

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 31493 of 2024

DR. RAJNI THAKUR

Versus

***STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL
SECRETARY HEALTH AND OTHERS***

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Appearance:

Shri Saurabh Sunder - Advocate for the petitioner.

Shri Vijay Shukla – Panel Lawyer for the respondents / State.

Shri Shubham Manchani – Advocate for the respondent No.3.

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ORDER

**(Reserved on 17/06/2025)
(Pronounced on 12 /08/2025)**

By way of this petition, the petitioner has called into question the recruitment notice (Annexure P-1) whereby the respondent No.3- Medical College i.e. Autonomous Gandhi Medical College, Bhopal has advertised vacancies for various posts. The petitioner is concerned with the post of Associate Professor in Anesthesia.

2. The contention of learned counsel for the petitioner is that the post of Associate Professor in Anesthesia is required to be filled by promotion and the petitioner since is working on the feeder post of Assistant Professor since 2012 and has completed 12 years of service which is sufficient for being considered for promotion as per Teachers Eligibility Qualification in Medical Institutions Regulations, 2022 framed by the National Medical

Commission, therefore, the direct recruitment on a post meant to be filled up by promotion has caused great prejudice to the petitioner whose rights to be considered for promotion have been violated.

3. Learned counsel for the petitioner vehemently argued that once the post is meant to be filled up by direct recruitment as per the statutory rules framed for autonomous medical colleges and brought on record as (Annexure P-8) and known as M.P. Autonomous Medical and Dental College Educational Model Service Rules 2018, the posts are meant to be filled up by direct recruitment as per Rule 7 and by promotion as per Rule 8. The Schedules have been framed under the said rules and as per the Schedule framed for the respondent No.3- medical college, which is placed on record as Annexure RJ-1 with the rejoinder, there are 9 posts of Associate Professors in Anesthesia as provided in Schedule-1. As per Schedule-2, it is provided that 2 posts are to be filled up by direct recruitment and 7 posts are to be filled up by promotion and therefore, the respondents could not have converted the posts meant for promotion to be filled up by direct recruitment. It is contended that this has violated the legal right of the petitioner to be considered for promotion because the right to consideration for promotion is vested right which could not have been violated by the respondents.

4. It is further argued that there is infact, no legal impediment for promotion inasmuch as the status quo order of the Hon'ble Supreme Court passed in case of *State of M.P. Vs. R.B. Rai (SLP No.13954/2016)* is not applicable in situation where there is single candidate eligible for promotion despite which the respondents have wrongly converted the vacancy into one for direct recruitment and notified it as such. It is contended that though the note as appended to Schedule-II of the

recruitment rules duly mentions that in case of any legal impediment in promotion, the post of promotion can be filled up by direct recruitment but there is no legal impediment to promotion and further that the second condition of the said note is non-availability of candidates in feeder cadre, and that condition is also not available in the present case because the petitioner is available in feeder cadre who is otherwise in the zone of consideration for promotion and therefore, the respondents have wrongly converted the post of promotion to a post of direct recruitment.

5. By placing great reliance on the letter dated 17.11.2020 (Annexure P-14), it is contended that the State Government has directed all the autonomous colleges to fill up the vacant posts, therefore, promotion or direct recruitment as permissible in light of Rules of 2018 was to be carried out. However, this letter did not give a liberty to the respondent No.3 to convert post of promotion to a post of direct recruitment and therefore, the rights of the petitioner have been greatly prejudiced by non-consideration for promotion.

6. *Per contra*, the petition is vehemently opposed by respondent No.3 on the ground that as per the prevailing norms governing faculty appointment in promotion within broad specialty (MD/MS) is laid down in Regulations of 2022 and when the said regulations are conjointly read with Rule 6 & 8 of the M.P. Rules of 2018, then it is evident that the posts can be filled up either by direct recruitment or by promotion. It is further contended that vide letter dated 20.10.2022, no instructions were received from Commissioner of Medical Education regarding the promotion process having ceased. It was therefore decided to fill up the post by direct recruitment in view of the letter dated 20.10.2022 (Annexure R-1) received from the office of Commissioner, Medical Education.

7. It is further contended that in view of letter (Annexure R-2) dated 24.07.2024 received from the State Government, Department of Public Health and Medical Education, it was directed that for the post of promotion/direct recruitment, first in-house advertisement should be issued for considering those candidates who are available in feeder cadre in the concerned medical college and if the in-house candidates are not available only then the posts will be filled up by open recruitment for outsider candidates. Therefore, on strength of these two letters, it is vehemently argued by learned counsel for the respondents that in view of note-2 of Schedule II of the M.P. Rules of 2018, since there is legal impediment in promotion in view of issue relating to reservation in promotion pending before the Hon'ble Supreme Court and *status quo* order prevailing, therefore, the respondent No.3 was directed by the State Government to carry out the process through direct recruitment and while doing so, to save the chances of the medical teachers in feeder cadre like the petitioner, it was decided that firstly in-house candidates only will be permitted to apply in the selection process and thereafter the candidates from open market will be considered if no in-house candidate is found to be eligible. Therefore, it is contended that the posts have been converted into direct recruitment under emergent circumstances to save the recognition of medical college which is one of the oldest medical colleges in M.P. because in absence of senior teaching cadre in the posts of Associate Professor and Professor, the recognition of medical college in itself would have been in danger. Therefore, the State Government to save the recognition of the medical college has directed the concerned medical college to fill up the promotional post through direct recruitment which does not prejudice the rights of the petitioner who is in feeder cadre of promotion because the process is initially conducted only from the candidates available in the

feeder cadre and not from outsiders and only if candidates are not available in feeder cadre then outsiders will be considered. It is for this reason that in-house advertisement has been issued at this stage in which no outsider can appear and therefore, the rights of the petitioner are fully secured who, if has completed the requisite years of service in feeder post and fulfills other requirement as per NMC Regulations of 2022 can be considered in direct recruitment which is only open for in-house candidates. Therefore, no prejudice is caused to the petitioner by converting the post into direct recruitment in place of promotion and carry out direct recruitment in place of promotion which is only a formality. Therefore, the petitioner has no valid cause or reason to be aggrieved by this conversion of post from promotion to direct recruitment.

8. The learned counsel for the petitioner in rejoinder submissions has submitted that despite the position that the advertisement in question is in-house advertisement only and open only to the candidates for feeder cadre yet it will prejudice the rights of the petitioner inasmuch as if a junior person is selected on the basis of merit in the internal advertisement then the right of the petitioner would be prejudiced. It is contended that in direct recruitment all the medical teachers in feeder cadre would be at par and there is high probability that a junior person may be selected on the basis of merit through internal advertisement, which will be contrary to the method adopted for promotion where the selection is done by merit-cum-seniority. This would be prejudicial to the interest of the petitioner, though the advertisement may be innocuously captioned as in-house advertisement and may be projected to be as an alternative to promotion.

9. Heard.

10. First the objection of the learned counsel for the respondents as to estoppel against the petitioner for having participated in the process is taken up. The counsel for the respondent No.3 had vehemently contended that the petitioner having participated in the selection process cannot now challenge the very process.

11. The advertisement in question has been issued on 29.08.2024 whereas the petition has been filed on 14.10.2024 before close of the selection process. It is not the case where the petitioner has jumped up to challenge the selection process after being unsuccessful in the process and then suddenly become wiser and challenging the very inception of the process. It is a case where the petitioner during ongoing process has made challenge to the same and therefore, in considered opinion of this Court, the petition does not seem to be barred by estoppel because it is not a petition by unsuccessful candidate, realizing after rejection, that the entire process was illegal. Moreover, it is settled in law that there can be no estoppel against law and where law requires something to be done in a particular manner and if it is not done in that manner then it would have no existence in law. The Supreme Court in case of **Krishna Rai v. Banaras Hindu University, (2022) 8 SCC 713** has held that merely upon participation in selection process the candidate cannot be prevented from challenging the illegal process. The Hon'ble Supreme Court has held as under:-

“23. However, the Division Bench fell in error in applying the principle of estoppel that the appellants having appeared in the interview and being unsuccessful proceeded to challenge the same and on that ground alone, allowed the appeals, set aside the judgment [Krishna Rai v. Banaras Hindu University, 2011 SCC OnLine All 1347] of the learned Single Judge. The Division Bench having approved the reasoning of the learned Single Judge, ought not to have interfered in the judgment of the

learned Single Judge on a technical plea. The Division Bench ought to have considered that the appellants were Class IV employees working from 1977 onwards and expecting from them to have raised serious objection or protest at the stage of interview and understanding the principles of changing the rules of the game, was too far-fetched, unreasonable and unwarranted.

24. The case laws relied upon by the Division Bench would have no application in the facts of the present case as none of the judgments relied upon by the Division Bench laid down that principle of estoppel would be above law. It is settled principle that principle of estoppel cannot override the law. The manual duly approved by the Executive Council will prevail over any such principle of estoppel or acquiescence.”

12. Now this Court proceeds to consider the case on merits.

13. It is undisputed that as per the Schedule framed for the respondent No.3-medical college the posts of Associate Professor in Anesthesia are total 9 in number out of which 7 are to be filled up by promotion and 2 are to be filled up by direct recruitment. Now by the impugned advertisement the respondent No.2 has advertised one post of Associate Professor in Anesthesia to be filled up by direct recruitment. It is not disputed between the parties that the posts of direct recruitment are otherwise filled up and the post which is advertised has been converted from promotion to direct recruitment.

14. The said conversion was defended by placing reliance on Schedule to the recruitment rules placed on record as Annexure RJ-2 wherein as per note-2 of the schedule as available at page 21 to the rejoinder the following has been mentioned :-

“2. कॉलम 5 में दर्शाये पदों को पदोन्नति के लिये तत्समय अर्हताधारी उम्मीदवार उपलब्ध नहीं होने की दशा में अथवा पदोन्नति पर वैधानिक बाधा होने की दशा में सीधी भर्ती की प्रक्रिया के माध्यम से

भरा जा सकेगा। इस हेतु समय-समय पर कार्यकारिणी समिति संकल्प पारित कर सकेगी।”

15. Either of the two conditions which are pre-requisite to convert the post of promotion into direct recruitment is that either there should be a legal impediment in promotion, or there can be a case where there are no available candidates entitled for promotion.

16. Admittedly, the condition of no candidate being available in the zone of consideration does not exist in the present case and the post has been converted into direct recruitment only because it is stated that there is legal impediment in filling up the post by promotion in view of the pendency of case before the Hon’ble Supreme Court in ***R.B. Rai (supra)***.

17. Though, it is true that a Coordinate Bench of this Court in WP No. 12257/2022 has held that in view of the judgment in case of **State of M.P. Vs. Vinay Kumar Babele (SLP Civil No.5868/2023)**, the Hon’ble Supreme Court has permitted the State Government to carry out promotions and has held that there is no legal impediment in filling up the posts by promotion. However, subsequently in case of **Chairman, MP Pollution Control Board Vs. Sunita Jhore (Civil Appeal No.1159/2025, decided on 28.1.2025)**, the Hon’ble Supreme Court has held the issues are to be decided by the High Court and remanded the matter to the High Court in Writ Appeal No. 657/2020. This was passed when a similar order passed by the High Court was put to challenge before the Hon’ble Supreme Court. Therefore, it cannot be said that there is no legal impediment at present because even the subsequent M.P. Public Service Promotion Rules, 2025 have been put to challenge before this Court and the challenge to the said rules is still pending. Therefore, the legal bar to promotions does exist, and

now the other ground of conversion of the post to direct recruitment affecting the rights of the petitioner, has to be taken up.

18. The respondents have justified the conversion of post to direct recruitment by stating that there is legal bar in promotion and secondly on the ground that the rights of the petitioner are fully secured because the post has not been converted into direct recruitment for open market candidates but only for in-house candidates and the petitioner otherwise being in zone of consideration for promotion, can still apply and get selected though not by promotion but by direct recruitment.

19. As per the Rules of 2018 framed by the State Government, different procedures are laid down for appointment by recruitment and by promotion, which are in Rule 6, 7 & 8. As per Rule 6 the provision for direct recruitment is laid down, as per Rule 7 there is procedure for direct recruitment and as per Rule 8 the provision is for promotion. The relevant Rules 6, 7 & 8 are as under:-

(6) रिक्त पदों पर नियुक्ति -

रिक्त पद तथा भविष्य में होने वाले रिक्त पदों पर नियुक्ति निम्नानुसार होगी-

- (1) रिक्त पदों में से सीधी भरती के पद और पदोन्नति के पद की गणना सलग्न अनुसूची-दो अनुसार की जाएगी।
- (2) रिक्त पदों की पूर्ति के आवश्यक न्यूनतम अर्हता के मापदण्ड में कार्यकारिणी समिति संकल्प पारित कर आवश्यकतानुसार वृद्धि कर सकेगी, तथा अतिरिक्त अर्हता नियत कर सकेगी। पदवार अर्हता का विवरण सलग्न अनुसूची तीन अनुसार है।
- (3) चयन समिति संभागायुक्त की अध्यक्षता में होगी जिसमें महाविद्यालय के मुख्य कार्यपालन अधिकारी के अतिरिक्त न्यूनतम दो

सेवारत अथवा सेवानिवृत्ता ख्यातिप्राप्त सदस्य संभागायुक्त द्वारा समय-समय पर मनोनीत किए जाएंगे।

7 सीधी भरती की प्रक्रिया -

(1) सीधी भरती के पदों की पूर्ति के लिए कार्यकारिणी समिति विज्ञप्ति जारी करते हुए पारदर्शी प्रक्रिया अपनाएगी।

(2) सीधी भरती के रिक्त पदों की पूर्ति के लिए कार्यकारिणी समिति संकल्प पारित कर यथावश्यक लिखित परीक्षा अथवा साक्षात्कार अथवा दोनों नियत कर सकेगी।

(3) चयन समिति मेरिट के आधार पर एवं मेरिट क्रम में अभ्यर्थियों के चयन हेतु अनुशंसा देगी और तदनुसार वरीयता क्रम में नियुक्ति की जा सकेगी ।

(4) चयनित अभ्यर्थी को नियुक्ति प्रथमतः एक वर्ष की अवधि के लिए परीवीक्षा पर अनुबंध पर की जाएगी।

परन्तु उक्त बिन्दु 7 (3) के तहत चयनित अभ्यर्थी द्वारा महाविद्यालय में एक वर्ष की अवधि के लिए सीनियर रेजिडेंट डॉक्टर के पद पर कार्य किया हो तो उसे नियमित सेवा में नियुक्ति दी जा सकेगी।

(5) परीवीक्षा अवधि में चिकित्सा शिक्षक के शैक्षणिक एवं चिकित्सकीय कार्यों के आधार पर चयन समिति संबंधित व्यक्ति को नियुक्त करने अथवा अन्यथा की अनुशंसा करेगी और तदनुसार आदेश जारी किया जाएगा।

(6) महाविद्यालय में सेवारत व्यक्ति, जो सीधी भरती के पद के लिए अर्हताधारी हो, सीधी भरती के पद के विरुद्ध आवेदन देने के लिए स्वतंत्र होगा और ऐसे आवेदन के लिए उसे नियोक्ता से अनापत्ति नहीं लेना होगी।

(7) महाविद्यालय में सेवारत व्यक्ति का अनुसूची-एक में विनिर्दिष्ट किसी पद के विरुद्ध चयन किया जाने की दशा में ऐसे व्यक्ति का चिकित्सा शिक्षक के विनिर्दिष्ट पद पर वेतन उसके द्वारा महाविद्यालय में दी गई पूर्व सेवा अवधि की गणना में लेकर किया जाएगा ।

8 पदोन्नति द्वारा नियुक्ति की प्रक्रिया -

(1) पदोन्नति के रिक्त पदों की पूर्ति के लिए कार्यकारिणी समिति समय-समय पर संकल्प पारित कर निम्न में से कोई भी एक या अधिक मापदण्ड अपनाने का निर्णय ले सकेगी -

(अ) कार्यकारिणी समिति के स्वशासी महाविद्यालय में की गई सेवा अवधि का मूल्यांकन।

(ब) साक्षात्कार।

(स) लिखित परीक्षा ।

(2) मुख्य कार्यपालन अधिकारी के पद पर पदोन्नति के लिए प्राध्यापक को प्राध्यापक के पद पर पदोन्नति के लिए सह प्राध्यापक की एवं सह प्राध्यापक के पद पर पदोन्नति के लिए सहायक प्राध्यापक को विचारण क्षेत्र में रखा जाएगा।

(3) पदोन्नति के लिए विचारण क्षेत्र में उन सभी अभ्यर्थियों को रखा जाएगा जो उपरोक्त नियम 6 (2) के अनुसार पदोन्नति के पद की अर्हता रखते हों । विचारण क्षेत्र सूची महाविद्यालयों में की गई सेवा अवधि के घटते क्रम में बनाई जाएगी।

(4) चयन समिति उम्मीदवारों का चयन कर पदोन्नति हेतु अनुशंसा देगी और चयन सूची के वरीयताक्रम में रिक्त पदों के विरुद्ध पदोन्नति आदेश जारी किए जाएंगे।

20. The procedure for direct recruitment has been laid down in Rule 7 which is ambiguous in itself because as per rule 7 (2) the requisite criteria can be written test or interview or both. In similar manner in Rule 8(1) the criteria for promotion can be service record or interview or written test, or either of them, or any one of them, or all of them.

21. As per Rule 7(2) and as per Rule 8(2) the exact procedure to be followed out of three methodologies has to be decided by the Executive Committee. This Court put a pointed query to the counsel for the

respondent No.3 that whether any methodology has been set in place by the Executive Committee till date to which learned counsel for the respondent No.3 was unable to give any categorical answer.

22. The methodology for recruitment is two folds i.e. written test and interview or either of them or both. The said provision though gives liberty to the Executive Committee to device the procedure for recruitment but no resolution of the Executive Committee has been brought on record whereby the Executive Committee has taken decision to follow a particular method for direct recruitment. If the Executive Committee decides on different methodology for different recruitment it would only give rise to instances of bias and arbitrariness in the selection process. The Executive Committee may decide a particular method that which of the two or both of the two has to be followed and in what manner and what is the respective weightage of written test and interview. However, no general decision has been taken by the Executive Committee which would apply to all the recruitments. If the Executive Committee after advertising the post in each case and after accepting the applications, then devices the procedure for appointment, there cannot be a better example of arbitrariness in selection process.

23. Similarly in case of promotion also three methods are provided as per Clause 8(1) (अ) (ब) and (स) which are service record, interview and written test or either of them or all of them or some of them. In the case of promotion also the Executive Committee has not taken decision which should be a general decision for all cases of promotion to arrive at any specific methodology to carryout promotions which would apply in all cases, present or future. The Rule 8 as it stands, if allowed to operate differently in each different case of promotion would give a illegal leverage to the college management to change the procedure in each case of

promotion. Rules 7 & 8 are enabling provisions but in pursuance to said rules it was obligatory for the Executive Committee to have devised procedure for direct recruitment and promotion and which procedure would not change for each recruitment or for each promotion but would remain consistent for each recruitment and each promotion.

24. The respondents may be right in saying that as there is legal impediment in filling up the post by promotion therefore they have gone ahead with direct recruitment and restricted it to in-house candidates. However, if that was to be done then the same methodology was to be adopted which is to be adopted for promotion and if any different methodology apart from promotion is adopted then it would definitely give cause of prejudice to petitioner who is in line for promotion because even if in-house candidates only are considered for direct recruitment but in absence of following the same procedure which is followed for promotion, then the vested right of the petitioner to be considered for promotion would be frustrated and defeated. That vested right of consideration can be protected only when for carrying out in-house direct recruitment, the same procedure for assessment is followed which is to be followed in case of promotion.

25. The respondent No.3 till date having not carved out any definite procedure for promotion i.e. any definite procedure for assessment to promote the candidates, therefore, conversion of post of promotion to direct recruitment without following the procedure for promotion because even the procedure for promotion has not been devised till date, is a patently illegal exercise being undertaken by the respondent No.3. Without devising the procedure for promotion by Executive Committee which should be consistent for all future promotions in the college, the college having

converted the post of promotion to direct recruitment has committed illegality because in case of direct recruitment past service record is not the relevant consideration which should be the consideration in case of promotion. Therefore, this Court has no hesitation in holding that the impugned recruitment notice (Annexure P-1) suffers from illegality inasmuch as the said recruitment notice does not mention that the same criteria would be followed for in-house direct recruitment of candidates which would have been followed for promotion and secondly, till date no definite criteria for promotion and direct recruitment has been notified by the Executive Committee of the college. Therefore, the impugned recruitment notice (Annexure P-1) deserves to be and is hereby set aside with following directions:-

- (a) The impugned recruitment notice (Annexure P-1) stands set aside.
- (b) The respondent No.3 would first notify a definite procedure for assessment of candidates for promotion which should be disclosed to all the teachers. Separate procedure for direct recruitment shall also be devised and notified.
- (c) After devising such promotional criteria and procedure, the respondent No.3 would take a decision whether to convert the post of promotion into direct recruitment and if still there is a legal impediment, then the respondent No.3 would be at liberty to issue a fresh advertisement for in-house candidates. But in that advertisement which would be initially open only for in-house candidates, the same criteria would be followed which has been previously notified by the Executive Committee to be followed for all cases of promotion.

26. With the aforesaid directions, the petition is **allowed**.

nks

(VIVEK JAIN)
JUDGE