

HIGH COURT OF MADHYA PRADESH: JABALPUR
(Division Bench)

(1) **WP No. 12602/2018 (S):**
(Ramji Tiwari & others v. State of M.P. & others)

WITH

(2) **WP No. 12831/2018 (S):**
(Ramesh Daharwal & Another v. State of M.P. & others)

(3) **WP No. 12975/2018 (S):**
(Ramakant Chouksey & others v. State of M.P. & others)

(4) **WP No. 11419/2018 (S):**
(Ramniwas Sharma & others v. State of M.P. & others)

CORAM :

Hon'ble Mr. Justice Hemant Gupta, Chief Justice

Hon'ble Mr. Justice Vijay Kumar Shukla, Judge

Appearance:

Mr. Sanjay Kumar Agrawal, Mr. Mahendra Pateriya and Mr. Anoop Nair, Advocates for the respective writ petitioners.

Mr. Amit Seth, Government Advocate for the respondents/State

Mr. Rahul Diwaker, Advocate for the Respondent-Professional Examination Board.

Whether Approved for Reporting : Yes

Law Laid Down:

- No age is contemplated in respect of limited competitive examination either in Rule 6 or Rule 13 of Madhya Pradesh Junior Administrative Service

(Recruitments and Service Conditions of Service) Rules, 2011 (“in short “the Rules”). Therefore, the Schedule-V of the Rules prescribing the age limit for filling of the posts of Naib Tehsildar from amongst the Patwaris or Revenue Inspectors is without any corresponding support from the substantive provisions of the Rules. In view of the said fact, the condition of age fixed in the advertisement is contrary to the Rules as Schedule-V of the Rules cannot be extended to Patwaris and Revenue Inspectors for the purposes of limited competitive examination against 10% quota falling in Rule 6(1)(a)(iv) of the Rules.

Significant Paragraph Nos. : 5,6, 8 to 15

ORDER

(Passed on this 27th day of June, 2018)

Per : Hemant Gupta, Chief Justice:

Since common questions of fact and law are involved in the present bunch of cases, they are heard analogously and are being decided by this common order. However, for the sake of convenience, the facts are taken from W.P. No.12602/2018 (Ramji Tiwari & others vs. State of M.P. and others).

2. The challenge in the present petitions is to the fixation of age of 50 years for the purposes of appointment to the posts of Naib Tehsildar from amongst the Patwaris/Revenue Inspectors by way of limited departmental examination.

3. An advertisement (Annexure P/12) has been published for appointment to the posts of Naib Tehsildar by way of limited departmental examination from amongst the Patwaris/Revenue Inspectors with the

stipulation that the last date for submission of the application form is 18.06.2018 and that examination shall be conducted on 30.06.2018. The petitioners are working on the posts of Patwari/Revenue Inspector and they are desirous of appointment to the posts of Naib Tehsildar.

4. Clause 5.3 of the Advertisement (Annexure P/12) contemplates that the candidate should not be more than 50 years of age though 45 years is the age to fill such posts under Madhya Pradesh Junior Administrative Service (Recruitments and Service Conditions of Service) Rules, 2011 (for short “the Rules”). The Revenue Department has granted one time relaxation of five years vide letter dated 02.05.2018. It is the said condition, which has been challenged by the petitioners in the present writ petitions.

5. Learned counsel appearing for the petitioners contend that there is no age limit provided for appointment to the posts of Naib Tehsildar under the Rules in question. In view of the said submission, the relevant extracts from the said Rules, are reproduced hereunder:-

“2. Definitions. – In these rules, unless the context otherwise requires.–

(g) “Limited Competitive Examination” means limited competitive examination conducted under rule 13 of these rules.

6. Method of recruitment. – (1) Recruitment to the services, after the commencement of these rules, shall be made by the following methods, namely.

(a) Recruitment to the post of Naib Tahsildars –

(i) 60% posts will be filled by direct recruitment on the basis of combined competitive examination conducted by the commission.

(ii) 5% posts will be filled by direct recruitment after selection from amongst the clerical staff of the office of the Revenue Board, Commissioner, Land Records and Settlement and office of Commissioners and Collectors, as provided in Schedule V.

(iii) 25% posts will be filled by promotion of Revenue Inspectors as provided in Schedule II and IV.

(iv) 10% posts will be filled from the Graduate Patwari's and Revenue Inspectors by the limited competitive examination according to the provisions made in Schedule II.

(b) Recruitment to the posts of Tahsildar shall be made by the promotions a Naib Tahsildars, as provided in Schedule II and IV.

11. Direct Recruitment by competitive examination to the post of Naib Tahsildar by selection (except selection from Ministerial service and from Patwari/Revenue Inspectors). – (1) A competitive examination for recruitment to the service shall be held at such intervals as the Commission may, in consultation with the Government, from time to time, determine.

13. Selection by Direct Recruitment through limited competitive examination to the post of Naib Tahsildar from the Ministerial Service and Patwari/Revenue Inspectors cadre. – Only such members of Ministerial Services of the offices of Revenue Board, Commissioner, Land Records and Settlement, Commissioners and Collectors and Patwari and Revenue Inspector will be eligible to get benefit of this scheme who have been serving for at least 5 years as a clerk of Patwari/Revenue Inspectors in permanent or officiating capacity in the Revenue Department and who are holding Graduate

degree in Arts, Science (including technical and engineering), Commerce, Agriculture from any recognized University.

- (1) For filling up the posts of Naib Tahsildar by selection from amongst the Ministerial Services of Revenue Board, Commissioner, Land Records and Settlement, Commissioners and Collectors, appointing authority shall hold annually, at such time, as he may determine, a limited competitive examination in accordance with scheme laid down in Schedule V.
- (2) The post shall be kept reserved respectively for the candidates of Scheduled Castes, Scheduled Tribes and Other Backward Classes from available vacant posts for direct recruitment according to the provisions of Madhya Pradesh Public Service (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (No.21 of 1994) and order issued by the State Government from time to time.
- (3) In filling the vacancies so reserved candidates who are members of Scheduled Castes and Scheduled Tribes and Other Backward Classes, shall be considered for appointment in the order in which their names appear in the list referred to in rule 12(1) above irrespective of their relative rank as compared with other candidates.
- (4) As the case may be, candidates of Scheduled Castes, Scheduled Tribes and Other Backward Classes who are although not eligible according to the standard mentioned in Schedule V but appointment authority regards them to be suitable for appointment to the service with due regard to the maintenance of efficiency of administration; may be appointed on the posts kept reserve for Scheduled Castes, Scheduled Tribes and Other Backward Classes.
- (5) On the available vacant post, consideration for appointment of candidates shall be done according to the order in the list subject to these rules.
- (6) The inclusion of a candidate's name in the list confers no right to appointment unless the Government is satisfied, after such enquiry as may be considered necessary, that the candidate is suitable in all respects of appointment to the service.

SCHEDULE II

(See rule 6 and 7)

Method of Recruitment

S.No	Name of Department	Name of Post and Service	Number of Duty Post	Percentage of Duty Post be filled		
				By Direct recruitment	By Promotion of Member of Service	By transfer from other services by Deputation by limited competitive examination
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Madhya Pradesh Revenue Department	Tahsildar	474	-	-	-
		Naib Tahsildar	594	60% by competitive examination which is conducted by Commission	25% by promotion of Revenue Inspectors	A-5% by clerical staff of Revenue Board. Commissioner, Land Records and Settlement, Commissioner, Collectors by limited competitive examination. B- 10% by Graduate Patwari/ Revenue Inspectors by limited competitive examination.

6. The Schedule-V of the Rules was substituted vide Notification No.F-1-5-2010-VII-S4A published in Madhya Pradesh Gazette published on 26.06.2015. The substituted Schedule V reads as under:

Schedule-V

“Scheme for filling up post of Naib-Tahsildars by limited competitive examination from amongst the Ministerial Services of the Offices of Revenue Board, Commissioner Land Records and Settlement, Principal Revenue Commissioner, Commissioner of Divisions, Collectors and Patwari/Revenue Inspectors Cadre.

- Title-** This Scheme shall be called “The Scheme for filling up the post of Naib-Tahsildars by selection from amongst the Ministerial Services of the Offices of Revenue Board, Commissioner Land Records and Settlement, Principal Revenue Commissioner,

Commissioners of Divisions, Collectors and Patwari/Revenue Inspectors Cadre.

2. **Eligibility.**- Only such members of the Ministerial Services of the Offices of Revenue Board, Commissioner Land Records and Settlement, Principal Revenue Commissioner, Commissioner of Divisions, Collectors and Patwari/Revenue Inspectors Cadre shall be eligible for getting the benefit of this Scheme who possesses the following qualifications, namely:-
- (i) who have been working on any Ministerial post in the Revenue Department or as Patwari/Revenue Inspector for at least 5 years in the permanent or officiating capacity;
 - (ii) whose age on the 1st January of that year in which application is made, does not exceed 45 years;
 - (iii) no person shall be allowed to appear for more than three times in the examination under the Scheme.

7. We have heard learned counsel for the parties and find that the stand of the respondents-State that “50 years is the maximum age for appointment to the posts of Naib Tehsildar” is not legal and is untenable.

8. Rule 6(1)(a) of the Rules provides different channels for appointment/ promotion to the post of Naib Tehsildar. 5% posts can be filled by direct recruitment from amongst the clerical staff, as provided in Schedule V, whereas, 10% posts are to be filled from amongst the Graduate Patwaris and Revenue Inspectors according to the provisions made in Schedule II.

9. We find merit in the argument of the learned counsel appearing for the petitioners that the State is treating the age of 45 years (50 years in view of relaxation) in view of Clause 2(ii) of the Schedule-V of the Rules whereas

Schedule-V of the Rules is not applicable to fill the posts of Naib Tehsildar from amongst the Patwaris/Revenue Inspectors. In terms of Rule 6(1)(a)(ii) of the Rules, Schedule-V is applicable only in respect of the posts to be filled from amongst the clerical staff of the office of the Revenue Board, Commissioner, Land Records and Settlement and office of Commissioner and Collector. Since the Patwaris and Revenue Inspectors are not the clerical staff, therefore, Schedule-V of the Rules meant to fill the posts of clerical staff is not applicable in the case of Patwaris and Revenue Inspectors in terms of Rule 6(1)(a)(iv) of the Rules. A limited competitive examination is to be conducted according to the provisions made in Schedule II of the Rules in respect of the posts of Naib Tehsildar from amongst the Graduate Patwaris and Revenue Inspectors. The Schedule II does not provide for any condition of age. Therefore, the condition of age, as mentioned in Schedule-V of the Rules, cannot be made applicable to the petitioners.

10. Rule 13 of the said Rules contemplates that the Patwaris and Revenue Inspectors will be eligible for selection by direct recruitment through limited competitive examination but again there is no reference that limited competitive examination shall be as per Schedule-V of the Rules.

11. Still further, in terms of Rule 13 of the Rules, Schedule-V is again applicable to fill the posts of Naib Tehsildar from amongst the Ministerial services of the office of Revenue Board, Commissioner, Land Records and Settlement, Commissioners and Collectors but not in respect of Patwaris and Revenue Inspectors. None of the six sub-clauses of Rule 13 dealt with the

appointment of Patwaris and Revenue Inspectors except Rule 13, which contemplates that Patwari and Revenue Inspector will be eligible, who has served for at least five years in permanent or officiating capacity. Therefore, the recital in Schedule-V of the Rules so as to be applicable to Patwaris or Revenue Inspectors is not supported by the substantive Rules and thus, the expression “Patwari/Revenue Inspector” in Schedule-V is not sustainable, as there is no support from the Rules for applicability of Schedule-V to the posts of Patwari and Revenue Inspector.

12. We do not find any merit in the arguments of the learned counsel for the respondents-State that limited departmental examination is contemplated for the posts of Ministerial cadre and that of Graduate Patwari and Revenue Inspector and for both the categories, Schedule-V is applicable. However, the learned counsel for the respondents was candid enough to say that the posts of Patwari and/or Revenue Inspector are not part of the clerical or Ministerial service.

13. The Schedule-V of the Rules is not stand alone clause. It derives its applicability as per the Rules. Such Schedule is applicable in respect of Ministerial services falling in Sub-clause (ii) of Sub-clause (a) of Rule 6(1) of the Rules only. Therefore, the age is not contemplated in respect of limited competitive examination either in Rule 6 or Rule 13 of the Rules. Therefore, the Schedule-V of the Rules prescribing the age for filling of the posts of Naib Tehsildar from amongst the Patwaris or Revenue Inspectors is

without any corresponding support from the substantive provisions of the Rules.

14. In the absence of any reference that the posts of Naib Tehsildar shall be filled as per the provisions made in Schedule-V from amongst the Patwari and Revenue Inspectors, the conditions in Schedule V of the Rules cannot be made applicable to the Patwari and Revenue Inspectors.

15. Thus, we find that the condition of age fixed in the advertisement is contrary to the Rules, as Schedule-V of the Rules cannot be extended to Patwaris and Revenue Inspectors for the purposes of limited competitive examination against 10% quota falling in Rule 6(1)(a)(iv) of the Rules.

16. Resultantly, the Patwaris and Revenue Inspectors would be eligible for the competitive examination irrespective of age. The writ petitions stand **disposed of** accordingly.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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