

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 30th OF JUNE, 2023
WRIT PETITION No. 13393 of 2023**

BETWEEN:-

1. **ISHWAR DEEN PRAJAPATI S/O SHRI MUNNA LAL PRAJAPATI, AGED ABOUT 38 YEARS, OCCUPATION: STUDENT R/O VILLAGE BAGHWAR KALAN DISTRICT PANNA (MADHYA PRADESH)**

2. **GANESH PRASAD PRAJAPATI S/O SHRI SHANKAR DAS, AGED ABOUT 38 YEARS, OCCUPATION: STUDENT R/O AJAYGARH DISTRICT PANNA (MADHYA PRADESH)**

3. **DHARMENDRA CHAKARWARTI S/O SHRI MOOLCHAND, AGED ABOUT 35 YEARS, OCCUPATION: STUDENT R/O RAI BHAVARR KE PICHE CHOPRA KHURD, DISTRICT DAMOH (MADHYA PRADESH)**

4. **SHAKTI CHOURASIA D/O SHRI RAJENDRA KUMAR CHOURASIA, AGED ABOUT 28 YEARS, OCCUPATION: STUDENT R/O GANGARAM PATEL KA BADA IN FRONT OF GATE NUMBER 1, RANITAL DISTRICT JABALPUR (MADHYA PRADESH)**

5. **GOLDI DAHAYAT D/O SHRI SURESH KUMAR, AGED ABOUT 34 YEARS, OCCUPATION: STUDENT R/O MUKHERJEE WARD NUMBER 10, GAURAIYA MOHALLA, SIHORA DISTRICT**

JABALPUR (MADHYA PRADESH)

6. **RUPAL TIWARI D/O SHRI SHYAM LAL TIWARI, AGED ABOUT 36 YEARS, OCCUPATION: STUDENT R/O CGM COMPLEX, DUNGARIYA DISTRICT CHHINDWARA (MADHYA PRADESH)**

7. **VARSHA TRIPATHI D/O SHRI RAMCHANDRA TRIPATHI, AGED ABOUT 38 YEARS, OCCUPATION: STUDENT R/O BORDAI, DISTRICT SEONI (MADHYA PRADESH)**

8. **NARAYAN PRASAD KULHARA S/O SHRI MOHANLAL KULHARA, AGED ABOUT 42 YEARS, OCCUPATION: STUDENT R/O KOSTA MOHALLA GARHA, GARHA WARD DISTRICT JABALPUR (MADHYA PRADESH)**

9. **RUKHSAR QURAISHI D/O SHRI NAWAB QURAISHI, AGED ABOUT 33 YEARS, OCCUPATION: STUDENT R/O WARD NUMBER 5, SARAI MOHALLA, JAWAHAR WARD SIHORA JABALPUR (MADHYA PRADESH)**

10. **ANAR SINGH LODHI S/O SHRI KESHRI LAL LODHI, AGED ABOUT 33 YEARS, OCCUPATION: STUDENT R/O BHAGWAT KALAN BAGHWAR PANNA SHAH NAGAR (MADHYA PRADESH)**

11. **SOWNDARYA SAHU D/O SHRI GUNVANTRAO SAHU, AGED ABOUT 28 YEARS, OCCUPATION: STUDENT R/O NEAR HANDPUMP KALAPATHA, VIVEKANAND WARD, MEHATO COLONY, DISTRICT BETUL (MADHYA**

PRADESH)

12. **ARCHNA DEVI PAL D/O SHRI RAJABHAIYA PAL, AGED ABOUT 28 YEARS, OCCUPATION: STUDENT R/O GAHLOT PURWA, TAROUNI, ARAMGANJ DISTRICT PANNA (MADHYA PRADESH)**

13. **RANI CHOURASIYA W/O SHRI NAVEEN CHOURASIYA, AGED ABOUT 36 YEARS, OCCUPATION: STUDENT R/O NEAR MATA MANDIR, CHOURAI, DISTRICT CHHINDWARA (MADHYA PRADESH)**

14. **PRACHI RAI D/O SHRI JAMNA PRASAD RAI, AGED ABOUT 28 YEARS, OCCUPATION: STUDENT R/O NH 07 MAIN ROAD CHATTI, VINOBA BHAVE WARD NO.05, LAKHNADON, DISTRICT SEONI (MADHYA PRADESH)**

15. **DROPDI DEVI KOSHTA W/O SHRI JITENDRA KOSHTA, AGED ABOUT 36 YEARS, OCCUPATION: STUDENT R/O BADHAIYA MOHALLA, IN FRONT OF KOSTI MANDIR, JABALPUR DISTRICT JABALPUR (MADHYA PRADESH)**

16. **DEEPTI TIWARI D/O SHRI RAM SUJAN TIWARI, AGED ABOUT 39 YEARS, OCCUPATION: STUDENT R/O 42, NEW JAGDAMBA COLONY VIJAY NAGAR JAI PRAKASH NARAIYAN WARD, VTC DISTRICT JABALPUR (MADHYA PRADESH)**

17. **SHALINI KHARE D/O SHRI GANGA PRASAD KHARE, AGED ABOUT 32 YEARS, OCCUPATION: STUDENT R/O WARD NUMBER 33 RADIO COLONY PANNA ROAD, NEELKANTH NAGAR, DISTRICT CHHATARPUR (MADHYA PRADESH)**

18. **ROHIT KUMAR PAWLE S/O SHRI SURENDRA PAWLE, AGED ABOUT 28 YEARS, OCCUPATION: STUDENT R/O VILLAGE SIMARIYA, WARD NO.1 SCHOOL TOLA JAHAR MAU, NAINPUR MANDLA (MADHYA PRADESH)**

19. **RAMKISHOR THAKUR S/O SHRI ROOP RAM THAKUR, AGED ABOUT 30 YEARS, OCCUPATION: STUDENT R/O WARD NO.06, RAIPUR ROAD KHADDEVRA MANDLA (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI ANURAG DUBEY - ADVOCATE)

AND

1. **STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY SCHOOL EDUCATION DEPARTMENT R/O VALABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **THE COMMISSIONER/DIRECTOR LOK SHIKSHAN SANCHANALAYA GAUTAM NAGAR, HOUSING BOARD COLONY, BHOPAL (MADHYA PRADESH)**

3. **SECRETARY/DIRECTOR, EMPLOYEE SELECTION BOARD CHAYAN BHAWAN, MAIN ROAD NO.1 CHINAR PARK (EAST), BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI VEER VIKRANT SINGH – DEPUTY ADVOCATE GENERAL)

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:

“7.1 Issue a writ of Certiorari quashing the impugned condition No.6 of the advertisement dated 12.1.2023 issued by the respondent No.3 for the appointment over the post of High School Teacher from 50% qualifying marks to 40% qualifying marks for SC/ST/OBC/Handicapped/EWS and from 60% qualifying marks to 50% to others.

7.2 Issue a writ of Mandamus commanding the respondents to accept the candidatures of the petitioners for the Mains Examination of the Teacher Eligibility Test - 2023. Any other relief, which the Hon'ble Court deems fit in the facts and circumstances of the case, be granted to the petitioners, in the interest of justice.

7.3 Any other relief deems fit may also be granted including cost of litigation.”

2. It is submitted by the counsel for the petitioners that Coordinate Bench of this Court by order dated **05.06.2023** passed in the case of **Om Prakash Gupta and others Vs. State of Madhya Pradesh and others** in **W.P. No.12152/2023**, (Indore Bench) has issued notices and has also

allowed the candidates to submit their application forms for mains examination in pursuance to the advertisement dated 18.05.2023 with a rider that the result would be subject to final disposal of the present petition.

3. It is submitted that State had conducted an eligibility test for High School Teacher and the minimum qualifying marks for the candidates belonging to SC/ST/OBC/Handicapped/EWS was fixed as 50% whereas the minimum qualifying marks for others was fixed as 60%. Thereafter, the respondents have announced selection test for the post of High School Teacher and as per the said advertisement, the minimum qualifying marks for the category of SC/ST/OBC/Handicapped/EWS candidates have been fixed as 40% and for others, the minimum qualifying marks have been fixed as 50%. It is submitted that the change in minimum qualifying marks amounts to change of rules of game in the midway and thus, the change in the minimum qualifying marks for selection on the post of High School Teacher is bad and accordingly, it is liable to be set aside. It is further submitted that even otherwise the validity of result of eligibility test is for its entire life and therefore, even the students, who had cleared the eligibility test in the year 2018 have been made eligible to contest in the selection examination for the post of High School Teacher.

4. Per contra, it is submitted by the counsel for the State that eligibility test has nothing to do with the selection process. Eligibility test is a test merely to shortlist the number of candidates and merely because a candidate has passed eligibility test, will not have any right to get selected against any vacant post but he will have a right to appear in the selection examination for the post which shall be advertised from time to time. Thus, by stretch of no imagination, it can be said that different qualifying marks provided for eligibility test as well as for recruitment test are violative of

Article 16 of the Constitution of India or will amount to change of rules of game.

5. Heard the learned counsel for the parties.

6. This Court by order dated 27.06.2023 had granted opportunity to the counsel for the petitioners to address on the question as to whether the change in qualification for the selection test can be said to be change of rules of game because different qualification was provided for eligibility test.

7. It is fairly conceded by Shri Anurag Dubey that eligibility test has nothing to do with the recruitment test and eligibility test is conducted in order to shortlist the number of candidates, who can participate in the recruitment process. However, it is submitted that generally the eligibility test and recruitment test are considered to be the preliminary examination and the final examination and therefore, rules of game cannot be changed in the midway.

8. It is fairly conceded by the counsel for the petitioners that post for recruitment to a particular post is never advertised at the time of holding of eligibility test and the eligibility test is conducted just to shortlist the candidates, who can appear in a subsequently advertised post. A preliminary examination and final examination are the part of one selection process. Whenever the posts are advertised, then in the light of large number of aspirants, the employer generally conducts a preliminary examination to shortlist the number of aspirants and thereafter, it conducts a final examination. Therefore, a preliminary as well as final examination is a part of same recruitment process whereas in the present case eligibility test has nothing to do with the recruitment process but it merely shortlist the number of candidates, who can appear in the recruitment process for the posts which are advertised at a later stage. Thus, providing for a different minimum qualifying marks in the eligibility test and different

qualifying marks in the selection process cannot be said to be violative of Article 14 or 16 of Constitution of India, and it cannot also be said that rules of game have been changed in the midway.

9. It is next contended by the counsel for the petitioners that since the candidates, who had passed the eligibility test in the year 2018 are also eligible to appear in the recruitment process, therefore, it is violative of Article 14 and 16 of Constitution of India.

10. As already held, the eligibility test is conducted to shortlist the number of candidates, who can appear in recruitment process for the post which shall be advertised as and when available. Any candidate, who otherwise fulfills all the qualifications prescribed under the advertisement or rules is eligible to contest for the recruitment process. As already held, the purpose of eligibility test is to reduce the number of candidates in recruitment process. Therefore, no discrepancies could be pointed out by the counsel for the petitioners by making list of eligible candidates live for the entire life. The State cannot debar a person from contesting in the recruitment process only on the ground that for each and every recruitment he has to clear the eligibility test, otherwise in case if such a provision is made, then it would violate the provisions of Article 14 and 16 of the Constitution of India. **Since the validity of the eligibility test has not been challenged, therefore, this Court cannot consider that aspect any further.**

11. So far as the interim order passed by Coordinate Bench of this Court is concerned, it is well established principle of law that interim orders cannot be treated as precedent. Furthermore, it appears that the interim order has been obtained by misleading the Court. The order dated 05.06.2023 passed by Coordinate Bench of this Court in the case of **Om Prakash Gupta (supra)** reads as under:

Considering the dispute involved in the case, as the respondents have changed the minimum eligibility qualifying percentage from 40% to 50%, it is directed that the petitioners shall be allowed by the respondents to submit their application forms for mains examination in pursuance to the advertisement dated 18.5.2023, the result of which, shall be subjected to final disposal of the present petition.

12. The use of word mains examination in this order clearly indicates that an impression was given that eligibility test and recruitment test are the part of one recruitment process whereas this Court has already held that eligibility test has nothing to do with the recruitment process and it is independent to the recruitment process.

13. Under these circumstances, this Court is of the considered opinion that no case is made out for interference in the matter.

14. The petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE