the guidelines circulated.

11. The plea of estoppel which the learned counsel for the petitioner has vehemently raised needs to be discussed at this stage. In a judgment of **Madras Institute of Development Studies** (supra), the argument was that the advertisement for appointment to the post of Associate Professor is contrary to the statutory rules framed. However, the Court held as under:-

“13. Be that as it may, the respondent, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, submitted his application and participated in the selection process by appearing before the Committee of experts. It was only after he was not selected for appointment, turned around and challenged the very selection process. Curiously enough, in the writ petition the only relief sought for is to quash the order of appointment without seeking any relief as regards his candidature and entitlement to the said post.”

12. In **Manish Kumar Shahi's** case (supra), the challenge was to the marks for viva voice test for appointment to the post of Bihar Civil Service (Judicial Branch). It was held that the candidates were aware that more than

19% marks have been prescribed for *vivo-voce*, therefore, such criteria or process of selection cannot be challenged.

13. We do not find that such judgments have any applicability to the present facts of the case. The Gram Panchayat is bound to make appointment only in terms of the scheme circulated on 12th June, 2012. In the said scheme, the possession of six months certificate from ITI in Computer Applications or Data Entry Operator is a desirable qualification. The condition of test has been made mandatory in the advertisement dated 26th August 2014. Since the scheme does not give liberty to Gram Panchayat to modify the scheme circulated by the State Government which provides finances for running of the scheme, therefore, there could not be any condition contrary to the guidelines framed. Therefore, the condition that the candidate has to qualify Computer Efficiency Test is contrary to the scheme and could not be enforced against the writ petitioners. The Gram Panchayat could fix only desirable conditions and not the mandatory conditions. The learned Single Bench has rightly found that there cannot be any estoppel against law. The appointments have to be made in terms of the guidelines. Therefore, we do not find that the condition of Computer Efficiency Test introduced by the Gram Panchayat is legally sustainable.

14. Another argument raised was that the scheme is not in exercise of the executive power of the State but are the guidelines which is not binding. We do not find any merit in the said argument as well. The guidelines or the Scheme has been issued by M.P. State Employment Guarantee Council. Such guidelines are applicable to all Gram Panchayat in a non-discriminatory and in a uniform manner. Such guidelines in the absence of any other law are binding. The guidelines are not contrary to any Statute,

Rule or Regulations. The advertisement for employment can be issued only in terms of the scheme framed and not contrary to the scheme so formulated. Therefore, we do not find that the condition of qualifying Computer Efficiency Test could be introduced by Gram Panchayat.

15. In respect of the fact that the Collector as a delegatee was competent to add condition of qualifying Computer Efficiency Test is again not tenable. The Collector is bound by the guidelines issued by the M.P. State Employment Guarantee Council. He has to give effect to the scheme in the manner contemplated by the Council and not *de hors* or contrary to the scheme framed even if he considers that the Computer Efficiency Test would be a better condition for implementing the scheme in question.

16. We do not find any merit in the argument that the stand taken by the State in the return will preclude the Court from examining whether there could be any additional condition of Computer Efficiency Test in the advertisement, as discussed above. The scheme framed by the M.P. Employment Guarantee Council does not provide liberty to the Gram Panchayat to add additional mandatory condition of employment. Therefore, the stand of the State will not empower the Gram Panchayat to add additional mandatory condition for appointment as Gram Rojgar Sahayak.

17. We though find merit in the argument that the finding recorded by the learned Single Bench that condition of the selection process has been altered after the same was set in motion. But, such argument does not alter the ultimate result which is that there could not be any condition, contrary to the guidelines framed. Since the selection process was initiated while issuing advertisement on 26th August, 2014 but such advertisement has to be in conformity with the guidelines framed. Therefore, though we are unable to

uphold the finding of learned Single Bench that the selection process was changed after the same was set in motion but the ultimate result does not warrant any change.

18. In the first review petition filed by the petitioner it was ordered that 703 candidates who have passed the Computer Efficiency Test should be allowed to continue provided they are meritorious. The petitioner was No.2 in the merit list and No.1 in the waiting list, meaning thereby that there was a candidate who was more meritorious and higher in the merit list. Therefore, though the petitioner is one of the 703 candidates but he is not meritorious who is entitled to protection of order dated 17th October 2016 passed by this Court.

19. In view of the said fact, we do not find any error in the order passed by this Court on 8th August and on 17th October 2016 which may warrant review of the order. **The review is, thus, dismissed.**

20. Having said so, we find that the order of this Court passed on 4th April, 2018 in W.A. No.206/2017 (supra) and W.A. No.207/2017 (supra) has not noticed the condition that appointment of 703 candidates is protected provided they are meritorious. The appointment of all 703 candidates are not necessarily on merit such as the petitioners in the present case. Therefore, we find that the order dated 4th April, 2018 requires to be re-examined.

Let a *suo motu* review petition be listed **after two weeks.**

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE