

**HIGH COURT OF MADHYA PRADESH: JABALPUR**

**Division Bench: Hon'ble Mr. Justice Hemant Gupta, Chief Justice  
Hon'ble Mr. Justice Vijay Kumar Shukla, Judge**

**W.P. No. 21918/2018**

**SUSHIL KUMAR TRIPATHI & ANR. .... PETITIONERS**

**Vs**

**HIGH COURT OF MADHYA PRADESH & ANR. ...RESPONDENTS**

-----  
Shri Ankit Saxena, Advocate for the petitioners.  
Shri Siddharth Seth, Advocate for the respondents.  
Shri Jogendra Singh, (Registrar Exam), M.P. High Court is also  
present in Court.  
-----

**WITH**

**W.P. No.21890/2018**

**REENA PRAJAPATI .... PETITIONER**

**Vs**

**HIGH COURT OF MADHYA PRADESH ...RESPONDENT**

-----  
Shri Praveen Verma, Advocate for the petitioner.  
Shri Siddharth Seth, Advocate for the respondent.  
Shri Jogendra Singh, (Registrar Exam), M.P. High Court is also  
present in Court.  
-----

**W.P. No.21998/2018**

**KALPIT JAIN & OTHERS .... PETITIONERS**

**Vs**

**HIGH COURT OF MADHYA PRADESH ...RESPONDENT**

-----  
Shri Aditya Sanghi, Advocate for the petitioner.  
Shri Siddharth Seth, Advocate for the respondent.  
Shri Jogendra Singh, (Registrar Exam), M.P. High Court is also  
present in Court.  
-----

**W. P. No. 22149/2018**

**KASHIF SHEIKH**

.....PETITIONER

**Vs**

**HIGH COURT OF MADHYA PRADESH & ANR**

...RESPONDENTS

-----  
Shri Rajesh Kumar Soni, Advocate for the petitioner.  
Shri Siddharth Seth, Advocate for the respondent No.1.  
Shri Jogendra Singh, (Registrar Exam), M.P. High Court is also  
present in Court.  
-----

**AND**

**W.P. No. 22061/2018**

**AMIT KUMAR**

...PETITIONER

**Vs**

**HIGH COURT OF MADHYA PRADESH & ANR**

...RESPONDENTS

-----  
Shri Aditya Adhikari, Senior Advocate with Shri Ritwik Parashar,  
Advocate for the petitioner.  
Shri Siddharth Seth, Advocate for the respondents.  
Shri Jogendra Singh, (Registrar Exam), M.P. High Court is also  
present in Court.  
-----

**Whether Approved for Reporting: Yes**

**Law Laid Down:**

- The Court cannot be indulgent to the petitioners as there may be many other candidates whose applications might have been received after the cut-off date as against more than 1200 applications received within time. Thus, the application forms of the petitioners cannot be directed to be accepted on account of postal delay. The petitioners can seek their remedy against the postal department for delay but the High Court cannot be directed to accept the application forms received after the cut-off date.

**Significant Paragraph Nos. : 9 to 15**  
-----

**ORDER (Oral)**  
**(19.09.2018)**

This order shall dispose of the above-mentioned writ petitions wherein the only issue is that: even if the application forms submitted by the petitioners for the main examination for the post of Madhya Pradesh Higher Judicial Services (Entry Level) direct recruitment from Bar Main Examination, 2018 was not received on or before 25.08.2018, still the petitioners are eligible to appear in the examination to be conducted on 23.9.2018.

2. An advertisement Annexure P/1 issued on 13.04.2018, *inter alia* provides for three steps examination process. One is short-listing on the basis of preliminary examination and second is main written examination of 400 marks and then the interview.

3. In the advertisement so published, it has the following clause:

**(1) Applications and Documents for Main Examination-**

After Preliminary Examination Results, every candidates who have qualified and desirous to appear in Main Examination, shall have to submit an Application Form, which shall be ported on the website of High Court of M.P. and candidates may download and take print out of it, duly filed up and signed by him, along with self-attested copies of all required documents & recent colored photographs. The Application forms and documents must be sent, in such a manner and within such a time that the same must reach/ be received in Examination Cell of the High Court on or before last date for the receipt of application of Main Examination.

(emphasis supplied)

4. The result of the preliminary examination was declared on

09.08.2018 when the applications were invited from the successful candidates to be submitted on or before 25.08.2018. In the said notification dated 09.08.2018 again, the date before which the application was required to be received by the High Court was mentioned. It was also mentioned that application for main examination received after stipulated time will not be considered on any ground even on the ground of postal delay and shall stand cancelled. Relevant clause of the notification dated 09.08.2018 reads as under:

“The candidates declared Successful for Applying for Main Examination shall submit Applications, after filling the given format, to the Exam Cell, alongwith Self Attested copies of relevant documents, so as to reach the same in the Exam Cell on or before 25.08.2018 positively. Application for Main Exam received after stipulated time shall not be considered on any ground even on the ground of postal delay and shall stand canceled and such candidates shall not be entitled to appear in the Main Written Examination”.

(emphasis supplied)

5. Learned counsel for the petitioners relies upon the notification dated 14.08.2018 issued by the High Court wherein, it was mentioned that 25.08.2018 (Saturday) was earlier declared court working day in lieu of 30.04.2018 declared holiday on account of Buddha Purnima. But by partial modification, the Court working was shifted to 06.10.2018 (Saturday).

6. Learned counsel for the petitioner also refers to an order passed by the Supreme Court in **Special Leave to Appeal No.10224/2017 (Ashutosh Agnihotri v. High Court of M.P. and another)** directed against an order dated 21.03.2017 passed in W.P. No.1970/2017 (Ashutosh Agnihotri v. High

Court of Madhya Pradesh & another) by this Court. The Supreme Court directed to declare result of the petitioner and the rejection of his application on the ground of one day's delay was ordered not to come in the way for considering him for interview. The order of the Supreme Court reads as under:

“Pursuant to earlier orders passed by this Court, the result of the examination has been brought before us in a sealed cover. The sealed cover has been opened in the Court today and on a perusal, we find that Ashutosh Agnihotri has qualified in the examination. The result is taken on record.

It is brought to our notice that the application for participating in the examination was sent by the petitioner on 10.01.2017 by speed post. The track consignment report has been placed before us. On a perusal thereof, we find that while the application was despatched on 11.01.2017 from Palam, it was received in Jabalpur on 20.01.2017, thereafter it was delivered to the High Court on 21.01.2017. The last date for receiving the application was 20.01.2017 but since the application was received by the High Court on 21.01.2017, there was a delay of one day and therefore it was rejected.

However in view of the order passed by this Court, Ashutosh Agnihotri was permitted to provisionally sit for the examination. As mentioned, the result has been perused by us and we find that he has qualified in the examination.

Although there is no doubt that the post office is not the agent of the High Court yet there is an unexplained delay of ten days by the postal department in the despatch of the application sent by Ashutosh Agnihotri from Palam to Jabalpur.

Surely, under the circumstances, the petitioner cannot be blamed for the delay particularly since the application was sent by him through speed post and not by ordinary post.

In view of these special circumstances, we are of the view that the result of the examination should be accepted by the High Court and the rejection of his application on the ground of one day's delay should not

come in the way for considering him for interview.

The impugned judgment and order is set aside and the petition is disposed of.

It is directed that Ashutosh Agnihotri may be considered for the interview.”

7. This Court has dismissed the writ petition on 21.03.2017 relying upon a Supreme Court decision rendered in **Vrinda Pareek (Minor) through Guardian v. Union of India (2015) 13 SCC 438**. In the said writ petition, this Court has allowed the petitioner to appear in the main examination by way of an interim order. Since the petitioner had appeared in the main examination and was successful, the Supreme Court has passed an order in special circumstances in exercise of powers conferred under Article 142 of the Constitution of India. In **Vrinda Pareek’s case (supra)**, the Court held as under:-

“8. The learned Single Judge has held that even if delay is caused on account of postal authorities, no direction can be issued to accept the application form with condonation of delay subsequent to the last date of submission of application form. Therefore, non-receipt of application by Respondent 3 cannot be termed as arbitrary.

9. The learned Single Judge has relied upon the judgment of the Supreme Court in *State of Bihar v. Amrendra Kumar Mishra* (2006) 12 SCC 561, particularly the following observation of the said judgment:

“14. It may be true that the appointment letter was sent by ordinary post but even in relation thereto a statutory presumption arises. It is also well known that postal delay by itself may not be a ground to take a sympathetic view.”

10. In our considered opinion, the view taken by the learned Single Judge does not warrant any interference. The view taken by the learned Single Judge also finds support from yet another decision of the Supreme Court in *T. Jayakumar v. A. Gopu* (2008) 9 SCC 403. In that case also, in

somewhat similar circumstances, plea to accept the application on account of submission beyond time was rejected. Reliance placed on the judgment of the Supreme Court in *Ogale Glass Works Ltd.* [AIR 1954 SC 429] is misconceived, inasmuch as in that case, the Supreme Court was examining entirely different issue relating to receipts of income profits or gains out of sales made to Government of India, within the meaning of Section 4(1)(a) of the Income Tax Act, 1922.”

8. It is, thus, argued that the petitioners have sent the application forms through speed post much before the last date of receipt of the application. But on account of postal delay, the application forms were not delivered to the High Court before the cutoff date, therefore, the petitioners cannot be blamed on account of postal delay.

9. However, in the present case, 25<sup>th</sup> August, 2018 was declared a Court working day earlier, which Court working day was shifted to 6<sup>th</sup> October, 2018 but the offices of the High Court were open on the said date and many application forms have been received on the said date.

10. Apart from the judgment referred as above, a three Judge Bench in a judgment reported as **AIR 1959 SC 1160 (Shri Jagdish Mills Ltd. v. Commissioner of Income-tax, Bombay North, Kutch and Saurashtra, Ahmedabad)**, held that where no express words were used to make the post office as agent, therefore, mere posting of the cheques in Delhi would not be enough to constitute the Post Office as the agent of the appellant. The relevant extract reads as under:-

“12. The various authorities which were discussed viz. *Thairlwall v. Great Northern Railway Co.* [(1910) 2 KB 509]; *Badische Anilin Und Soda Fabrik v. Basle Chemical Works Bind Schedler* [(1898) AC 200]; *Comber v. Layland* [(1898) AC 524] and *Mitchell-Henry v. Norwich Union Life Insurance Society* [(1918) 2

KB 67] , were also cases where the expressions used were construed as words of express request constituting the Post Office the agent of the party receiving the money or the goods and went to support the case made by the Revenue that the post office was constituted the agent of the assessee for the purposes of receiving the cheques when they were posted by the Government in Delhi. Where, however, no such express words were used and the matter rested merely in the stipulation that the payment would be made by cheques, would the mere posting of the cheques in Delhi be enough to constitute the Post Office the agent of the appellant so that the income, profits and gains may be said to have been received by the appellant within the taxable territories?

13. If there was nothing more, the position in law is that the Post Office would not become the agent of the addressee and the mere posting of the cheque would not operate as delivery of the cheque to the addressee so as to pass the title in the cheque to the addressee. (Vide *Thorappa v. Umedmalji* [(1923) 25 Bom LR 604] and the case of *Ex-parte Cote In re Daveza* [(1873) LR 9 Ch. 27]”

11. Thus, in view of judgments of the Supreme Court referred to above and the fact that the advertisement and the notification dated 09.08.2018 specifically contemplated that the application forms have to be received by the High Court on or before the date fixed and application shall not be considered on any ground even on the ground of postal delay, the applications submitted by petitioners cannot be treated to be received within time. We find that the application forms sent by the petitioners but received by the High Court after the cut-off date, cannot be accepted.

12. Still further, the cutoff date is sacrosanct. If the cutoff date has to be given go bye there will be no end up to which dates the application forms can be received. A three Judge Bench in a Judgment reported as **(1997) 4 SCC 18 (Ashok Kumar Sharma v. Chander Shekhar)**, was examining a situation where the Division Bench of the High Court thought it just and



proper to direct that while the appointment of the said 33 respondents, who were not possessed of the essential qualification on the relevant date, could not be set aside, they should be treated as junior to all those selected persons who were fully qualified by the prescribed date. Though the court was considering the qualification for the post before the cut-off date but the principle would very well be applicable to the present case, as the application forms of the petitioners were not received before the cut-off date.

The Court in review petition held as under:-

“6. The review petitions came up for final hearing on 3-3-1997. We heard the learned counsel for the review petitioners, for the State of Jammu & Kashmir and for the 33 respondents. So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan* [1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951 : (1993) 25

ATC 234] . The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.”

(emphasis supplied)

13. In a judgment reported as **(2011) 9 SCC 438 (Alka Ojha v. Rajasthan Public Service Commission)**, the question examined was whether the candidate must have the prescribed educational and other qualifications as on the particular date specified in the Rule or the advertisement. The Court held as under:-

“15. The question whether the candidate must have the prescribed educational and other qualifications as on the particular date specified in the Rule or the advertisement is no longer res integra. In *Bhupinderpal Singh v. State of Punjab* (2000) 5 SCC 262, this Court referred to the earlier judgments in *A.P. Public Service Commission v. B. Sarat Chandra* (1990) 2 SCC 669, *Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* (1990) 3 SCC 655, *M.V. Nair v. Union of India* (1993) 2 SCC 429, *Rekha Chaturvedi v. University of Rajasthan* [1993 Supp (3) SCC 168], *U.P. Public Service Commission v. Alpana* (1994) 2 SCC 723 and *Ashok Kumar Sharma v. Chander Shekhar* (1997) 4 SCC 18 and approved the following proposition laid down by the Punjab and Haryana High Court: (*Bhupinderpal Singh case* (2000) 5 SCC 262, SCC p. 268, para 13)

“13. ... (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be

no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority.”

16. The same view was reiterated in *M.A. Murthy v. State of Karnataka* (2003) 7 SCC 517 and *Ashok Kumar Sonkar v. Union of India* (2007) 4 SCC 54. Therefore, the Full Bench of the High Court rightly held that a candidate who does not possess a driving licence on the last date fixed for submission of the application is not eligible to be considered for selection.”

14. This Court cannot be indulgent to the petitioners as there may be many other candidates whose applications might have been received after the cut-off date as against more than 1200 applications received within time. Thus, the application forms of the petitioners cannot be directed to be accepted on account of postal delay. The petitioners can seek their remedy against the postal department for delay but the High Court cannot be directed to accept the application forms received after the cut-off date.

15. Therefore, we do not find any merit in the present petitions. The petitions are **dismissed**.

(HEMANT GUPTA)  
Chief Justice

(V.K. SHUKLA)  
Judge