# IN THE HIGH COURT OF MADHYA PRADESH
# AT JABALPUR

## BEFORE

## SHRI JUSTICE SUJOY PAUL
## ON THE 10th AUGUST, 2023

## WRIT PETITION No. 7243 of 2021

**BETWEEN** :-

SUNIL S/O SUMAN KALAM, AGED ABOUT 44 YEARS, OCCUPATION: PROCESS SERVER NAHALDA AT POST BADGAO ALI TEHSIL KHANDWA (MADHYA PRADESH)

*….PETITIONER*

*(BY SHRI PUSHPENDRA YADAV -  ADVOCATE )*

**AND**

1.   THE STATE OF MADHYA PRADESH THR. PRINCIPAL SECRETARY DEPARTMENT OF REVENUE VALLABH BHAWAN BHOPAL (M.P.) (MADHYA PRADESH)

2.    COLLECTOR KHANDWA DISTT. KHANDWA M.P (MADHYA PRADESH)

3.    SUB DIVISIONAL OFFICER REVENUE TEH. HARSUD DISTT. KHANDWA M.P (MADHYA PRADESH)

*.….RESPONDENTS*

*(BY SHRI RITWIK PARASHAR  – GOVERNMENT ADVOCATE)*

*AND*

## WRIT PETITION No. 8812 of 2021

**BETWEEN** :-

1. MOHD. NIZAM S/O MOHD. SHAUKAT, AGED ABOUT 52 YEARS, OCCUPATION: PROCESS SERVER HOSUE NO. 47 KAHAD WADI WARD NO. 16 RAJENDRA PRASAD WARD KHANDWA TEH. KHANDWA (MADHYA PRADESH)

2. TEJRAM S/O SHRAWAN KANARE, AGED ABOUT 45 YEARS, OCCUPATION: PROCES SERVER AT POST KILLOD, TEH. HARSUD, DISTT. KHANDWA (MADHYA PRADESH)

*….PETITIONERS*

*(BY SHRI PUSHPENDRA YADAV -  ADVOCATE )*

**AND**

1. THE STATE OF MADHYA PRADESH THR. PRINCIPAL SECRETARY DEPARTMENT OF REVENUE VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

2. COLLECTOR KHANDWA DISTT. KHANDWA (MADHYA PRADESH)

3. SUB DIVISIONAL OFFICER REVENUE TEH. HARSUD DISTT. KHANDWA (MADHYA PRADESH)

*…..RESPONDENTS*

*(BY SHRI RITWIK PARASHAR  – GOVERNMENT ADVOCATE)*

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*This petition coming on for hearing this day, **JUSTICE SUJOY PAUL** passed the following:*

# **O R D E R**

Regard being had to the similitude of the question involved on the joint request these matters are analogously heard and decided by this common order.

## **W.P. No.7243/2021**

Petitioner in this petition filed under Article 226 of the Constitution challenged the order dated 21.01.2020 (Annexure P/1), whereby he was held to be ineligible/disqualified for appointment on the vacant post of Peon because petitioner admittedly solemnized marriage before attaining the age of 21 years and because two children of petitioner were born after 26.01.2001.

**2.** Learned counsel for the petitioner submits that the facts are not in dispute in the instant case. The petitioner was appointed as Process Server in the year 1998. While working as Process Server, the petitioner wanted appointment as Peon but he was held to be ineligible as per M.P. Civil Services (General Conditions of Services) Rules, 1961 ( Rules, 1961)

**3.** Shri Pushpendra Yadav, learned counsel for the petitioner submits that Sub-Rule (5) of Rule 6 of the said rules was omitted w.e.f. 24.05.2013 and therefore, the said Rule cannot be an impediment for the petitioner.

**4.** So far Sub-Rule (6) of Rule 6 is concerned, he by placing reliance on an order of this Court dated 23.01.2018 passed in **W.P.**

**No.16859/2011 (Prakash Soni and Ors. Vs. State of M.P. & Ors.)** urged that petitioner, who was appointed as Process Server way back in the year 1998, cannot be deprived from consideration for appointment as Peon.

**5.** Shri Ritwik Parashar, learned Government Advocate fairly submitted that since Sub-Rule (5) of Rule 6 is no more part of statute book w.e.f. 24.05.2013, the said provision will not come in the way of the petitioner but in the light of Sub-Rule (6) of Rule 6 of said Rules, petitioner was rightly held ineligible/disqualified.

**6.** No other point is pressed by learned counsel for the parties.

**7.** Heard the parties at length and perused the record.

**8.** Learned counsel for the parties have rightly contended that sub-Rule (5) of Rule 6 which stood omitted cannot deprive the petitioner from consideration for regular appointment on the post of peon. Thus, impugned order to the extent it is based on sub-Rule (5) aforesaid, cannot sustain judicial scrutiny.

**9.** The petitioner was deprived from right of consideration by treating him as disqualified/ineligible because admittedly two children of petition were born after 26.01.2001. Sub-Rule (6) of the Rule 6 of 1961 reads as under:-

> "(6) No candidate shall be eligible for appointment to a service or post who has more than two living children one of whom is born on or after the 26th day of January, 2001.
>
> Provided that no candidate shall be disqualified for appointment to a service or post, who has already one living child and next delivery

takes place on or after the 26<sup>th</sup> of January, 2001, in which two or more than two children are born".

**(Emphasis supplied)**

**10.** The above Rule deals with 'disqualification'. In view of admitted facts, petitioner cannot be treated to be eligible for appointment if one of them was born after 26.01.2001. Petitioner certainly falls in the clutches of this embargo/impediment. So far reliance on the order of this Court in **Prakash Soni (supra)** is concerned. The factual backdrop of that case shows that it was a claim of 'regularization' and in the said case, the deprivation was based on sub-Rule (5) of Rule 6 which stood omitted from the statute book. In the instant case, the petitioner's claim was not about regularization, instead, it was for the regular vacant post of peon and disqualification is as per Rule 6(6) of Rules of 1961. Thus, said order in **Prakash Soni (supra)** is of no assistance to the petitioner.

**11.** In view of foregoing analysis, no fault can be found in declaring the petitioner as disqualified/ineligible in the teeth of Rule 6 of the Rules of 1961. The petition fails and is hereby **dismissed.**

**12.** At this stage, learned counsel for the petition prays for liberty to file appropriate proceedings in the event petitioner is aggrieved by the action of respondents and in not continuing him on the post of Process Server. If law so permits, petitioner can file appropriate proceeding for the said purpose.

**W.P. No.8812 of 2021**

**13.** In this case, the petitioner was held to be disqualified in the teeth of Rule 6 of the Rules of 1961. In view of the order passed in aforesaid matter, no relief is due to this petitioner also.

**14.** For the reasons stated hereinabove, this petition is also **dismissed**.


**(SUJOY PAUL)**
**JUDGE**


rj/navin