

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

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 22<sup>nd</sup> OF JUNE, 2023**

**WRIT PETITION No. 12079 of 2023**

**BETWEEN:-**

**SMT. USHA YADAV W/O SHRI  
TEERATH PRASAD YADAV, AGED  
ABOUT 22 YEARS, OCCUPATION:  
NIL R/O VILLAGE  
MACHHARKATA, TEHSIL KUSMI,  
DISTT. SIDHI (MADHYA  
PRADESH)**

**.....PETITIONER**

**(BY SHRI ARVIND KUMAR TIWARI - ADVOCATE)**

**AND**

- 1. THE STATE OF MADHYA  
PRADESH THROUGH THE  
PRINCIPAL SECRETARY  
WOMEN AND CHILD  
DEVELOPMENT  
DEPARTMENT  
MANTRALAYA VALLABH  
BHAWAN BHOPAL, M.P.  
(MADHYA PRADESH)**
- 2. COLLECTOR SIDHI DISTRICT  
SIDHI (MADHYA PRADESH)**
- 3. SUB DIVISIONAL OFFICER  
KUSMI DISTRICT SIDHI  
(MADHYA PRADESH)**
- 4. DISTRICT PROGRAMME  
OFFICER WOMEN AND  
CHILD DEVELOPMENT**

**DEPARTMENT      DISTRICT  
SIDHI (MADHYA PRADESH)**

5. **PROJECT                      OFFICER  
INTEGRATED                  CHILD  
DEVELOPMENT      PROJECT  
KUSMI      DISTRICT      SIDHI  
(MADHYA PRADESH)**
  
6. **CHIEF EXECUTIVE OFFICER  
JANPAD PANCHAYAT KUSMI  
KUSMI      DISTRICT      SIDHI  
(MADHYA PRADESH)**
  
7. **SMT. SHAKUNTALA YADAV  
W/O SHRI MUKESH YADAV  
VILLAGE      MACHHARKATA  
TEHSIL      KUSMI      DISTT.  
(MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY MS. SWATI ASEEM GEORGE – PANEL LAWYER FOR RESPONDENTES/STATE)**

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*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 following reliefs:-

- “(i) *A writ in the nature of mandamus be issued to command the respondents authorities concerned to take the Mark-Sheet of B.A. Final Year of the petitioner on record by considering and deciding the representation of the petitioner contained in Annexure P/2, P/4 and P/5 and accordingly to prepare a fresh Merit List for the post of Anganwadi Worker in Anganwadi Centre Machharkata, Block Kusmi, District Sidhi within a time bound frame, in the interest of justice.*

OR

*In alternative and without prejudice, this Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus to direct that the appointment on the post of Anganwadi Worker in Anganwadi Centre Machharkata, Block Kusmi, District Sidhi shall be subject to final outcome of instant Writ Petition.*

*(ii) Any other writ, order or direction, which this Hon'ble Court deems fit and proper in the facts and circumstances of the case, may also kindly be passed, in the interest of justice."*

2. It is the case of the petitioner that an advertisement was issued for appointment on the post of Anganwadi Worker in Anganwadi center, Machharkata, Block Kusmi, District Sidhi (M.P.). The last date for submission of application form was 08.03.2022. The petitioner also submitted her application along with required documents. Total 9 applications were received including that of the petitioner. Till the last date for submission of application form, the result of B.A. final year of the petitioner was not declared, therefore, she could not submit her mark sheet of B.A. final year. When the recruitment process was going on and final list was not issued, the petitioner submitted her mark sheet of B.A. final year on 02.11.2022, however without giving any additional marks to the petitioner the respondents issued merit list and the respondent No.7 was given appointment. The petitioner made a representation but could get any response and accordingly the present petition has been filed.

3. Heard the learned counsel for the petitioner.

4. The undisputed facts are that the last date for submission of application form was 08.03.2022. Till that, the result of the petitioner was not declared. It appears that mark sheet of B.A. final year main examination was issued on 10.08.2022 much after the last date of submission of application form.

5. Now, the only question for consideration is as to whether the candidate must possess the qualification on the last date of submitting application form or on the date of consideration of the application ?

6. The question involved in the present case is no more *res integra*.

7. The Supreme Court in the case of **Rakesh Kumar Sharma v. State (NCT of Delhi)**, reported in **(2013) 11 SCC 58** has held as under:-

**11.** There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification.

**12.** In *U.P. Public Service Commission v. Alpana* [(1994) 2 SCC 723 : 1994 SCC (L&S) 742 : (1994) 27 ATC 101], this Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined as on the last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared up to the last date of submission of applications, would not be eligible.

**13.** A three-Judge Bench of this Court in *M.V. Nair v. Union of India* [(1993) 2 SCC 429 : 1993 SCC (L&S) 512 : (1993) 24 ATC 236] held as under : (SCC p. 434, para 9)

“9. ... It is well settled that suitability and eligibility have to be considered *with reference to the last date for receiving the applications*, unless, of course, the notification calling for applications itself specifies such a date.”

(emphasis supplied)

**14.** In *Harpal Kaur Chahal v. Director, Punjab Instructions* [1995 Supp (4) SCC 706 : 1996 SCC (L&S) 226 : (1996) 32 ATC 172] this Court held : (SCC p. 707, para 2)

“2. ... It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications. Such of those candidates, *who possessed of all the qualifications as on that date, alone are eligible to apply* for and to be considered for recruitment according to the rules.”

(emphasis supplied)

**15.** This Court in *Rekha Chaturvedi v. University of Rajasthan* [1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951 : (1993) 25 ATC 234] held : (SCC p. 175, para 10)

“10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence viz. even those candidates who do not have the qualifications in praesenti and are likely to

acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, *the only certain date for the scrutiny of the qualifications will be the last date for making the applications.* ... Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission v. B. Sarat Chandra* [(1990) 2 SCC 669 : 1990 SCC (L&S) 377 : (1990) 13 ATC 708] and *Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766].”

(emphasis supplied)

**16.** In *Ashok Kumar Sharma v. Chander Shekher* [1993 Supp (2) SCC 611 : 1993 SCC (L&S) 857 : (1993) 24 ATC 798] [hereinafter referred to as *Ashok Kumar (1993)*], the majority view was as under : (SCC pp. 616-17, para 15)

“15. The fact is that the appellants did pass the examination and were fully qualified for being selected prior to the date of interview. By allowing the appellants to sit for the interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview was made as broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in the public interest that better candidates who were *fully qualified on the dates of selection* were not rejected,

notwithstanding that the *results of the examination in which they had appeared had been delayed for no fault of theirs*. The *appellants were fully qualified on the dates of the interview* and taking into account the generally followed principle of Rule 37 in the State of Jammu & Kashmir, we are of opinion that *the technical view adopted by the learned Judges of the Division Bench was incorrect....*”

(emphasis supplied)

However, the opinion of R.M. Sahai, J. had been that these 33 persons could not have been allowed to appear for the interview as they did not possess the requisite eligibility/qualification on the last date of submission of applications.

17. A three-Judge Bench of this Court in *Ashok Kumar Sharma v. Chander Shekhar* [(1997) 4 SCC 18 : 1997 SCC (L&S) 913] reconsidered and explained the judgment of *Ashok Kumar Sharma* (1993) [1993 Supp (2) SCC 611 : 1993 SCC (L&S) 857 : (1993) 24 ATC 798] observing : (*Chander Shekhar case* [(1997) 4 SCC 18 : 1997 SCC (L&S) 913] , SCC pp. 21-22, para 6)

“6. *The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also*

*have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment.”*

(emphasis added)

The Court in *Ashok Kumar Sharma* [(1997) 4 SCC 18 : 1997 SCC (L&S) 913] further explained that the majority view in *Ashok Kumar Sharma (1993)* [1993 Supp (2) SCC 611 : 1993 SCC (L&S) 857 : (1993) 24 ATC 798] was not correct, rather the dissenting view by R.M. Sahai, J. was correct as the Court held as under : (SCC p. 22, para 6)

*“6. ... The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.”*

(emphasis added)

**18.** It may also be pertinent to mention here that in the aforesaid case reference to *Rekha Chaturvedi* [1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951 : (1993) 25 ATC 234] appears to have been made by a typographical error as the said judgment is by a two-Judge Bench of this Court. In fact the Court wanted to make a reference to the case of *Ashok Kumar Sharma (1993)* [1993 Supp (2) SCC 611 : 1993 SCC (L&S) 857 : (1993) 24 ATC 798].

**19.** In *Bhupinderpal Singh v. State of Punjab* [(2000) 5 SCC 262 : 2000 SCC (L&S) 639 : AIR 2000 SC 2011] this Court



placing reliance on various earlier judgments of this Court held : (SCC p. 268, para 13)

“13. ... The High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied *by reference to the last date appointed by which the applications have to be received by the competent authority*. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with.”

(emphasis supplied)

**20.** This Court lately in *State of Gujarat v. Arvindkumar T. Tiwari* [(2012) 9 SCC 545 : (2012) 9 SCC (L&S) 795 : AIR 2012 SC 3281] held : (SCC p. 550, para 14)

“14. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that *his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage* and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that *he does not have a right which can be enforced through court*. (See *Prit Singh v. S.K. Mangal* [1993 Supp (1) SCC 714 : 1993 SCC (L&S) 246 : (1993) 23 ATC 783] and *Pramod Kumar v. U.P. Secondary Education Services Commission* [(2008) 7 SCC 153 : (2008) 2 SCC (L&S) 244] .)”

(emphasis supplied)

A similar view has been reiterated by this Court in *Pramod Kumar v. U.P. Secondary Education Services Commission* [(2008) 7 SCC 153 : (2008) 2 SCC (L&S) 244]

and *State of Orissa v. Mamata Mohanty* [(2011) 3 SCC 436 : (2011) 2 SCC (L&S) 83] .

**21.** In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification i.e. eligibility, character verification, etc. Clause 11 of the letter of offer of appointment dated 23-2-2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

8. The Supreme Court in the case of **Ashok Kumar Sharma v. Chander Shekhar**, reported in **(1997) 4 SCC 18** held as under:-

“6. The review petitions came up for final hearing on 3-3-1997. We heard the learned counsel for the review petitioners, for the State of Jammu & Kashmir and for the 33 respondents. So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot

act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan* [1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951 : (1993) 25 ATC 234] . The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.”

9. Therefore, even if the result was not declared prior to the last for submission of application form without there being any fault on the part of the candidate, still the subsequent acquisition of qualification cannot be considered. Furthermore, the petitioner has not disclosed the date on which the examination of B.A. 3<sup>rd</sup> year main examination was conducted.

10. Viewed from every angle, this Court is of the considered opinion that since the petitioner was not graduate on the last date for submission of application form, therefore, she was rightly denied any mark for having passed the graduation examination.

11. As no case is made out warranting interference, the petition fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

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