

REPORTABLE

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SANJAY DWIVEDI**

ON THE 12TH OF JUNE, 2023

W.P. No.748 of 2019

BETWEEN:-

**ABHYA SINGH GOUND D/O SHRI NIRBHAY SINGH
VANSHI, AGED ABOUT 30 YEARS, OCCUPATION –
SERVICE, R/O NEAR SYMBOL KIRANA STORE,
KIDWAI WARD NO.15, ROSHAN NAGAR, NEWKATNI
JUNCTION, KATNI (M.P.)**

.....PETITIONER

(BY SHRI BRIJESH KUMAR CHOUBEY - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH,
THROUGH THE PRINCIPAL SECRETARY,
COMMERCIAL TAX DEPARTMENT,
MANTRALAYA, VALLABH BHAWAN,
BHOPAL (M.P.)**
- 2. THE COMMISSIONER, COMMERCIAL TAX
DEPARTMENT, INDORE (M.P.)**
- 3. MADHYA PRADESH PUBLIC SERVICE
COMMISSION, RESIDENCY AREA,
INDORE, DISTRICT INDORE (M.P.)
THROUGH ITS SECRETARY**

.....RESPONDENTS

***(SMT. ARTI DWIVEDI – PANEL LAWYER FOR RESPONDENT NOS.1 &
2/STATE)***

.....
Reserved on : 05.04.2023

Pronounced on : 12.06.2023
.....

*This petition having been heard and reserved for orders,
coming on for pronouncement this day, the Court pronounced the*

following:

ORDER

Pleadings are complete. The counsel for the parties agreed to argue the matter finally. It is accordingly finally heard.

2. By filing this petition under Article 226 of the Constitution of India, the petitioner is questioning the validity of the order dated 18.12.2018 (Annexure-P/7) whereby she has been informed that the validity of select list prepared for the post of Commercial Tax Inspector in the examination of State Civil Services-2013 was upto 15.02.2018 and after expiry of said period, no further action is required to be taken with regard to her appointment.

THE FACTUAL PRISM

3. As per the facts of the case, the petitioner in pursuance to the advertisement dated 30.12.2013 inviting applications for appointment on various posts in the State Departments, submitted her candidature for the post of Commercial Tax Inspector. Admit card was issued to her and since she has cleared the written examination successfully, therefore, she was called for interview on 01.06.2016. Thereafter, on 25.06.2016 a final select list along with waiting list was published in which the name of the petitioner was also there in the waiting list.

4. Since the petitioner applied for the post of Commercial Tax Inspector and there were total eight posts including the post for reserved category as the petitioner belongs to female ST category, therefore, in the list of Commercial Tax Inspector from ST category, the petitioner was at serial No.1 in the waiting list.

5. According to the information of the petitioner, one selected candidate namely Ku. Durga Bamaniya who got appointed on the post of Commercial Tax Inspector has resigned from the said post and, therefore, she has claimed that on the post lying vacant due to resignation submitted by selected candidate her candidature should be considered for appointing her on the said post. The order of leaving job from the post of Commercial Tax Inspector by the selected candidate namely Ku. Durga Bamaniay is Annexure-P/4.

6. A recommendation was made by the Deputy Controller Examination to the Secretary of Commercial Tax Department sending the name of waiting list candidate and that recommendation is dated 06.02.2018 (Annexure-P/5).

7. The petitioner made request to the respondents and also made representation for giving her appointment to the post of Commercial Tax Inspector in view of the vacancy lying vacant due to resignation of Ku. Durga Bamniya, but despite making request and representation by the petitioner, nothing was done.

8. The petitioner had filed a petition i.e. W.P. No.29308 of 2018 before the High Court seeking direction for respondent Nos.1 & 2, but during the pendency of the said petition, the respondents issued the impugned order rejecting the claim of the petitioner on the ground that the validity of select list was expired on 15.02.2018, therefore, nothing can be done and claim of the petitioner cannot be considered for appointment to the post of Commercial Tax Inspector. Hence, this petition.

SUBMISSION BY THE PETITIONER

9. The counsel for the petitioner submitted that in view of the

recommendations made the respondent/authority and the approach made by the petitioner which was well within time, she should have been given the appointment on the post of Commercial Tax Inspector which was lying vacant due to resignation submitted by a selected candidate. In support of his submission, he has placed reliance upon a judgment of Division Bench of this Court passed on 09.09.2021 in case of **Shailesh Kumar Sonwane Vs. State of M.P. and others (W.P. No.4792/2020)** with other connected petitions and also a judgment of Rajasthan High Court passed in **Civil Writ Petition No.1727/2015 (Dr. Rakesh Meena Vs. Rajasthan Public Service Commission and others)**. He submitted that in view of the law laid down by the High Courts in the aforesaid case, the petitioner has a good case and as such, this petition deserves to be allowed and the petitioner be given the appointment on the post of Commercial Tax Inspector which was lying vacant due to resignation submitted by a selected candidate.

SUBMISSION BY THE RESPONDENTS/REPLY

10. The counsel for the respondents/State submitted that they have filed reply taking stand therein that the selection was conducted in view of the provisions of M.P. Junior Services (Joint Qualifying) Examination Rules, 2013 and Rule 14 whereof clearly provides that the duration of validity of final list of successful candidates in the examination in any recruitment year shall be upto 18 months from the date of declaration of final select list. She submitted that in view of the law laid down by the Supreme Court in a case reported in **(1996) 9 SCC 309** parties being **State of U.P. Vs. Harish Chandra**, no mandamus can be issued against the authority for considering the claim of waiting list candidate after expiry of panel/select list. As per the respondents, the appointment of five candidates made vide Annexure-P/8 dated

15.02.2018 and that order was well within the validity of waiting list and as such, nothing illegal is committed by them.

REJOINDER TO THE REPLY

11. The petitioner has filed a rejoinder reiterating the fact about the availability of vacancy due to resignation submitted by selected candidate namely Ku. Durga Bamaniya and also claimed therein that W.P. No.29308 of 2018 filed by the petitioner before the High Court seeking direction that too within the validity of period of waiting list, therefore, the claim of the petitioner cannot be denied only on the ground that the period of validity of waiting list was only upto 15.02.2018. Therefore, according to the petitioner, the stand taken by the respondents is not proper and the impugned order 18.12.2018 Annexure-P/7 is liable to be set aside.

ANALYSIS, REASONING & CONCLUSION:

12. Considering the submissions made by the counsel for the parties and perusal of record, as per the facts of the case, there were eight posts of Commercial Tax Inspector and select list was published on 25.06.2016. Undoubtedly, all the selected candidates against the post of Commercial Tax Inspector submitted their joining, but one of the candidates namely Ku. Durga Bamaniya (Female ST Candidate) joined and thereafter resigned from the post as she got selected on the post of Chief Municipal Officer ('ग'श्रेणी). The order of her relieving from the post of Commercial Tax Inspector is dated 16.10.2017 (Annexure-P/4).

13. The petitioner thereafter claiming that in pursuance to the recommendation made by the Deputy Controller Examination sending the name of petitioner on 06.02.2018 to the Commercial Tax Department apprising that the claim of the candidate from the waiting

list is being sent for giving appointment on a post lying vacant. As per the said recommendation, the said post lying vacant due to resignation submitted by selected candidate namely, Ku. Durga Bamaniya, therefore, the name of the present petitioner was recommended, but that recommendation was not given effect and according to record available, the period of validity of waiting list expired on 15.02.2018 and thereafter vide impugned order dated 18.12.2018 (Annexure-P/7), the respondent/department rejected the claim of the petitioner saying that the validity of waiting list expired on 15.02.2018 and no appointment made prior to that. The life of waiting list does not survive and as such, claim of the petitioner was rejected.

14. However, the explanation has been called by the Court from the respondent/authority as to why when recommendation made on 06.02.2018, no action has been taken by the State Government till the expiry of waiting list i.e. till 15.02.2018. The State has come up with an affidavit explaining the situation therein that due to some procedural delay, the letter dated 06.02.2018 communicated to the Commissioner Commercial Tax Department belatedly and, therefore no action was taken thereof. However, the said explanation is ambiguous, not clarifying the position as to on what date the said communication received by the department. In the said explanation, the Commercial Tax Department has sought guidance vide communication dated 27.02.2018 that the recommendation made on 16.02.2018 giving name of the petitioner, but the validity of period of waiting list already expired on 15.02.2018 then as to under what circumstances the appointment could be made in favour of the petitioner. In response to the same, the Commercial Tax Department was informed that period of validity of waiting list cannot be extended and letter in this regard has also been

filed by the respondents as Annexure-R-3 dated 14.11.2018.

15. The core question involved in this case is as to whether after submitting resignation by a selected candidate a right to be appointed accrues in favour of the petitioner or not because she was at serial No.1 in the waiting list. Although, this stand is not taken by the respondents or denied the petitioner's claim on this ground, but this Court is under obligation to consider the legal position which is otherwise. Even though, the communication made by the respondent/authority recommending the name of petitioner to be appointed against the post lying vacant in view of the resignation submitted by a selected candidate that too after submitting joining on the post of Commercial Tax Inspector does not create any right in favour of petitioner.

16. The Supreme Court in a case reported in **(2013) 12 SCC 171 (Manoj Manu and another v. Union of India and others)**, has considered this aspect and observed that the moment selected candidate accepted appointment and submitted joining on the said post, the select list is exhausted and right of candidate to be appointed from the waiting list comes to an end. The Supreme Court has further observed that if vacancy arises due to resignation of a selected candidate that would create a new vacancy for which fresh selection is required to be done. The Supreme Court in paragraph-9 has observed as under:-

“9. It can be clearly inferred from the reading of the aforesaid that it is not the case where any of these persons initially joined as Section Officer and thereafter resigned/left/promoted, etc. thereby creating the vacancies again. Had that been the situation viz. after the vacancy had been filled up, and caused again because of some subsequent event, position would have been different. In that eventuality UPSC would be right in not forwarding the names from the

list as there is culmination of the process with the exhaustion of the notified vacancies and vacancies arising thereafter have to be filled up by fresh examination. However, in the instant case, out of 184 persons recommended, six persons did not join at all. In these circumstances when the candidates in reserved list on the basis of examination already held, were available and DoPT had approached UPSC “within a reasonable time” to send the names, we do not see any reason or justification on the part of UPSC not to send the names.”

(emphasis supplied)

17. The Division Bench of the High Court of Jammu & Kashmir in a case of **State of JK & Anr. Vs. Danish Zia Bhat & Ors (LPASW No.186/2018)**, has considered this aspect and relying upon several decisions of the Supreme Court has observed that the select/waiting list prepared may remain operative and valid for a limited purpose of appointing select/waiting list candidates on the vacancies which remains unfilled due to one reason or the other. The High Court has observes as under:-

“11. A Three Judges decision in **Rakhi Ray & Ors. vs. High Court of Delhi & Ors. AIR 2010 Supreme Court 932** categorically lays down that vacancies cannot be filled up over and above the number of vacancies advertised as the recruitment of the candidates in excess of that vacancies notified is denial and deprivation of the constitutional right under Article 14 read with Article 16 of the Constitution of those persons who acquired eligibility for the posts in question in accordance with the statutory rules subsequent to the date of notification of the vacancies. Filling up of the vacancies over and above the notified vacancies amounts to filling up a future vacancies which is not permissible in law. In the event, the vacancies notified stands filled up, the process of selection comes to an end and the waiting list cannot be used a reservoir.

12. The legal position as laid down above makes it clear that only the number of vacancies notified can be filled up through the process of selection and from the select list so prepared. The authorities have no right to fill up any vacancy

over and above the vacancies notified as it would amount to filling up of a fresh vacancies encroaching upon the right of all those persons who may become eligible after the notification of the vacancy. It has also been clarified that the vacancy which has been advertised and on which a selected candidate has been appointed if resigns subsequently would lead to the exhaustion of the select panel and no one from the said panel can be pushed up for appointment. In other words, such a vacancy has been described as a fresh vacancy to be filled up after a new advertisement and a fresh selection thereof.”

(emphasis supplied)

18. Here in this case also, the vacancy on which the petitioner is claiming her appointment fallen vacant due to resignation submitted by candidate selected, accepted appointment, submitted joining and thereafter resigned. Meaning thereby, the said post is a creation of new post which cannot be available for the candidates who are in the waiting list like the petitioner. Therefore, even otherwise, in the opinion of this Court and in view of the law laid down by the Supreme Court, no right accrues in favour of the petitioner to be appointed against the vacancy lying vacant due to resignation submitted by selected candidate who accepted appointment, submitted her joining and then resigned.

19. Consequently, the petition, being devoid of merit, stands **dismissed**. No order as to costs.

(SANJAY DWIVEDI)
JUDGE