

HIGH COURT OF MADHYA PRADESH: JABALPUR

(Division Bench)

Writ Petition No. 12747/2018

Dr. Avinash Mishra & othersPETITIONERS

Versus

State of Madhya Pradesh & Others RESPONDENTS

Shri Satya Prakash Mishra, Advocate for the petitioners.

Shri Amit Seth, Government Advocate for the respondent Nos. 1 & 2/State.

Shri Anshul Tiwari, Advocate for the respondent No.3/MPPSC.

AND

Writ Petition No. 12769/2018

Girvar Singh Rajput & othersPETITIONERS

Versus

State of Madhya Pradesh & Another RESPONDENTS

Shri Swapnil Ganguly, Advocate for the petitioners.

Shri Amit Seth, Government Advocate for the respondent No.1/State.

Shri Anshul Tiwari, Advocate for the respondent No.2/MPPSC.

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice

Hon'ble Shri Justice Akhil Kumar Srivastava, Judge

Whether Approved for Reporting : Yes

Law Laid Down:

- ✓ The State has a right to assess the suitability of a candidate for appointment with or without interview. The State having exercised the jurisdiction in terms of Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1990 (for short "the 1990 Rules"), it cannot be said that power of relaxation to do away with the interview is illegal.

- ✓ In exercise of power of judicial review, this Court examines the jurisdiction to relax the Rules. Since there is explicit power with the State Government to relax the Rules, the Court will not act as Court of appeal over the decision of the State Government, when no infirmity is found in the decision making process.
- ✓ The jurisdiction to issue circular dated 04.05.2018 is vested in the Governor which is to be exercised by the State Government in terms of Rule 24 of the 1990 Rules. The power of relaxation can be exercised in favour of an individual in case of hardship or to a class of persons i.e. all the candidates. Though Rule 24 deals with “person” but in terms of Section 13(2) of the M.P. General Clauses Act, 1957, the words in the singular shall include the plural, and *vice versa*.
- ✓ The power of relaxation is not limited as it can be exercised as it may appear to be just and equitable except that relaxation shall not be in any manner less favourable to a candidate than that provided in the Rules. Therefore, there cannot be a harsher condition but any condition in the Rules could be relaxed or toned down.
- ✓ The petitioners have no right to claim preference on account of their practical experience of teaching. Since all the candidates are required to be treated alike on the touchstone of Article 14 of the Constitution of India, therefore, the petitioners are not being dealt with arbitrarily but fairly as condition of interview has been done away with in respect of all the candidates.

Significant Paragraph Nos.: 6, 9, 10, 12 to 18 & 20

ORDER

(Passed on this 22nd day of June, 2018)

Per : Hemant Gupta, Chief Justice:

This order shall dispose of both the above-mentioned writ petitions challenging the order dated 04.05.2018 (Annexure P-1) issued by the State Government whereby Madhya Pradesh Educational Service (Collegiate

Branch) Recruitment Rules, 1990 (for short “the 1990 Rules”) were relaxed so as to do away with requirement of the interview of the candidates for the posts of Assistant Professors, the process of appointment of which was started vide Advertisement dated 12.12.2017. The common questions of fact and law are involved in the present cases, however, for the sake of convenience, the facts are taken from W.P. No.12769/2018 (Girvar Singh Rajput and others vs. State of M.P. & Another).

2. Madhya Pradesh Public Service Commission issued an advertisement inviting applications for appointment to the posts of Assistant Professors on 12.12.2017 (Annexure P-3). The advertisement contemplates that there will be a written examination of 400 marks and viva-voce/interview having 50 marks, totalling to 450 marks. A candidate to be successful has to obtain 40% marks in the written examination whereas the candidates belonging to scheduled castes, scheduled tribes, other backward classes and differently-abled category candidates as notified for the State of Madhya Pradesh, who are domicile of State of Madhya Pradesh are required to obtain 30% marks. The condition of interview is that on the basis of the marks obtained in the written examination, the candidates, thrice the number of vacancies including the candidates having same marks, would be called for the interview and that the candidate is not required to have any minimum marks for qualifying the interview. Still further, it may be noticed that 707 posts were advertised as backlog vacancies of the reserved categories in 22 subjects whereas 1040 posts were advertised in 36 subjects which were fallen vacant on account of promotion and/or retirement whereas 1221 newly sanctioned posts were advertised in 16 subjects. Thus, a total of 2968

posts have been advertised. Therefore, around 9000 candidates have to be called for the interview. It may be mentioned that the recruitment process to fill such large number of posts is being undertaken almost after two decades.

3. The petitioners are discharging their duties as guest faculty in the colleges under the State. Their grievance is that the 1990 Rules contemplate both written-test as well as interview whereas without any amendment in the 1990 Rules, the State Government has granted relaxation in the 1990 Rules, which contradicts the spirit of the said Rules as also the advertisement.

4. It is argued that the condition of interview is a condition of the advertisement itself; therefore, the State could not have changed the process of appointment by doing away with the interview. It is vehemently contended that the rules of the game have been changed after the game has begun. Reliance is placed upon a decision of the Supreme Court reported as **(2001) 10 SCC 51 (Maharashtra State Road Transport Corpn. And others vs. Rajendra Bhimrao Mandve and others)**. The condition of interview has been relaxed in terms of Rule 24 of the 1990 Rules. Such relaxation is said to be illegal. It is further contended on behalf of the petitioners that interview is one of the important mode to adjudge the personality of a candidate; therefore, such condition of interview could not have been dispensed with.

5. It is also argued on behalf of the petitioners that Rule 24 of the 1990 Rules confers power on the Governor to relax the Rule, which power has to be exercised by the Governor personally; therefore, the order issued on behalf of the Governor is not legal.

6. Shri Ganguly, learned counsel for the petitioners has raised the following issues for consideration before this Court in his writ petition:

- I. Whether the circular dated 09.05.2018 as well as order dated 04.05.2018 are in gross contravention to the 1990 Rules which have statutory force and duly formulated by State Legislature in furtherance of Article 309 of the Constitution of India, 1950?
- II. Whether the Respondents have failed in following the principles elucidated by the Hon'ble Supreme Court in the case of Lila Dhar v. State of Rajasthan, AIR 1981 SC 1777 as well as Ashok Kumar Yadav v. State of Haryana, 1985 (3) SLR 200 wherein the Court has mentioned the importance of interview in higher post experience examinations for variety of purposes?
- III. Whether the Respondents failed in appreciating that the Petitioners have been badly affected by the move of removing interview as they hold number of years practical experience of teaching?
- IV. Whether the circular/orders smack of arbitrariness as there no Legal Basis/power of exempting interview on onetime basis as the exam itself is taking place after 25 years so there is no urgency and rather the examination should take place in best possible desired way as provided in the 1990 Rules?
- V. Whether the recruitment rules cannot be relaxed by invoking the relaxation clause if any, as holding of interview for selection is a part of Recruitment Process?
- VI. Whether the circular dated 09.05.2018 and order dated 04.05.2018 tantamount of hanging the 'rules of the game' during the course of selection process?

VII. Whether during the course of selection process after submitting the requisite application forms the method of selection can be altered?"

7. On the other hand, learned counsel for the State has produced the Agenda which was approved by the Council of Ministers in its meeting held on 23.04.2018 wherein by giving reference to large number of vacancies available and that next academic session is to start in August, 2018, therefore, it is considered appropriate to fill the vacant posts before the said time. It is also pointed out that since 9000 candidates have to be interviewed, which will take long time but if on the basis of written examination the candidates are selected, the candidates would be available for appointment immediately. It is in pursuance of such decision of the Cabinet; the circular was issued on 04.05.2018, which is impugned herein.

8. Learned counsel for the State argued that since there is emergent requirement of Assistant Professors as the guest faculties were engaged as a stopgap arrangement, therefore, it is necessary that regular candidates should be available immediately at the time of start of the new academic session. The interview of large number of candidates, may be to the tune of 9000, will delay the selection process. It is also contended that the interview is subjective marking by the members of the Interview Board whereas the marks in the written examination are based upon the objective marking of the written papers. It is further contended that the condition of interview has been relaxed even before the conduct of the written examination; therefore, the candidates are aware that the candidates will be selected only on the basis of written examination. Though the interview was part of the Rules but

the same has been relaxed in exercise of the executive power of the State and in terms of the 1990 Rules, therefore, such relaxation cannot be said to be illegal

9. Before we consider the respective arguments of the learned counsel for the parties, the relevant provisions of the 1990 Rules are required to be reproduced, which read as under:

“11. Direct Recruitment by Competitive Examination.—(1) Direct recruitment shall be made by competitive examination to the posts of Assistant Professor, Librarian and sports officer and the merit list shall be made for the appointment on the basis of total marks obtained in written examination and interview.

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24. Relaxation.—Nothing in these Rules shall be construed to limit or abridge the power of the Governor to deal with the case of any person to whom these rules apply in such manner as may appear to it to be just and equitable:

Provided that, the case shall not be dealt with in any manner less favourable to him than that provided in these rules.

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SCHEDULE II
(See Rule 6)

Name of Department	Name of Service	Name of post	Number of Duty post	Percentage of Duty post to be filled in			Remarks
				By direct Recruitment	By promotion of substantive members of service	By transfers of persons of other services	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Department of Higher Education	M.P. Educational (Gazetted) Service	(i) * (ii) * (iii) * (iv) *	***	***	***	***	*** *By competitive examination. The successful candidates shall be interviewed as well. **
		(v) Asst. Professor	7426	100%*			

Note.— The procedure of appointment in the senior and selection grade pay scale to the posts mentioned in serial No.(V), (VI) and (VII) shall be according to the note given in Schedule IV.

10. We find that the interview is of 50 marks, which is almost 12% of the marks in the written examination. In response to a repeated query as to how the interest of the candidates is prejudicially affected, the only answer was that the petitioners are teaching as guest faculty; therefore, with their experience in teaching, they are likely to perform better in the process of interview. Therefore, their interest as a candidate for the post of Assistant Professor is prejudicially affected. We do not find any merit in such apprehension. The argument is based upon surmises and conjectures. We find that the petitioners who are working as guest faculty would be, in fact, better equipped to do well in the written examination. Even otherwise, the preparation of merit list on the basis of written examination is transparent and fair method of preparing the merit list. All the candidates would be subjected to same set of examination and valuation process. Therefore, the relaxation of condition of interview has not caused any prejudice to the candidates such as the petitioners.

11. The argument that the Hon'ble Governor has to relax the rule of interview personally in terms of Rule 24 of the 1990 Rules is not tenable in view of a Division Bench judgment of this Court rendered in **Writ Appeal No.58/2017 (Smt. Shanti Bavaria vs. State of M.P. and others)** decided on 10.10.2017. This Court has relied upon seven Judge Bench judgment of the Supreme Court rendered in the case of **Samsher Singh and another vs. State of Punjab, (1974) 2 SCC 831** and other decisions to hold that the Council of Ministers is to aid and advise the Governor. The Rules of business are for discharging of executive powers of the State in the name of

the Governor. Therefore, the Governor is not to personally approve the charge-sheet. It was concluded as under:-

“14. Thus, there is no doubt that the Hon’ble Governor acts on the aid and advice of his Council of Ministers except the matters which fall exclusively to be exercised by him in his discretion. The power as to whether pension of an employee should be stopped or not is not a matter which falls within his exclusive discretion. Therefore, the charge-sheet dated 11.1.2012 served upon the appellant in the name of Hon’ble Governor cannot be said to be without jurisdiction and thus same is not suffering from any illegality.”

12. Now, coming to arguments raised by Shri Ganguly in the writ petition. The first and fifth issues of challenge are in respect of validity of the circular dated 04.05.2018. The jurisdiction to issue such circular is vested in the Governor which is to be exercised by the State Government in terms of Rule 24 of the 1990 Rules. The power of relaxation can be exercised in favour of an individual in case of hardship or to a class of persons i.e. all the candidates. It may be stated that though Rule 24 deals with “person” but in terms of Section 13(2) of the M.P. General Clauses Act, 1957, the words in the singular shall include the plural, and *vice versa*. We find that the circular dated 04.05.2018 issued in the name of the Governor is in terms of the 1990 Rules. The power of relaxation is not limited as it can be exercised as it may appear to be just and equitable except that relaxation shall not be in any manner less favourable to a candidate than that provided in these Rules. Therefore, there cannot be harsher condition but any condition in the Rules could be relaxed or toned down. In view of the said fact, the said issues raised by the learned counsel for the petitioners that the

recruitment rules cannot be relaxed by invoking the relaxation clause is rejected.

13. The second issue raised in respect of importance of interview for appointment to the higher posts is based upon the Supreme Court judgments reported as **(1981) 4 SCC 159 (Lila Dhar vs. State of Rajasthan and others)** and **(1985) 4 SCC 417 (Ashok Kumar Yadav and others Etc. Etc. vs. State of Haryana and others Etc. Etc.)**. In **Lila Dhar's** case (*supra*), the Court held that open competitive examination is universally accepted as the gateway to public services. The relative competence for appointment of a candidate is determined by a neutral, disinterested body on the basis of objective evidence supplied by the candidate himself. The relevant extract reads under:

“4. The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services.

The ideal in recruitment is to do away with unfairness. (UNITED NATIONS HANDBOOK ON CIVIL SERVICE LAWS AND PRACTICE)

Competitive examinations were the answer to the twin problems represented by democracy and the requirements of good administration. They were the means by which equality of opportunity was to be united with efficiency.... By this means favouritism was to be excluded and the goal of securing the best man for every job was to be achieved (O. Glenn Stahl: Public Personnel Administration).

Open competitive examinations are a peculiarly democratic institution. Any qualified person may come forward. His relative

competence for appointment is determined by a neutral, disinterested body on the basis of objective evidence supplied by the candidate himself. No one has "pull"; everyone stands on his own feet. The system is not only highly democratic, it is fair and equitable to every competitor. The same rules govern, the same procedures apply, the same yardstick is used to test competence. (Leonard White: Introduction to the Study of Public Administration)

5. How should the competitive examination be devised? The Kothari Committee on Recruitment Policy and Selection methods in their report said:

A system of recruitment almost totally dependent on assessment of a person's academic knowledge and skills, as distinct from ability to deal with pressing problems of economic and social development, with people, and with novel situations cannot serve the needs of today, much less of tomorrow.... We venture to suggest that our recruitment procedures should be such that we can select candidates who can not only assimilate knowledge and sift material to understand the ramifications of a situation or a problem but have the potential to develop an original or innovative approach to the solution of problems.

It is now well recognised that while a written examination assesses a candidate's knowledge and intellectual ability, an interview-test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the interview-test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness, in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an interview-test, much depending on the constitution of the Interview Board.....”

14. In **Ashok Kumar Yadav's** case (*supra*), the Court found that 33.3% marks earmarked for the interview opens the door wide for

arbitrariness and that even 22.2% marks for viva voce test is likely to create scope of arbitrariness. Therefore, it suggested that the marks allocated to viva voce test shall not exceed 12.2% in case of candidates belonging to general category. We find that both the decisions have delineated the importance of written examination and interview but whether interview is a necessary condition for appointment, is not mandated in the aforesaid decisions. In fact, learned counsel for the petitioner could not point out that interview is necessary precondition for making appointment against a post under the State.

15. In respect of third issue that the petitioners would be affected by relaxation of condition of interview is in the realm of conjectures and surmises. The petitioners have no right to claim preference on account of their practical experience of teaching. All the candidates are required to be treated alike on the touchstone of Article 14 of the Constitution of India. Therefore, by relaxing the condition of interview, the petitioners are not being dealt with arbitrarily but fairly as condition of interview has been done away with in respect of all the candidates.

16. In respect of the fourth issue that the circulars/orders smack of arbitrariness is again not tenable. The decision to relax the condition of interview has been taken much before the examination is proposed to be held on 23.06.2018. The relaxation in interview is one time measure to fill the large number of vacancies in a time bound manner. Since there are large numbers of vacancies, consequently there will be large number of candidates to be interviewed. The marks in the interview are not decisive as well;

therefore, the decision that the marks in the written examination will determine the merit list cannot be said to be arbitrary, unfair and illegal in any manner.

17. In respect of the last two; (VI) and (VII) issues that the rules of the game have been changed after game has begun and that the method of selection cannot be altered during the course of selection process, is again not meritorious. We find that the rules of the game have not been changed so as to change the criteria of selection but only to do away with the interview which decision has been taken in view of the fact that the candidates should be available for regular appointment. Therefore, it cannot be said that the relaxation of interview has prejudiced any of the candidates in the selection process. The State has a right to assess the suitability of a candidate for appointment with or without interview. The State having exercised the jurisdiction in terms of the 1990 Rules, it cannot be said that power of relaxation to do away with the interview is illegal.

18. Shri Ganguly, learned counsel for the petitioners has relied upon a judgment of the Supreme Court reported as **(2012) 9 SCC 545 (State of Gujarat and others vs. Arvindkumar T. Tiwari and another)** to contend that a candidate must fulfil the eligibility criteria fixed in the Rules. However, we do not find any merit in the said argument. In fact, the said judgment draws a distinction between the eligibility criteria and the qualification. The eligibility criteria in the aforesaid case was 10th Class qualification which the candidate was not possessed of while seeking appointment on compassionate ground as Peon. The Court held that such

eligibility criteria could not be relaxed. In the present case, none of the eligibility criteria has been relaxed but condition of interview as a part of selection process has been relaxed to facilitate the appointment of large number of candidates to the posts of Assistant Professor at an early date.

19. Learned counsel for the petitioners placed reliance on the judgment of the Supreme Court reported as **AIR 1991 SC 284 (Keshav Chandra Joshi and others etc. vs. Union of India and others)**. In the aforesaid case, U.P. Forest Service Rules, 1952 were under consideration wherein Rule 27 contemplated relaxation of the Rules in consultation with the Public Service Commission. The Court held as under:-

“32.....Therefore, the rule which effects the right to confirmation or similar provision is a condition of service. The rules relating to recruitment to the service either under R. 5(a) or 5(b) or the manner of recruitment to service as per Appendix ‘A’ or ‘B’ are basic rules of recruitment to service. Satisfaction of the Governor that the operation of the rules regarding the conditions of service would cause undue hardship in a particular case or cases and the need to relieve hardship and to cause just and equitable results is a pre-condition. Even otherwise the court cannot substitute its satisfaction to the satisfaction of the Governor in exercise of the power of deemed relaxation. In Narendra Chadha vs. Union of India’s case (AIR 1986 SC 638) the power to relax was wide enough to cover ‘any rule’ and there was no pre-condition of objective satisfaction by the Governor. We hold that R. 5(a) and (b) and Appendices ‘A’ and ‘B’ are basic rules of recruitment and would not be subject to R. 27.”

20. Thus, in exercise of power of judicial review, this court examines the jurisdiction to relax the Rules. There is explicit power with the State Government to relax the Rules. Therefore, this Court will not act as Court of

appeal over the decision of the State Government, as we have not found any infirmity in the decision making process.

21. In view of the aforesaid, we do not find any merit in the present writ petitions. The same are **dismissed**.

(HEMANT GUPTA)
CHIEF JUSTICE

(AKHIL KUMAR SRIVASTAVA)
JUDGE

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