

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 21st OF JUNE, 2023

WRIT PETITION No. 788 of 2019

BETWEEN:-

**UMESH KUMAR RAJAK S/O SHRI VIJENDRA LAL
RAJAK, AGED ABOUT 28 YEARS, R/O VILLAGE
BHAMHA GRAM PANCHAYAT BHAROTHI,
JANPAD PANCHYAT SHAHPPUR, DISTRICT
DINDORI (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI CHOUDHARY MAYANK SINGH- ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH; PRINCIPAL; SECRETARY,
PANCHAYAT AND RURAL DEVELOPMENT
DEPARTMENT, VALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)**
- 2. COMMISSIONER, M.P. RAJYA GURANTEE
PARISHAD, BHOPAL (MADHYA PRADESH)**
- 3. COLLECTOR, DISTT. DINDORI (MADHYA
PRADESH)**
- 4. CHIEF EXECUTIVE OFFICER ZILA
PANCHAYAT, DISTT. DINDORI (MADHYA
PRADESH)**
- 5. CHIEF EXECUTIVE OFFICER JANAPAD
PANCHAYAT SHAHPURA, DISTT. DINDORI
(MADHYA PRADESH)**

6. **AJAY KUMAR SONDHIYA S/O SHRI LAKHRAM SONDHIYA, R/O VILLAGE BHARUTI, GRAM PANCHAYAT BHARAUTI, POST MANIKPUR, SHAHPURA, DISTRICT DINDORI (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI A.P. SINGH- ADVOCATE FOR THE RESPONDENT NOS. 1 TO 5 AND SHRI PARITOSH TRIVEDI- ADVOCATE FOR RESPONDENT NO.6)

This petition coming on for admission this day, the court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

“(i) That this Hon. Court may be pleased to quash the impugned order dated 17.03.2017 ANNEXURE P/9 order dated 24.09.2018 ANNEXURE P/15 and after quashing the same this Hon. Court may be pleased to direct the respondents to immediately appoint the petitioner on the post of Gram Rojgar Sahayak w.e.f. 21.17.2010 in view of merit list with all consequential benefits.

(ii) Further the respondents be directed to immediately disqualify and remove the respondent no.6 from the post of GRS and disbar him from appearing in the selection process because he has deliberately submitted forged documents.

(iii) that any other writ or writs, order or order, direction or direction thought just and proper may kindly be issued.”

2. According to the petitioner, an advertisement was issued by

Janpad Panchayat, Dindori for appointment of Gram Rojgar Sahayak. As per the eligibility criteria, the aspirant was required to have passed Computer Certificate from Universities Recognized by the State Government as well as UGC and the details of the Universities were also mentioned i.e. A.P. Singh University, Barkatullah University, Devi Ahilya Bai University, Dr. Harisingh Gour University, Jiwaji University, Rani Durgawati University and Vikram University and it was specifically mentioned that only the certificate issued by the aforesaid universities shall be accepted and the certificate issued by any other institution shall not be accepted. However, it was clarified that the application form will not be rejected but the aspirant will not be given Computer related marks.

3. It is submitted by the counsel for the petitioner that apart from the other aspirant, the petitioner as well as the respondent No. 6 applied for the post of Gram Rojgar Sahayak. The respondent No. 6 had annexed the certificate of Diploma in Computer Applications purportedly issued by the Global Open University, Nagaland. According to which, the said certificate was issued on 22.02.2010. It is further submitted that the said certificate appears to be forged because the mark-sheet of First Semester of the respondent No. 6 is at page 38, according to which, the examination of First Semester was held in December, 2009. It is submitted that when the examination of First Semester held in December, 2009, then it was not possible for the University to issue the certificate of Diploma in Computer Applications on 22nd of February, 2010 i.e. just two months after holding the examination of First Semester.

4. Furthermore, it is submitted that the Global Open University,

Nagaland was not competent to issue the certificate to the respondent No. 6 and thus, the award of marks to the respondent No. 6 on the strength of Certificate of Diploma in Computer Applications issued by the Global Open University, Nagaland is bad in law. Against the selection of the respondent No. 6, the petitioner filed a Writ Petition i.e. W.P. No. 12168/2013 and in light of the order passed by this Court, an appeal was filed before the Collector who disqualified the respondent No. 6 for the post but instead of appointing the petitioner, he declared the post vacant and directed for fresh selection. Against the order dated 31.12.2013, the respondent No. 6 filed a W.P. No. 15173/2014, in which the petitioner was impleaded as respondent No. 4. This Court by order dated 03.03.2015 reopened the matter and passed a very detailed order and directed for restoration of the appeal and to decide the same on merits. It was also directed that the Collector shall also consider the eligibility and entitlement of the petitioner in place of the respondent No. 6, if the appeal is allowed.

5. In the meanwhile, the respondent No. 6 whose appointment was set aside by the Collector preferred a Revision before the Commissioner who by order dated 17.03.2017 passed in Case No. 143/B;121/2015-16 restored the order of appointment of the respondent No. 6.

6. Challenging the order passed by the Additional Commissioner, Jabalpur, Division Jabalpur, it is submitted by the counsel for the petitioner that the Additional Commissioner failed to see that the Global Open University, Nagaland was not eligible to issue Diploma Certificate to the petitioner and accordingly has relied upon a communication received from UGC which shows that no Private University has been granted permission to establish any Study Centre or Off Campus Centre

outside the limits of its State. Even, as per the UGC (Establishment of Maintenance of Standards in Private Universities) Regulation, 2003, no University can open a centre even within the limits of the State without obtaining due permission from the UGC. It was also mentioned that UGC has not granted permission to any of the University to operate Off Campus or Study Centre and the Global Open University, Wokha, Nagaland has been granted permission to award degree to the students studying in Main Campus in regular mode. It is submitted that the respondent No. 6 was granted Diploma by Global Open University, Nagaland as he was a student of Off Campus, Dindori and according to the communications sent by the UGC dated 24.05.2017 (Annexure-P/12), the Global Open University was not competent to run any Off Campus Centre or Study Centre outside its State. Even otherwise, no such permission has been granted by the UGC to any University to operate Off Campus Centre or Study Centre and thus, it is submitted that the certificate relied upon by the respondent No. 6 was not appropriate and could not have been utilized for giving additional marks for having Diploma in Computer Applications.

7. *Per contra*, the counsel for the respondents have refuted the submissions made by the counsel for the petitioner but none of the counsel could dispute the communication dated 24.07.2017 sent by UGC, New Delhi pointing out the authority of Global Open University Wokha, Nagaland.

8. Heard learned counsel for the parties.

9. This Court is constantly observing that the State Authorities are filing evasive returns and they do not take care of meeting out the objections/grounds raised in the petition. Even in the present case the

return filed by the respondent Nos.1 to 5 is completely evasive in nature. A major part of the return contains the summary of the case of the petitioner but has not filed any reply to the communication sent by UGC dated 24.05.2017 which is to the effect that Global Open University, Nagaland is not empowered to run Off Campus Centre or Study Centre out of the State of Nagaland and further Global Open University is competent to issue degrees only to the students who have prosecuted their studies in Main Campus by Regular Mode. The State and its functionary must realize that the petitions are filed against their actions and, therefore, it is their primary duty to file response to each and every ground raised by the petitioner.

10. Although, in light of Section 141 of C.P.C., the provisions of C.P.C. are not applicable to the proceedings under Article 226 of the Constitution of India but this Court can treat the evasive reply as admissions which is also provided under Order 8 Rule 3 and 4 of C.P.C.

11. Be that whatever it may be.

12. Since, the contention of the petitioner that the Global Open University, Nagaland is not competent to run Off Campus Centre or Study Centre and the respondent No. 6 had obtained Diploma in Computer Applications by studying in Off Campus Centre at Dindori has not been refuted, this Court is of the considered opinion that the additional marks for Computer Applications awarded to the respondent No. 6 cannot be upheld as he was not holding a Diploma in Computer Applications from an authorized institution.

13. Accordingly, the matter is remanded back. The authorities are directed to deduct the additional marks which were given to the

respondent No. 6 for Computer Applications and then to decide the eligibility of the petitioner as well as the respondent No. 6.

14. If, the respondents come to a conclusion that after deduction of the additional marks given to the respondent No. 6, any third aspirant would be more meritorious to the petitioner or respondent No. 6, then an offer should be made to the said meritorious aspirant. However, it is directed that after preparing the merit list afresh, the meritorious candidate should be given appointment.

15. Let the entire exercise be completed within a period of three months from today.

16. Since, it has been held that the respondent No. 6 was not entitled for additional marks for Computer Applications, accordingly, it is directed that he shall not perform the duties of Gram Rojgar Sahayak, Gram Panchayat, Bharauti, Janpand Panchayat, Shahpura, District Dindori till the final decision is taken.

17. The respondents shall be free to make some temporary arrangement till the final decision is taken. However, the matter shall not be kept pending beyond the period of three months and the entitlement of the candidates should be decided positively by deducting the additional marks given to the respondent No. 6 for having Diploma in Computer Applications.

18. With aforesaid observations, the petition succeeds and is hereby **allowed**.

(G.S. AHLUWALIA)
JUDGE