

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

BEFORE

**HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 8th OF SEPTEMBER, 2022

WRIT PETITION No. 19955 of 2022

BETWEEN:-

- 1 DILIP BEHERE S/O LATE SHRI
. W.B. BEHER, AGED ABOUT 53
YEARS, OCCUPATION: PUBLIC
RELATIONS OFFICER O/O M.P.
LABOUR WELFARE BOARD 83
MALVIYA NAGAR BHOPAL
(M.P.) DK-2/529 DANISH KUNJ
KOLAR ROAD BHOPAL
(MADHYA PRADESH)

- 2 BHARAT KUMAR PATIDAR S/O
. SHRI KISHANLAL PATIDAR,
AGED ABOUT 52 YEARS,
OCCUPATION: ASSISTANT
ACCOUNTANT OFFICER C/O
M.P. LABOUR WELFARE
BOARD 83 MALVIYA NAGAR
BHOPAL (M.P.) R/O HOUSE NO.
81 SHARDA VIHAR KARWA
DAM ROAD BHOPAL (MADHYA
PRADESH)

.....PETITIONERS

(BY SHRI ATUL KUMAR RAI - ADVOCATE)

AND

- 1 THE STATE OF MADHYA
. PRADESH THROUGH THE
PRINCIPAL SECRETARY

LABOUR DEPARTMENT
VALLABH BHAWAN BHOPAL
(MADHYA PRADESH)

2 THE STATE OF M.P. THROUGH
. THE DEPUTY SECRETARY
LABOUR DEPARTMENT
VALLABH BHAWAN BHOPAL
M.P. (MADHYA PRADESH)

3 WELFARE COMMISSIONER
. MADHYA PRADESH LABOUR
WELFARE BOARD 83 MALVIYA
NAGAR BHOPAL (MADHYA
PRADESH)

4 ASSISTANT WELFARE
. COMMISSIONER MADHYA
PRADESH LABOUR WELFARE
BOARD 83 MALVIYA NAGAR
BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ROHIT JAIN – GOVERNMENT ADVOCATE)

.....
.....

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

ORDER

Petitioners are working as Class III employees with the Madhya Pradesh Labour Welfare Board. It is their case that respondent No. 2 published the *Madhya Pradesh Shram Kalyan Nidhi (Sanshodhan) (Mandal Karmcharyon Ki Bharti) Viniyam, 2021*. The same pertains to recruitment of Class II and Class III employees through competitive exams and interview etc. They are specifically aggrieved by sub-rule 2 (ka) of Rule 4, which reads as follows:-

“(क) द्वितीय श्रेणी—

(1) सहायक कल्याण आयुक्त-4 पद एवं लेखाधिकारी-1 पद का पद है जो, द्वितीय श्रेणी का होगा । सहायक कल्याण आयुक्त पदों में 25 प्रतिशत सीधी भरती से एवं 75 प्रतिशत पदोन्नति से भरे जायेंगे । जबकि लेखाधिकारी का पद शासन द्वारा (वित्त विभाग) से प्रतिनियुक्ति से भरा जावेगा ।”

2. The same would indicate that the promotion to Class II from Class III for the post of Assistant Welfare Commissioner will be done by providing 75% promotion to in-service candidates and 25% through direct recruitment. It is a case of the petitioners that by promulgation of the said Rules, the chances of the petitioners are vastly affected. That the earlier Rule of 1984 provided for 100% promotion from in-service candidates. The same has been reduced to 75%. Therefore, the instant petition was filed seeking for a writ of certiorari to declare the impugned gazette notification as *ultra vires* and consequential reliefs.

3. We have heard the learned counsel for the petitioners. The sum and substance of the ground urged by the learned counsel is that by virtue of impugned notification the chances of the petitioners are affected.

4. On hearing the learned counsels, we do not find any merit in this petition. The prayer sought for by the petitioners is for a writ of certiorari to declare the impugned gazette notification as *ultra vires* and consequential reliefs.

5. Any enactment that is sought to be challenged, can be entertained only if the same is either arbitrary, unreasonable or irrational and whether the legislature has competence to make the law or it affects fundamental rights of the petitioners. We do not find that any of these exists in the instant case. The only plea of the petitioners is that their chances of promotion are affected by the same. We do not find the same to be a ground to declare the impugned notification as *ultra vires*.

6. The Hon'ble Supreme Court in the judgment reported as (2012) 6 SCC 312 in the case of State of Madhya Pradesh Vs. Rakesh Kohli and another held in para 17 as under:-

17. This Court has repeatedly stated that legislative enactment can be struck down by Court only on two grounds, namely (i), that the appropriate Legislature does not have competency to make the law and (ii), that it does not take away or abridge any of the fundamental rights enumerated in Part – III of the Constitution or any other constitutional provisions. In Mcdowell and Co.2 while dealing with the challenge to an enactment based on Article 14, this Court stated in paragraph 43 of the Report as follows : (SCC pp.737-38)

“.....A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground..... if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.....” (Emphasis supplied)

7. Therefore, in the absence of any of the reasons that constitutes a ground to declare the enactment to be *ultra vires*, no relief can be granted.

There is also no material to indicate that the impugned gazette notification is arbitrary, unreasonable or irrational. Hence, we are of the view that the petitioners would not be entitled to the relief sought for by them. Even otherwise, in terms of the impugned notification, 25% of the promotion would be governed by the direct recruitment, which earlier to the amendment was nil. Earlier, all promotions were made through in-service candidates whereas vide impugned notification, 25% of the posts are reserved for direct recruitment. This is probably intended to enhance better administration and also to ensure that the direct recruits have also an opportunity for appointment. It does not in any way take away or abridge any of the fundamental rights of the petitioners. They are still entitled to compete for promotion of the 75% of the seats reserved for promotion.

8. Hence, we do not find any ground to entertain this petition.
9. For the aforesaid reasons, the petition being devoid of merit is dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE