

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV

ON THE 10th OF FEBRUARY, 2022

WRIT APPEAL No. 852 of 2021

Between:-

**HEMRAJ SUMAN, S/O KALULAL, AGED
ABOUT 32 YEARS, OCCUPATION-
ADVOCATE, R/O VILLAGE-GODIYACHARAN,
POST BUAKHEDI, TEHSIL-CHHABRA
DISTRICT BARA (RAJASTHAN)**

.....APPELLANT

(BY SHRI PRASHANT MANCHANDA - ADVOCATE)

AND

- 1. M.P. PUBLIC SERVICE COMMISSION,
THROUGH SECRETARY, RESIDENCY AREA,
DAELY COLLEGE ROAD, INDORE (M.P.)**
- 2. STATE OF M.P. THROUGH SECRETARY,
HOME, VALLABH BHAWAN, BHOPAL (M.P.)**

....RESPONDENTS

***(SHRI RITWIK PARASHAR - GOVERNMENT ADVOCATE FOR
RESPONDENT NO.2)***

- (Heard through Video Conferencing)

***This appeal coming on for admission this day, Hon'ble Shri
Justice Ravi Malimath, passed the following:***

ORDER

Aggrieved by the order dated 24.06.2021 passed by the learned Single Judge in dismissing the Writ Petition No.3764 of 2019, the petitioner is in appeal.

2. The case of the writ petitioner is that he had applied for the post of Assistant District Public Prosecution Officer (ADPO). He was successful in the written examination and was called for an interview. Thereafter, a merit list was prepared. The petitioner was placed in the waiting list at serial no.15. It is his case that since a large number of persons did not join the post, hence four persons from the waiting list were called to join as the ADPO. The petitioner was asked to submit his medical examination to respondent No.1. He submitted the same. He was examined on 15.11.2018. The respondent No.1, namely the Madhya Pradesh Public Service Commission had sought permission from the State Government for permitting the petitioner to join on the said post. However, due to the Vidhan Sabha Elections being declared, the Model Code of Conduct was enforced. Therefore, the permission was sought for. However, the Principal Secretary, General Administration Department did not convene the meeting of the screening committee and permission from the Election Commission was sought for. On 19.11.2018, a letter was issued to the Principal Secretary that respondent No.1 had recommended selection of four candidates. Only the character verification certificate was not available with respondent No.1. Hence, the petitioner was not permitted to join as the validity of the said list has come to an end on 28.08.2018. That the delay has been caused by the respondent No.2 and the petitioner had to suffer for no fault of his. Thereafter, the petitioner moved the Human Rights Commission and was thereafter, given the impugned order dated 21.12.2018. A combined representation was also made by the candidates, who were not permitted to join. That the validity of the list had to be extended due to the enforcement of the Model Code of Conduct. That, the period of the Vidhan Sabha Elections and the validity of the list ought to be extended. Since the same was not done and he was not appointed, the instant writ petition was filed seeking for a direction to the respondents to allow the petitioner to work on the post

of Assistant District Public Prosecution Officer with all consequential benefits.

3. The learned Single Judge came to the conclusion and held that the question was whether the State Government had acted arbitrarily in not granting appointment to the petitioners. That, the petitioners have not challenged the decision of the Madhya Pradesh Public Service Commission dated 28.01.2019, but have only challenged the letter written by the Secretary contained in Annexure-P/7 dated 21.12.2018 to the Public Service Commission for extending the validity of the select list. Therefore, the *bona fide* of the State was sought to be questioned. The learned Single Judge held that the State wrote a letter for extending the validity of the select list but the Public Service Commission refused to extend the same. The action of the State was *bona fide* in nature and there was no arbitrariness in the action of the State. The Madhya Pradesh Public Service Commission has rightly notified vacancies for the posts of ADPO, for the subsequent year 2021. Further, the validity of the select list has expired and its period has not been extended as on the said date, no panel exists and, therefore, the Court could not give directions to the State to grant appointment to the petitioner. Aggrieved by the same, the instant appeal is filed.

4. Shri Prashant Manchanda, learned counsel for the appellant contends that the order passed by the learned Single Judge is erroneous and liable to be interfered with. That, but for the Code of Conduct being put into force, the appointment of the petitioner would have been made. It is only because the election was declared and the Model Code of Conduct came into play that the appointment could not be made. That the Public Service Commission has wrongly declined to extend the period of validity of the waiting list. Therefore, he pleads that the writ appeal be allowed by directing the respondents to appoint the petitioner.

5. The learned counsel for the respondent disputes the same and pleads that the writ appeal be dismissed.

6. Heard learned counsels.

7. The learned Single Judge was justified firstly in holding that even though the State wrote a letter to the M.P. Public Service Commission to extend the validity of the list, but the Commission refused to extend the same. It was obviously within the discretion of the M.P. Public Service Commission to extend the validity. It is because the Public Service Commission alone had the authority to extend the validity and that the same could not be done by the State, the Public Service Commission was requested to do so. The rejection of the plea cannot be said to be *mala fide* only because the petitioner was not appointed. Therefore, the finding recorded by the learned Single Judge on that account does not call for any interference.

8. The further reasoning of the learned Single Judge that the petitioner has not challenged the decision of the Public Service Commission is also justified, since what was questioned was only the letter written by the Secretary to the Commission. Hence, on both the reasons assigned by the learned Single Judge, we do not find any error that calls for any interference.

9. However, while considering the case of the petitioner, we considered the relative law that is applicable to the case on hand. The learned counsel for the appellant was put on notice. We have examined the said issue *ad nauseam*. We have heard the learned counsels on 01.10.2021, 01.02.2022 and on 08.02.2022 extensively.

10. The plea of the petitioner was that the respondent rejected the request for appointment by placing reliance on Rule 12 (5) of the Madhya Pradesh Public Prosecution (Gazetted) Services Recruitment Rules 1991. That, the said Rule is not applicable to the case of the petitioner, since the same came into effect from the date of publication i.e. on 07.06.2019. However, what is applicable to the case of the

petitioner is the M.P. State Service Examination Rules 2015 namely; Rule 4 (3) (d) (i). Therefore, he pleads that no reliance could be placed on Rule 12 (4) and (5) of Madhya Pradesh Public Prosecution (Gazetted) Service Recruitment Rules, 1991. Furthermore, that the said amendment came about only with effect from 07.06.2019, which is much subsequent to the date involved herein. Reliance is placed on the Madhya Pradesh State Service Examination Rules, 2015 on Rule 4 [(3) (d) (i)].

11. So far as Clause (4) and (5) of Rule 12 of the Rules of 1991 are concerned, the said amendment came into force on the date of its publication in the Madhya Pradesh Gazette which was on 07.06.2019, namely much after the relevant date. Hence, the same are not applicable to the appellant.

12. So far as, the State Service Examination Rules 4, 3 (d) (iv) of Rule 2015 is concerned, what is relied upon is to the extent that the validity of the main list shall be 12 months and the supplementary list shall be for 18 months. It is for this reason, we need to ascertain as to which of the Rules are applicable to the petitioner.

13. So far as the Rules of 2015 are concerned, they are applicable only so far as the posts enunciated in Rule 3 of the State Service Rules, 2015. So far as the petitioner is concerned, the 1991 Rules govern him. The 1991 Rules are specific to the petitioner. In terms of Rule 12, prior to the amendment, the same read as follows:-

"12. List of candidates recommended by the Commission. (1) The Commission shall forward to the Government, a list arranged in order of merit of the candidates who have qualified by such standards as the Commission may determine and of the candidates belonging to the Scheduled Castes and Scheduled Tribes who, although not qualified by that standard, are yet declared by the Commission to be suitable for appointment to the service with due regard to maintenance of efficient

of the administration. The list shall be published for general information.

(2) Subject to the provisions of these rules and of the Madhya Pradesh Civil Service (General Conditions of Service) Rules, 1961 candidates will be considered for appointment on the available vacancies in the order in which their names appear in the list.

(3) The inclusion of a candidate's name in the list confers no right to appointment unless the Government is satisfied, after such inquiry as may be considered necessary that the candidate is suitable in all respects for appointment in the service."

The reading of the entire Rules do not contemplate a supplementary or a waiting list. What is contemplated under the said Rule is that only one merit list to be prepared. It also does not indicate the period of the validity of the list as prepared under the said Rules. What would affect the petitioner is only the provisions of unamended Rule 12. The same does not postulate a preparation of the waiting list at all. Even though various material have been shown to us with regard to the preparation of the waiting list, it is needless to state that the preparation of such a list under these Rules is *non est*. There cannot be any other list other than only one merit list which is contemplated under Rule 12.

14. The further plea of the petitioner is that since a waiting list has been prepared by the Public Service Commission and has been enforced by the State and is being used by the State for appointment requires to be followed herein. On considering the contentions, we are of the view that the same cannot be accepted. Firstly is the fact that any action of the Commission or the State should relate to a source of power. The 1991 Rules do not grant any power to the Commission or the State with regard to the waiting list.

15. The present case arises for a direct recruitment. However, the Rules of 1991 also include promotions for selection by way of promotion. Rule 15 postulates the conditions for preparation of the list for promotion. Rule 15 (1) reads as follows:-

“15. Preparation of list of suitable Officers.-(1) The Committee shall prepare a list of such persons who satisfy the conditions prescribed in rule 14 above and as are held by the Committee to be suitable for promotion to the Service. The list shall be sufficient to cover the anticipated vacancies on account of retirement and promotion during the course of one year from the date of preparation of the select list. A reserve list consisting of 25 per cent of the number of the persons included in the said list shall also be prepared to meet the unforeseen vacancies occurring during the course of the aforesaid period.”

Therefore, in terms of Rule 15 (1) a reserve list consisting of 25 per cent of the number of the persons included in the select list requires to be prepared. Therefore, what is contemplated is a preparation of a reserve list only so far as promotional posts are concerned. They have been deliberately omitted insofar as direct recruits are concerned. Rule 12, therefore, governs candidates recommended by the Commission for direct recruitment. The same does not postulate preparation of a waiting list. Therefore, when Rule 12 which is applicable to the petitioner does not contemplate a waiting list, the petitioner cannot derive any legal right from being in the waiting list. Therefore, the instructions, if any, or the preparation of the waiting list by the Commission for the case on hand is, therefore, contrary to the 1991 Rules. Preparation of a waiting list is not authorised by law. Therefore, such action of the State or the Commission with regard to the waiting list is bad in law, unsustainable and is *non est*.

16. Admittedly, since the petitioner is in the waiting list, he would not derive any right at all or for the relief that he has claimed for. The contention that the validity of the list is for a period of 12 months for

the main list and 18 months for the supplementary list in terms of the Rules of 2015, therefore, cannot be accepted. The said Rules, are not applicable to the petitioner. It is applicable only to those posts that are enunciated in Clause 3. Therefore, the reliance placed on Rule 4 (3)(d) (i) of the Madhya Pradesh State Service Examination Rules, 2015, is misplaced.

17. So far as the Model Code of Conduct is concerned, extending the validity of the list by extending the period when the Model Code of Conduct was in force, has no nexus with the facts of this case when once it is held that the petitioner is governed by the Rules of 1991 and when those Rules do not postulate the creation of a waiting list, then whether the Model Code of Conduct exists or not, is of no consequence.

18. Therefore, we are of the view that since the Rules of 1991 are applicable to the appellant which do not postulate the creation of a waiting list and the entire case made out by the petitioner is the exercise of his right as a candidate whose name finds place in the waiting list is concerned, in our considered view does not arise for consideration. Hence for all these reasons, the writ appeal being devoid of merit, is dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDRA KUMAR KAURAV)
JUDGE