

**MADHYA PRADESH
PUBLIC SERVICE
COMMISSION**

IN THE HIGH COURT OF MADHYA PRADESH

WRIT PETITION NOS.2656/95 & 2184/98

D.D. 7.3.2002

THE HON'BLE MR. JUSTICE BHAWANI SINGH, CHIEF JUSTICE

THE HON'BLE MR. JUSTICE K.K.LAHOTI, JUDGE

Raj Kumar Tamrakar ... Petitioner

Vs.

State of Madhya Pradesh & Others ... Respondents

Examination – Debarment for producing forged certificate of Scheduled Tribe:

Petitioner belonging to Tamrakar sub tribe produced certificate claiming to belonging to Chhatri Scheduled Tribe – PSC debarred the petitioner from appearing future examinations for serious mis-conduct of filing forged ST certificate – The petitioner filed Writ Petitions for quashing the said order and declaration that Tamrakar as sub tribe of Chhatri tribe – Writ Petitions were dismissed following the Supreme Court decision in (2001) 1 SCC 4 holding that the Courts cannot and should not expand the jurisdiction to deal with the question as to whether a particular caste, sub-caste, a group or part of tribe or sub tribe is included in any one of the entries mentioned in the Presidential Orders issued under Articles 341 & 342.

The relevant observation of the Supreme Court in the above case is as under:

“3. A notification issued under clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under clause (4) of Article 342 only by Parliament by law and by no other authority.”

4. It is not open to State Governments or Courts or Tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342.”

Case Referred:

(2001) 1 SCC 4 – State of Maharashtra vs. Milind & Others

ORDER

Petitioner by these two petitions, has invoked the jurisdiction of this Court to decide the question

whether Tamrakar sub tribe is included in the list of Scheduled Tribes issued by the President of India in entry 20 of the list and for this purpose to make a reving and deep examination of the material and to declare that Tamrakar should be treated as Chhatri.

2 Writ Petition No.2656/1995 filed by petitioner Raj Kumar Tamrakar challenging the order of Madhya Pradesh State Public Service Commission, Indore, in which petitioner has been debarred from appearing in the future examination because of his serious misconduct of filing forged certificate of Scheduled Tribes. In this case, the petitioner has prayed that Tamrakar be declared as Chhatri Scheduled Tribe as notified by 1950 Order and he may be permitted to enjoy all the privileges and concessions available to member of Scheduled Tribe.

3. Writ Petition No.2184/1998 has been filed by the same petitioner in which order passed by Madhya Pradesh State Administrative Tribunal, Jabalpur in O.A.No.2428 of 1995 dated 5.9.1998 in which his termination order was challeged on the same ground that he being Tamrakar be declared as sub-tribe of Chhatri Tribe claiming that Chhatri is the genus of which Tamrakar is specie. The learned counsel for the petitioner submits that this Court should exercise its writ jurisdiction in the matter and after going through all the material and documents filed by the petitioner, the above said declaration as prayed by him be granted.

4. It is not in dispute that the Constitutional Schedule Tribe order Part-VIII-Madhya Pradesh in which Chhatri has been included in scheduled Tribe in Madhya Pradesh did not include Tamrakar sub-caste of Chhatri. Recently, the Apex Court has considered the powers of the Court for dealing with such matters. The Apex Court in the case of State of Maharashtra vs. Milind and others reported in (2001) 1 SCC 4 held:

“Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste, a group or part of tribe or sub-tribe is included in any one of the entries mentioned in the Presidential Orders issued under Articles 341 and 342.. ..

Allowing the State Governments or Courts or other authorities or Tribunals to hold inquiry as to whether a particular caste or tribe should be considered as one included in the schedule of the Presidential order when it is not so specifically included; may lead to problems. In order to gain advantage of reservations for the purpose of Article 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential orders issued under Articles 341 and 342. This apart, when no other authority other than Parliament, that too by law alone can amend

the Presidential Orders, neither the State Governments nor the Courts nor Tribunals nor any authority can assume jurisdiction to hold inquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one entry or the other, although they are not expressly and specifically included. A Court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342. It is not possible to hold that either any inquiry is permissible or any evidence can be let in in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included.

The Apex Court has further held:

1. It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the constitution (Scheduled Tribes) Order, 1950.
2. The Scheduled Tribe Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community or synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.
3. A notification issued under clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under clause (4) of Article 342 only by Parliament by law and by no other authority.
4. It is not open to State Governments or Courts or Tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342.”
5. With background aforesaid, this Court cannot exercise jurisdiction to declare that Tamrakar is a schedule tribe in entry 20 of Constitutional (Scheduled Tribes) Orders which reads as under:
20. Kavar, Kanwar, Kaur, Cherwa, Rathia, Tanwar, Chhatri
6. In view of this, both petitions are devoid of any substance and accordingly dismissed with no order as to costs.

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**WRIT PETITION NO.785/2000****D.D. 12.8.2002****HON'BLE SARVASHRI DEEPAK VERMA & HON'BLE MR. JUSTICE N.K.JAIN****State of M.P. & Anr. ... Petitioner**

Vs.

Dr.Sheetal Kumar Bandi & Others ... Respondents**Disciplinary Enquiry:**

Petitioner Professor of Surgery was convicted under Section 337 of the I.P.C. for being negligent in performing operation – He was subsequently released on probation of good conduct – In the disciplinary enquiry held on same set of facts he was removed from service mainly on the ground he was convicted in the criminal case – The petitioner challenged the same before the State Administrative Tribunal (SAT) – SAT quashed the order of dismissal on the ground that no show cause notice against the proposed penalty was given to the petitioner – The State Government challenged the said order by filing this Writ Petition – The High Court has dismissed the Writ Petition with costs.

Held:

Non-observance of legal requirement vitiates disciplinary enquiry. Although Article 311(2) of the Constitution confers on the Government, power to dismiss or remove a person from service on the ground of conduct which has led to his conviction on a criminal charge, that power like any other power has to be exercised fairly, justly and reasonably.

Cases referred:

1. AIR 1975 SC 2216 – Challappan
2. AIR 1985 SC 772 – Shankar Dass
3. AIR 1985 SC 1416 – Tulsiram
4. 2001 (2) Supreme Court Today 199 – Sunil Kumar

ORDER

This petition under Article 226/227 of the Constitution of India filed by the Petitioners – The State of Madhya Pradesh and the Dean. M.G.M. Medical College, Indore – is directed against the order dated 31.1.2000 passed by the Indore Bench of M.P. State Administrative Tribunal (for short, ‘the SAT’) quashing the order of removal of respondent No.1 – Dr. Sheetal Kumar Bandi, passed by the State Government on 28.9.1999.

2. Respondent – Dr. Bandi on the date of his removal was working on the post of Professor, Surgery (Paediatrics) in M.G.M. Medical College, Indore, a Government Institution. He, amongst others, was prosecuted on the charge under Section 377 of the Indian Penal Code, for being negligent in performing operation on a two years old healthy child mistaking him for another child was to be operated upon for Hernia. After trial he was convicted by the Magistrate for the said charge and sentenced to six months rigorous imprisonment with fine Rs.500/-. On appeal, the conviction was affirmed but the sentence of imprisonment was set aside leaving the sentence of fine unaltered, by Additional Sessions Judge, Indore, vide his judgment dated 10.5.1999 in Criminal Appeal No.175/1998. Following this conviction and taking recourse to Rule 19 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (for short ‘the State Rules’) and after consulting the State Public Service Commission, the State Government on 28.9.1999, imposed major penalty of removal on the respondent. The respondent challenged his removal before the SAT by filing an application (O.A.No. 1611/1999) which has been allowed and the impugned removal has been quashed with all consequential benefits to the respondent, vide order dated 31.1.2000 which is under challenge before this Court.

3. The SAT has quashed the order mainly on the ground that no opportunity of hearing was accorded to the respondent – employee to show cause against the proposed penalty which was imposed even when the Revision filed by the respondent against his conviction was pending before the High Court.

4. We have heard Shri Z.A.Khan, learned Additional Advocate General for the petitioner – State and Shri Amit Agrawal, learned counsel for the respondent – employee.

5. Shri Khan, learned A.A.G. has assailed the order of SAT as contrary to law. He submitted that after the 42nd Amendment of the Constitution, Article 311 as it stands after amendment, now no more required that any second opportunity of making representation at the stage of imposing

penalty should be given to the delinquent employee. Rule 19 of the State Rules, 1966 also did not postulate any such opportunity. It was further contended that the State Government was not obliged in law to wait for the result of the Criminal Revision filed by the respondent inasmuch as no stay was granted by the High Court in that Revision. He has placed reliance on a Supreme Court decision in *Tulsiram* (AIR 1985 SC 1461).

As against it, Shri Amit Agrawal, learned counsel for the respondent strongly defended the order of the SAT and submitted that notwithstanding the said amendment in Article 311 of the Constitution or of Rule 19 of the State Rules, it was still necessary to offer the respondent an opportunity of making representation on the penalty proposed to be imposed. He submitted that although clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government, power to dismiss or remove a person from service on the ground of conduct which has led to his conviction on a criminal charge, but that power like any other power has to be exercised fairly, justly and reasonably. The respondent was entitled to demonstrate to the Disciplinary Authority that the penalty of dismissal or removal was not warranted and it was wholly disproportionate to the charge for which he was convicted by the Court. Reliance is placed on Supreme Court decisions in *Shankar Dass* (AIR 1985 SC 772) and *Sunil Kumar* 2001 (2) Supreme Today 199.

6. Having heard learned counsel for the parties and given our anxious consideration to the rival contentions, we are of the considered view that this petition must fail.

7. Before we dwell upon the question regarding necessity of giving opportunity of hearing, it may be stated at the outset that we are told that in Revision decided during the pendency of this petition, the respondent has been released by this Court after due admonition U/S 3 of the Probation of Offenders Act. Court has noticed that though the respondent Doctor was guilty of not exercising the due care and caution, nevertheless, several other factors had contributed equally in performance of the said operation by him on a wrong person. While Section 12 of the Probation of Offenders Act is of no avail to the respondent employee, the facts and features of the case were very relevant and required to be taken into consideration before imposition of any penalty. It is apt here to refer certain observations made by the Apex Court in the case of *Shankar Dass* (supra). Chandrachud, CJ (as he then was), speaking for the Court in the very first paragraph of its judgment remarked:

“Cases which evoke sympathy come frequently before the Court. But pity not often. The case before us has a unique story to tell the story of a crime committed under the stress of personal misery compounded by the apathy of the Establishment.”

In that case the concerned employee was convicted U/S 409 of IPC and was released U/S 4 of the Probation of Offenders Act, 1958. As a result of his conviction he was dismissed from service. The apex court held: “But the right to impose a penalty carries with it the duty to act justly”. Considering the facts of this case, there can be no two opinions that penalty of dismissal from service imposed upon the appellant is whimsical.

8. In the instant case also non-observance of the legal requirement apart, the State Government did not seem to have acted justly and the penalty of removal imposed upon the appellant, in the facts and circumstances of the case, appeared arbitrary rather whimsical. It is rally a matter of pity that a person having put in boltless career as a Surgeon for nearly 34 years should, at the fag end of his career, be dealt with so shabbily for one time mistake of his life for which the Court itself has taken a lenient view and released him under provisions of the Probation of Offenders Act. The disciplinary Authority in the instant case, seems to have acted with a pre-determined mind.

9. Coming to the point involved in the case, the same stands resolved by a recent Supreme Court decision in Sunil Kumar (supra) wherein the apex court dealing with a similar situation with reference to Rule 19 of Central Civil Service (Classification, Control and Appeal) Rules, which is para-materia to Rule 19 of the State Rules, held:

“Rule 19 of the Central Rules which contemplates that if any penalty is imposed on a Government Servant on his conviction on a criminal charge, the Disciplinary Authority can make such order as it deems fit (dismissal from service is one such order contemplated under Rule 19) on initiating disciplinary proceedings and after giving the delinquent officer an opportunity of making a representation on the penalty proposed to be imposed. As a matter of fact, this type of disciplinary procedure is contemplated in the Constitution itself as could be seen in Article 311(2)(a). Rule 19 of the Central Rules is in conformity with the above provision of the Constitution. This, as we see, is a summary procedure provided to take disciplinary action against a Government Servant who is already convicted in a criminal proceedings.”

(emphasis supplied)

10. Shri Khan, learned Additional Advocate Genera strenuously urged that Rule 19 of the State Rules, unlike Rule 19 of the Central Rules does not provide for giving second opportunity of making representation at the stage of imposing penalty. He, thus, submitted that this Rule 19 read with proviso (2)(a) of Article 311 of the Constitution makes it clear that no such second opportunity is now required to be given to a delinquent official who has either been held guilty after enquiry or convicted on a criminal charge by some court. We are not persuaded by the argument. It is true that although Rule 19 of the State Rules does not in terms provide for any such second opportunity of making representation against the proposed penalty, as is available under the Rule 19 of the Central Rules, nevertheless, as held by the Supreme Court in Sunil Kumar (supra) this type of disciplinary procedure is contemplated in the Constitution itself as could be seen in Article 311(2)(a). So any State Rule has to be in conformity with the above provision of the Constitution. The Apex Court seems to have resiled from the earlier view expressed in Tulsiram (supra) and reverted back to the view taken in Challappan (AIR 1975 SC 2216). Relying on the decision in Challappan (supra), Division Bench of this Court in Tikaram (1978 J LJ 201), dealing with the same Rule 19 of the State Rules, held:

“Conviction on a criminal charge does not necessarily mean that the employee concerned should be removed or dismissed from service. The nature of penalty will naturally depend upon the gravity of the offence for which the employee is convicted. It is, therefore, necessary for the disciplinary authority to decide even in such case, whether in the acts and circumstances of a particular case, what penalty, if at all, should be imposed on the delinquent employee, in determining this question, delinquent employee should be noticed to put forward his point of view and the circumstances of the case, why no penalty or a lesser penalty should be imposed on him.

Although decision in Chellappan (supra) was over ruled in Tulsiram, however, the apex court, as already pointed out, in Sunil Kumar (supra) has reaffirmed the view taken in Chellappan. This Court’s decision in Tikaram (supra) would also therefore, hold ground.

11. A bare reading of Rule 19 of the State Rules in the context of the proviso (2)(a) of Article 311, will make it abundantly clear that these provisions are merely enabling and do not enjoin the disciplinary authority to impose the extreme penalty of dismissal or removal in every case of conviction, say for trivial offences or technical offences not involving ‘moral turpitude’. Principle

of natural justice and fair play, therefore, required that the authority concerned should apply its mind to the facts and circumstances of a particular case so as to decide what penalty, if at all, is required to be imposed on the delinquent employee and in order to determine this question, the delinquent employee should also be heard and his view point should be taken into consideration. Even in the case of Tulsiram (supra), relied upon heavily by the learned Additional Advocate General, their Lordships cautioned : The Disciplinary Authorities are expected to act justly and fairly after taking into account all the facts and circumstances of the case and if they act arbitrarily and impose a penalty which is unduly excessive, capricious or vindictive, it can be set aside.....”

12. In Shankar Dass (supra), the apex court lamented “despite observations of the learned Magistrate the Government chose to dismiss the appellant in a huff without applying its mind to the penalty which could appropriately be impose upon him in so far as his service career was concerned But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no parking area should be dismissed from service”. In the instant case also, the authorities concerned do not seem to have considered the facts and circumstances of the case which led to the conviction of the respondent – employee and instead acted with a pre-determined mind while imposing the penalty of removal. So, even if the respondent may not be held entitled to be heard on the question of penalty then also his removal was liable to be set aside as the penalty of removal from service imposed upon him is whimsical.

13. For what we have said above, this petition must fail and is dismissed with costs. Counsel’s fee Rs.5,000/-, if certified.

HIGH COURT OF MADHYA PRADESH : JABALPUR**WRIT PETITION NO.14562 OF 2003****D.D. 26.7.2004****HON'BLE SHRI JUSTICE A.K.SHRIVASTAVA****Dr.(Smt.) Aditi Dixit ... Petitioner**

Vs.

State of M.P. & Others ... Respondents**Eligibility:**

Petitioner a candidate for the post of Assistant Veterinary Surgeon – Qualification prescribed as per the advertisement – Degree of B.V.Sc. & A.H. should have registered in the State Veterinary Council – The petitioner produced two provisional registration certificates – One had expired before the cutoff date and the other issued after the cutoff date - Hence, the petitioner was not considered for the post.

Held:

The Court cannot relax the eligibility of a candidate if he/she does not satisfy the requisite eligibility on the cutoff date.

Cases referred:

1. (1990) 3 SCC 157 – N.T.Devin Katti & Ors. Vs. Karnataka Public Service Commission & Others
2. 1990 (4) SLR 237 – Distt. Collector & Chairman, Vizianagaram & Anr. Vs. M.Tripura Sundari Devi

ORDER

This petition was originally filed before the M.P. State Administrative Tribunal at Jabalpur and was registered as O.A.No.204/2000, however, after abolition of the said Tribunal, this Court has received this petition.

2. By this petition, the petitioner has sought for quashment of impugned condition No.8 which,

according to her, has been superimposed for the first time in the interview call letter (Annexure-A/1), as illegal and arbitrary. It has been further prayed that respondent No.2 be directed to consider the candidature of the petitioner for the post of Assistant Veterinary Surgeon as per advertisement (Annexure-A/2) published and to declare her result in accordance with law.

3. In brief the case of the petitioner is that State Government, Department of Veterinary Science, advertised 260 posts for recruitment of Veterinary Assistant Surgeon. The entire selection process was to be conducted by State Public Service Commission (respondent No.2). Respondent No.3, State Veterinary Council is the Council authorised and responsible for registration of the Veterinary Graduate of the entire State. According to the petitioner, she had completed her B.V.Sc. & A.H. degree and underwent her internship programme. The State Government through its advertisement dated 29.4.1999 (Annexure-A/2) advertised to recruit 260 of Veterinary Assistant Surgeon. In the advertisement the essential qualification for recruitment is that a candidate should be possessed degree of B.V.Sc. & A.H. from recognised Institution or University. It has been specifically mentioned in the advertisement that the candidates not registered by State Veterinary Council (respondent No.3) on the last date of the application would not be considered by the State Public Service Commission. The last date of receipt of application in the advertisement has been mentioned as 10 June 1999.

4. The petitioner submitted her application for consideration of her candidature along with the provisional registration certificate issued by State Veterinary Council (respondent No.3) under Section 32 of the Veterinary Council of India Act, 1984. According to the petitioner, she had passed her Bachelor of Veterinary Science & animal Husbandry graduate course. Annexure-A/10 is the certificate issued on 21st October 1997 by the Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur. Thus, according to the petitioner, she was fully qualified to submit the application for recruitment on the post of Assistant Surgeon. It has been set forth in the petition that when the petitioner received interview call letter dated 17.12.1999 (Annexure-A/1) impugned condition No.8 has been superimposed for the first time that her candidature shall be considered only when she had permanent registration of State Veterinary Council which should exist on the cut-off date. According to the petitioner, since she qualified all the eligibility published in the advertisement, therefore, imposing of impugned condition in the interview call letter of possessing permanent registration issued by State Veterinary Council should be struck down, being illegal

and arbitrary and M.P. Public Service Commission (respondent No.2) should consider the candidature of the petitioner for the post of Assistant Veterinary Surgeon and to declare her result.

5. All the respondents have filed their separate return. In the return, the case which has been set forth by the respondents is that the petitioner was not qualified and was not eligible for the recruitment because she was not possessing the requisite certificate issued by State Veterinary Council (respondent No.3) on the cut-off date i.e. 10.6.1999 and, therefore, there is no merit in this petition and the same be dismissed.

6. I have heard Shri Mrigendra Singh and Shri Arpan Pawar, learned Counsel for the petitioner and Shri V.P.Nema, Govt. Advocate for respondent No.1 and Shri Hemant Shrivastava, learned counsel for respondent No.2. Having heard learned counsel for the parties, I am of the view that this petition deserves to be dismissed.

7. The petitioner could get any relief in this petition only if she fulfils the eligibility criteria and qualifications emphasised in the advertisement (Annexure-A/2). On bare perusal of the said advertisement it transpires that two conditions should be fulfilled by the candidate applying for the recruitment of the said post. The first condition is that he should be a Graduate in Veterinary Science and Animal Husbandry and the second condition is that he should possess the certificate of registration issued by respondent No.3 i.e. State Veterinary Council on the cut-off date (10.6.1999). No doubt the petitioner did possess the first qualification i.e. she is a Bachelor in Veterinary Science and Animal Husbandry as it is clear from Annexure-A/10 which is a certificate of the petitioner issued by Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur on 21 June, 1997 declaring her to be a Bachelor of Veterinary Science and Animal Husbandry. However, the second qualification of having registration certificate issued by respondent No.3 on the cut-off date is lacking. It has been contended by learned counsel for the petitioner that twice provisional certificate of registration was issued by State Veterinary Council (respondent No.3) to petitioner and they are Annexure-A/3 and Annexure-A/4 dated 16.4.1998 and 25.6.1999 respectively. It be seen that except these two provisional registration certificates the petitioner has not annexed any other certificate nor there is any pleading to that effect in her petition that apart from these two provisional certificates any other provisional certificate of registration has been issued to her.

8. It has been contended by Shri Hemant Shrivastava and Sri Nema, learned counsel appearing for the respondents that the degree in Veterinary Science & Animal Husbandry is a five years' degree course plus six months internship and on successful completion internship the degree in Veterinary Science known as Bachelor of Veterinary Science and Animal Husbandry is awarded. The Parliament has enacted the Indian Veterinary Council Act 1984 and in pursuance to the said Act in exercise of powers conferred by Sub-section (1) of Section 22 read with clause (b) of sub-section (1) of Section 21 of the said Act, Regulations 1993 are framed and they are known as Veterinary Council of India (Minimum Standards of Veterinary Education) Degree course (B.V.Sc.& A.H.) Regulations 1993 (hereinafter referred to as 'the Regulations'). It has been contended by learned counsel for the respondents that the Regulations prescribed the course of study, the procedure to be adopted and the Veterinary Curriculum in part V of the said Regulations, Regulation 7(2) speaks about internship. According to this provision a candidate who had passed B.V.Sc.& A.H. course has to undergo rotating internship to the satisfaction of the University for a minimum period of six months so as to become entitlement of full registration. According to clause 7(2)(ii), a candidate is required after passing the final B.V.Sc. and A.H. examination to undergo compulsory rotating internship to the satisfaction of the University for a minimum period of six months so as to be eligible for the award of degree of B.V.Sc. & A.H. and full registration. According to clause 7(2)(iv), the State Veterinary Council will grant provisional registration to the candidates who are undergoing internship on being presented by them provisional B.V.Sc. & A.H. course completion certificate. According to this clause, the provisional registration will be for a minimum period of six months and even on the shortage of attendance or unsatisfactory work, the period of the compulsory rotating internship shall not be extended for more than two months by the appropriate authority. For the ready reference it would be condign to re-write the said provision:

“7(2) Internship

(i) All parts of the internship shall be done as far as possible in Veterinary institution in India. In case of any difficulties, the matter may be referred to Veterinary Council of India to be considered on individual merit.

(ii) Every candidate will be required after passing the final B.V.Sc. & A.H. examination to undergo compulsory rotating internship to the satisfaction of the University for a minimum period of six months so as to be eligible for the award

of the degree of B.V.Sc. & A.H. and full registration.

(iii) The University shall issue a provisional course completion certificate on passing the final examination.

(iv) The State Veterinary Council/Veterinary Council of India will grant provisional registration to the candidate on production of the provisional B.V.Sc. & A.H. course completion certificate. The provisional registration will be for a minimum period of six months. In the event of shortage of attendance or unsatisfactory work, the period of the compulsory rotating internship shall not be extended for more than two months by the appropriate authority.”

(v) ———

(vi) ———

(vii) ———

(viii) ———

On going through the aforesaid provisions, I have no scintilla of doubt that on the cut-off date i.e. 10.6.1999 the petitioner was not having registration certificate issued by respondent No.3. The petitioner submitted two provisional certificates issued by respondent No.3 and they are dated 16.4.1998 and 25.6.1999 (Annexure-A/3 and Annexure-A/4 respectively). The period of provisional certificate issued on 16.4.1998 comes to an end after the expiration of six months i.e., on 15.10.1998 as per provisions of clause 7(2)(iv) of the Regulations. Another provisional certificate issued by respondent No.3 dated 25.6.1999 (Annexure-A/4) carries no meaning for the simple reason that it has been issued after the expiry of cut-off date (10.6.1999). Thus, on the last date of receipt of the application, the petitioner was not having any registration certificate issued by respondent No.3 which is cardinal and prerequisite condition for the recruitment as per advertisement Annexure-A/2.

9. The regulations are having force of law since they are framed under Section 22 of the said Act. According to the Regulations the provisional certificate issued by State Veterinary Council shall be for six months only. For the entitlement of degree of B.V.Sc. & A.H. and full registration, a candidate has to undergo internship and the period of provisional certificate issued by State Veterinary Council shall be only for six months and, therefore, provisional certificates of petitioner dated 16.4.1998 and 25.6.1999 would not help her in order to validate her candidature for the

recruitment on the said post. On bare perusal of Annexure-A/3 which is a provisional certificate issued by respondent No.3 to the petitioner on 16.4.1998, it is revealed that the same has been cancelled as it appears from bare perusal of the said certificate. The word “Nirast” (cancelled) has been written on the said certificate and, thus, the said certificate did not remain in existence and the other certificate Annexure-A/4 dated 25.6.1999 has been issued after the cut-off date i.e. after 10.6.1999 and, therefore, it is of no any use to the petitioner so far as her recruitment as per the demand of advertisement Annexure-A/2 is concerned.

10. Since the petitioner was not having requisite qualification on the last date of receipt of the application form, her candidature cannot be considered. It is the cardinal principle of law in regard to selection and appointment that the qualification of a candidate must be considered on the date when the case of the candidate is considered. When qualifications for appointment to a post in a particular cadre are prescribed, the same has to be satisfied before a person can be considered for appointment. In that regard it would be apposite to place reliance on the decision of the Apex Court in the case of *R.Prabha Devi and Others Vs. Government of India and others*, AIR 1988 SC 902.

11. In the case of *Distt. Collector & Chairman, Vizianagaram and another Vs. M.Tripura Sundari Devi*, 1990 (4) SLR 237, the Apex Court laid down the law in regard to the eligibility of a candidate for appointment and it would be relevant to re-write para-6 of the said decision which reads thus:

“6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard the same, it is not a matter only between the appointing authority and the appointees concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint person with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.”

In another case *State of Rajasthan Vs. Hitender Kumar Bhatt*, AIR 1998 SC 91, it was held by

the Apex Court that for the purpose of selection a candidate should be eligible for consideration and if/she does not qualify the eligibility and despite he was continued in service on account of interim orders, his case was not required to be considered. I think it proper to re-write para-6 of the said decision of the Apex Court thus:

“6. Looking to the clear terms of the advertisement which we have referred to above, the respondent was not eligible for consideration. It is submitted by the respondent before us that since he has been continued and has now been confirmed we should not disturb his appointment. He has requested that his case should be considered sympathetically. The fact, however, remain that the appellants have taken the correct stand right from the beginning. The respondent’s application was not considered and he was not called for an interview. It was on accounts of interim orders which were obtained by the respondent that he was given appointment and continued. He was aware that his appointment was subject to the outcome of his petition. One cannot, therefore, take to sympathetic view of the situation in which the respondent finds himself. A cut-off date by which all the requirements relating to qualifications have to be met, cannot be ignored in an individual case. There may be other persons who would have applied had they known that the date of acquiring qualifications was flexible. They may not have applied because they did not possess the requisite qualification on the prescribed date. Relaxing the prescribed requirements in the case of one individual may, therefore, cause injustice to others.”

The Apex Court specifically held that merely because a candidate was allowed to appear in the interview and later on he joined his service and even confirmed by the interim order, since the candidate does not qualify the eligibility, no sympathetic view is to be accorded to him. The High Court by adopting sympathetic view ignored the eligibility criteria and directed the said person to continue in service, in that situation the Apex Court not only deprecated that type of practice but also set aside the order of the High Court. Thus, if the ratio-decidenti of the case of *Hitendra Kumar (supra)* is applied on the realm of the present case, according to me, the Court cannot relax the eligibility of a candidate and if he/she does not qualify the requisite eligibility on the cut-off date his/her candidature cannot be considered for selection. The view of this Court is that Articles 14 and 16 of the Constitution of India cannot be stretched up to the extent so as to include those candidates who do not qualify the requisite eligibility for selection.

12. On the basis of the above said pronouncement of the case-laws of the Apex Court, I do not find any merit in the case of the petitioner since she does not qualify the eligibility in accordance to the terms of advertisement (Annexure-A/2) as on the cut-off date i.e. on 10.6.1999, she was not possessing the requisite certificate issued by State Veterinary Council. Learned Counsel for the petitioner, by placing reliance on the decision of the Apex Court in the case of N.T.Devin Katti and others Vs. Karnataka Public Service Commission and others, (1990) 3 SCC 157, has argued that the petitioner is having right to be considered as on the date of the application she was qualified in accordance with existing rules and in terms of advertisement. So far as the proposition of law laid down in the case of N.T.Devin Katti (supra) is concerned, there is no quarrel. Indeed this case is in favour of respondents and does not help the petitioner. In this decision also it has been held by Their Lordships of the Apex Court that a right of a person applying for appointment is to be considered in accordance with the existing rules or conditions in terms of advertisement inviting the application and if the candidate fulfils the requirement he acquires a vested right to be considered for selection. In the present case, as discussed hereinabove, since the petitioner does not qualify the requisite eligibility, she had no case and the case of N.T.Devin Katti and others (supra) do not help her.

12. In the result, the petition is found to be devoid of any substance and the same is hereby dismissed without any order as to costs.

HIGH COURT OF MADHYA PRADESH**WRIT PETITION NO.643/1999****D.D. 26.8.2002****HON'BLE MR.JUSTICE DEEPAK VERMA & HON'BLEMR. JUSTICE N.K.JAIN****Kum.Priti Sharma ... Petitioner**

Vs.

State of M.P. & Others ... Respondents**Examination – Fixing of minimum marks in each subject in the Written Examination:**

Petitioner was a candidate for the post of Assistant Professor in Government Colleges in various subjects – Candidates were to be called for interview on the basis of total marks obtained by the candidates in the written examination in the ratio of 1:3 – P.S.C. passed resolution after the written examination that a candidate eligible for being called for interview should obtain minimum of 33% in each subject in the written examination – As the petitioner did not obtain the minimum marks in General Knowledge she was not called for interview – Therefore, the petitioner challenged the said action of P.S.C. – The High Court upheld the contention of P.S.C. that in conduct of examination for appointments to the services of the State and laying down of criterion of securing minimum percentage of marks in each subject, was a process of selection and could not be termed as arbitrary or violative of any fundamental right and dismissed the petition.

Held:

That the resolution in question fixing the minimum marks in each subject of the written examination was a process of selection. There being nothing unreasonable to expect a candidate to secure at least minimum marks of 33% in each subject and the resolution was applicable uniformly to all the candidates and as such there was no question of discrimination or arbitrariness.

Cases referred:

1. AIR 1989 SC 134 – The case of Dr. M.C.Bindal
2. AIR 1995 SC 77 – M.P. Public Service Commission Vs. Navnit Kumar

ORDER

By this petition under Article 226/227 of the Constitution of India, petitioner Ku. Priti Sharma calls in question the Order dated 5.5.1999 rendered by M.P. State Administrative Tribunal, Indore Bench, Indore (for short, 'the SAT'), in Original Application No.1008/1995, dismissing petitioner's application seeking direction to the M.P. Public Service Commission – respondent No.2 herein – to call her for interview for selection to the post of Assistant Professor in Government Colleges in English subject.

2. Petitioner was one of the candidates who had appeared in the written examination conducted by respondent No.2 for selection of candidates for appointment to the posts of Assistant Professors in Government Colleges in various subjects. As per Advertisement (vide Annexure P/6), the candidates were to be called for interview on the basis of total marks obtained by the candidates in written examination. Three candidates were to be called for interview as against one post and final selection was to be made on the basis of aggregate marks obtained in written examination and the interview. However, after holding of written examination, the respondent – Commission on 19.8.1991, passed a Resolution providing that a candidate eligible for being called for interview has to obtain minimum 33 percent marks in each subject in the written examination. Admittedly, the petitioner herein did not obtain the minimum marks in one of the subjects i.e., General Knowledge. She was, therefore, not called for interview.

3. The petitioner has challenged the aforesaid Resolution as arbitrary and violative of her fundamental rights as guaranteed by Articles 14 and 16 of the Constitution. It was contended that no term or condition in addition to those provided in the Advertisement could be introduced after holding of written examination to the prejudice of any candidate. It was pointed out by the petitioner that she had obtained much more marks in aggregate than the candidates who were called for interview and finally selected. She, thus, prayed before the Tribunal that the said Resolution be quashed and the Commission be directed to call her for interview and if found fit, to appoint her on to the post of Assistant Professor in English subject.

4. The application of the petitioner was resisted by the respondents and it was contended that the Public service Commission by virtue of _____ conferred by Article 320 of the Constitution, was

entitled to lay down such terms and conditions found necessary in conduction of examination for appointments to the services of the State and laying down of criteria of securing minimum percentage of marks in each subject, was a process of selection and could not be termed arbitrary much less violative of any fundamental right of the petitioner candidate.

5. The Tribunal upheld the contentions of the respondents and dismissed the application of the petitioner who has, therefore, approached this Court under Article 227 of the Constitution.

6. We have heard Shri D.M.Kulkarni, learned counsel for the petitioner, Shri Mukati, GA for respondent No.1 – State and Shri V.P.Khare, learned counsel for respondent No.2 – Commission. Learned Counsel for the parties have reiterated the contentions already referred to above. We have given our anxious consideration to the rival contentions and we are of the considered view that this petition must fail.

7. The moot question requiring determination is whether the Commission could after holding of written examination, lay down the criteria of obtaining minimum marks in each subject before a candidate could be called for interview, particularly when no such condition was prescribed in the Advertisement. The obvious answer is : YES. The resolution in question in our opinion was a process of selection which the Commission has to undertake by virtue of Article 320. It is true that the eligibility for being called for interview was to be fixed on the basis of total marks obtained by a candidate in the written examination, but there was nothing unreasonable to expect a candidate to secure at least minimum passing marks (33 percent) in each subject in which he had appeared for written examination. The said Resolution was applicable uniformly to all the candidates appearing in the written examination. So, there was no question of discrimination.

8. Dealing with a similar situation, the Supreme Court in *M.P. Public Service Commission Vs. Navnit Kumar* (AIR 1995 SC 77) in the matter of selection of candidates for the posts of presiding officers of the Labour Courts, where the Public Service Commission after inviting application and in the process of short-listing of candidates, took a decision to call for interview only such candidates who had completed seven and half years of practice instead of five years of practice as required under the Law and provided in the Advertisement, held that raising the period of five

years to seven and half years practice, for the purpose of calling the candidates for interview, did not amount to changing the statutory criteria by an administrative decision. The Apex Court observed : “In any case this fixing of limit at seven and half years instead of five years of the practice for the purpose of calling for interview cannot be said to be irrational, arbitrary having no nexus with the object to select the best amongst the applicants”.

9. In the instant case, what the Commission expected a candidate to secure minimum passing marks in each subject of the written examination. The criteria so prescribed cannot be termed as irrational or arbitrary. When a person is required to appear in written examination, before he is called for interview, not only he should secure such total marks necessary to put him in the consideration zone, but should also secure minimum passing marks in each subject.

10. Shri Kulkarni, learned counsel for petitioner strenuously submitted that petitioner was a candidate for appointment as Assistant Professor in English subject and so her eligibility should have been considered with reference to her marks obtained in that subject alone. He has placed reliance on a Supreme Court decision in the case of Dr. M.C.Bindal (AIR 1989 SC 134). We are not persuaded by the arguments which is rather falicious. When more than one subjects were prescribed in the written examination the minimum expected of a candidate was that he should obtain passing marks in each subject besides obtaining the requisite aggregate marks. In our opinion, this requirement was implicit even in the advertisement and the subsequent Resolution dated 19.8.1991 only applied the omission. The decision in Dr.M.C.Bindal (supra), has absolutely no bearing in the facts and circumstances of the present case. It dealt with altogether a different subject holding that the Public Service Commission was entitled under Article 320 of the Constitution to recall its recommendation made to the Government for appointment of candidates.

11. For what we have said above, this petition fails and is dismissed but without any order as to costs.

**IN THE HON'BLE HIGH COURT OF JUDICATURE
JABALPUR BENCH AT GWALIOR
ORIGINAL APPLICATION NO.829/1994
D.D. 12.10.2004
HON'BLE MR. JUSTICE RAJENDRA MENON**

Sanjay Kumar Poranik ... Petitioner

Vs.

State of M.P. & Ors. ... Respondents

Recruitment – Educational Qualification:

The petitioner who is M.A., Ph.D. in Social Work was called for interview by P.S.C. to the post of Deputy Director/Chief programmer - Subsequently, interview letter was cancelled on the ground that M.A. in Social Work possessed by the petitioner is not equivalent to the qualification prescribed for the post namely P.G. in Sociology on the basis of the letter dated 28.7.1994 issued by Devi Ahilaya University from where the petitioner obtained M.A. Social Work –This petition challenging the same was dismissed.

Held:

As the petitioner did not possess the essential qualification prescribed in the advertisement no illegality was committed by the P.S.C. in cancelling the interview letter.

ORDER

Petitioner has filed this petition being aggrieved by cancelling the call letter issued to him by the Public Service Commission for appointment to the post of Deputy Director/Chief Programmer by the State Government. It is the case of the petitioner that he has passed M.A., Social Work from Devi Ahilaya University, Indore in the year 1986. He has also acquired Ph.D., qualification and in pursuance to an advertisement issued for appointment to the post of Deputy Director/Chief Programmer, he submitted an application. His application was scrutinized and on being found eligible he was issued with an interview letter vide Annexure A/4 asking him to appear in the interview to be held on 13.12.1993. But subsequently, the same was telegraphically cancelled vide Annexure A/5 on the ground that he is not qualified.

On notice being issued, respondents have filed reply and in the reply filed by the Madhya Pradesh Public Service Commission, it has been indicated that the minimum qualification required for appointment to the post is Post Graduate in Sociology whereas the petitioner has a Post Graduate degree in Social Work. The letter, Annexure R/2 dated 23.7.1994 issued by the Additional Registrar, Devi Ahilaya University, Indore is filed to show that the Post Graduate in Sociology and Post Graduate in Social Work are two different subjects. Accordingly, it is the case of the respondents that petitioner does not fulfill the requisite minimum qualification required for selection, and therefore, the interview letter issued to him was cancelled.

Considering the aforesaid reply submitted by the respondent No.2, it is clear that petitioner was not having the essential qualification prescribed in the advertisement no illegality has been committed by the respondents in cancelling the interview letter issued to the petitioner.

Accordingly, finding no ground to interfere in the petition, the same is dismissed without any order as to cost.

ORDER

As common questions are involved in all the three petitions being W.P.No.1817/2004, W.P.No.1838/2004 and W.P.No.2038/2004 they are being disposed of by this common order.

Petitioners in all these cases feel aggrieved by action of the Madhya Pradesh Public Service Commission in rejecting these applications submitted by the petitioners for considering their candidature for appointment to the post of Asstt. Professors (History). Facts which are not in dispute are that all the petitioners are Post Graduates in the subject of Ancient History, Cultural and Archaeology and in pursuance to an advertisement published by the M.P. Public Service Commissions 10.7.2003 Annexure P/11, they applied for seeking appointment to the post of Asstt. Professors in the subject of History against advertisement vide column No.11 of the aforesaid advertisement.

The grievance of the petitioners are that even though they are qualified having the requisite Post Graduate qualification in the subject of Ancient History, Cultural and Archaeology. By the impugned order dated 5th August, 2004 the Madhya Pradesh Public Service Commission has rejected their applications on the ground that they do not possess the requisite qualifications. Inviting my attention to the advertisement in question so also the requirement prescribed therein it was submitted by learned counsel appearing for the petitioners that the education qualification was graduate in subject with 50% so also post graduate with 55% marks and other conditions as stipulated by the U.G.C. Petitioners are post graduate in the subject of Ancient Indian History, Culture and Archaeology and having obtained more than 55% marks in the post graduate examination, are eligible for appointment to the said post. Accordingly, it is the case of the petitioners that their candidature has been illegal rejected.

Shri R.D.Jain, Senior Advocate appearing for respondent No.2 has refuted the aforesaid and by filing a detailed reply along with various documents has contended that the minimum qualifications required was post graduate in the subject of History and not a post graduate in the subject of Ancient Indian History, Culture and Archaeology. Bringing on record various documents mainly the circular issued by the State Government vide Annexure R/2 dated 30.6.2004 so also the syllabus for the subjects in question issued by the Jiwaji University, Gwalior, Shri R.D.Jain,

Senior Advocate learned counsel emphasised that the syllabus and course in both these post graduate subject i.e., History and Ancient Indian History, with and Archeology are different. It was pointed out by Shri Jain, that subjects and topics in Ancient Indian History Culture and Archeology, the semester and the periods for various subjects i.e. the Historical period taught are different. In that view of the matter, it was submitted by him that petitioners were not eligible for applying. Bringing on record the advertisement issued in the year 1990 vide Annexure R/4 it was submitted by Shri Jain that Asstt. Professor in History and Asstt. Professor in Ancient History are two different subjects and in the present case as appointment is to be post of Asstt. Professor in History. Petitioners do not fulfill the requisite qualifications. Placing reliance on the judgment of Supreme Court 1998 (3) S.C.C. 391 and 1998 (8) S.C.C. 399, it was submitted by Shri R.D.Jain, Senior Advocate, learned counsel that once the qualification prescribed is not fulfilled by the candidates concerned, this court cannot direct for consideration their cases. It is argued by learned counsel for the petitioner that the subject are different, the courses prescribed for the study are different, semester is different and the topic and Historical periods of study in each subjects is different and the in that view of the matter the Commission has not committed any error in rejecting the candidature of the petitioners and no relief can be granted to the petitioners in these petitions.

Having heard learned counsel for the parties and on considering the material available on record, I find no ground to interfere in the matter.

Admittedly, the advertisement issued was for appointment to the post of Asstt. Professor in History and from the informations furnished by the State Government as contained in Annexure R/2 dated 30.6.2004 so also on considering the information issued by Jiwaji University, Gwalior vide Annexure R/3, it is seen that a candidate who is post graduate in Ancient Indian History, Culture and Archeology has to study various subjects consisting of 18 papers in four semesters. In this course the subjects indicated included Political History (600 B.C. to Satavahanas) Political History of India (Kushanas to 647 A.D.) likewise various other subjects are given in the semester and subjects prescribed in this course and if the same is compared with the subjects prescribed for post of graduate study in History, it is seen that semester are entirely different subject and topics of study and the Historical periods are also different. In fact the subject in both these

course are entirely different and it cannot be said that the course are identical and therefore, the basic qualification for appointment to the post is fulfilled. A perusal of the details furnished by Shri R.D.Jain, Senior Adocate along with return, so also advertisement Annexure R/4 dated 27.9.1990 clearly indicates that the post of Asst. Professor in History and Asstt. Professor in Ancient History with Culture and Archeology are different and the qualification acquired by the petitioners i.e. M.A. Ancient History with Culture and Archeology is a different course and is not the prescribed minimum qualification for appointment to the post of Asstt. Professor in History. As submitted by Shri R.D.Jain, senior Advocate prescribing minimum qualification and the requirement for a particular post is determined by the expert bodies and the same is done by the competent authorities on the basis of the evaluation and requirements for discharging duties in a particular post. This is purely within the domain of an expert authority and courts cannot step into the shoes of such expert authority and substitute their decision with that of it own, until and un3rt rt oceounaid that thr decisio ocvoriaittedeibincontratroy yot atitstorrulhoesrne

HIGH COURT OF MADHYA PRADESH : JABALPUR**WRIT PETITION NO.9091 OF 2003****(O.A. NO.2433 OF 1994)****D.D. 2.12.2004****HON'BLE MR. JUSTICE A.K.SHRIVASTAVA****Onkar Nath Pandey & Anr. ... Petitioner****Vs.****The State of M.P. & 5 Others ... Respondents****Appointment – Irregularities in Selection Process:**

The petitioners who were unsuccessful in the selection to the recruitment to the post of Principal in Higher Secondary School, have challenged the selection and appointment of private respondents on the ground that they do not possess the prescribed qualification and experience – The selected candidates were found to possess the prescribed qualification and experience – Hence petitions dismissed.

Held:

Since all the petitioners were well aware that what were the criteria of selection and after going through the advertisement they participated in the selection process and if on scrutiny they were not selected, they are estopped from challenging selection process.

Cases referred:

1. (1996) 9 SCC 309 – State of U.P. Vs. Harish Chandra & Others
2. (1997) 4 SCC 426 – University of Cochin Vs. N.S.Kanjoonjamma
3. AIR 1998 SC 375 – Government of Orissa Vs. Haraprasad Das
4. (2001) 10 SCC 237 - Sri Kant Tripathi Vs. State of U.P.
5. AIR 2001 SC 2196 – Union of India Vs. Tarun K.Singh

ORDER

In these four petitions since common question is involved, therefore, they are being decided by this common order.

(2) The petitioners have challenged the selection and appointment of private respondents on the post of Principal, Higher Secondary School. According to them selection and appointments were not accorded in terms of the advertisement (Annexure P/1), for convenience, annexures which are referred in W.P.No.9091 of 2003 are being considered for the disposal of these petitions. The State of Madhya Pradesh in order to recruit 150 posts of Principal in High Secondary Schools published an advertisement (Annexure-P/1). In this advertisement certain conditions for selection and appointment were made and inter alia two conditions were that a candidate should be a Teacher/Lecturer having five years teaching experience in High Secondary School and another was that a candidate, who is holding a Green Card shall be given two years relaxation of the age. According to petitioners since private respondents were not possessing qualification of five years experience as Lecturer/Teacher in Higher Secondary School, therefore, their selection and appointment are in contravention to the advertisement. It has also been printed out that one of the respondent in place of giving two years age relaxation, as he was holding Green Card, benefit of five marks was given to him which is contrary to the advertisement, and therefore, the selection and appointment are contrary to the advertisement. It has been prayed by the petitioners that these petitions be allowed and the appointment of respondents be cancelled and petitioners may be appointed on the post of Principal.

(3) In order to substantiate the submissions my attention has been invited to a document which is enquiry report dated 31.5.2000 given by the Committee duly constituted under the instructions of the Government. It be seen that on 11th August, 1994 select list was issued and on 13.10.1994 appointment orders were issued and these petitions were filed in the month of September, 1994 and July 1995.

(4) Shri A.P.Shrotri learned counsel appearing for State of Madhya Pradesh has submitted that there was a complaint in regard to selection and appointment and therefore an enquiry was made by a Committee constituted by the Government and at the first instance. appointment of 17 persons were found to be doubtful. Later on, on detailed scrutiny of the case out of the 17 persons, four persons were found eligible for appointment and their appointments were otherwise also found to be correct and out of remaining 13 persons, it was found that two persons, namely, Ram Prasad Gupta and Shivswaroop Pateria were not meeting experience criteria as they did not have 5 years teaching experience in Higher Secondary School. Before any action could be taken

against these two persons, namely, Ram Prasad Gupta and Shivswaroop Pateria, one of them namely Ram Prasad Gupta approached the M.P. State Administrative Tribunal by filing an application bearing O.A.No.3835 of 2001 in which on 21.11.2001 interim relief was granted and the respondents were directed to maintain status quo. According to learned counsel on account of the stay order passed by the Tribunal, enquiry could not be proceeded further, in regard to Ram Prasad Gupta and Shivswaroop Pateria. It has further been contended in the return that the cases of remaining 11 persons are still under investigation. It has also been pleaded that the enquiry officer has already been appointed to carry on the spot verification and appropriate decision in respect to those persons would be taken on receipt of the enquiry report. According to Shri Shrotri return which has been filed in W.P.No.9746/2003 respondents of that petition No.5, 6, 3, 9, 11, 12 and 13 were found to be rightly appointed whereas appointment of respondent No.3 Ramprasad Gupta has been found to be illegal and, therefore, action was initiated against him. So far as respondents 4, 7 and 10 are concerned, their cases have been sent for spot verification and, therefore, today nothing can be said about validity of their appointment. For respondent No.6 it is said that after enquiry his appointment was found to be legal as he was found to be eligible for appointment.

(5) Shri Shrotri, learned counsel appearing for respondent No.1 has further submitted that the names of petitioners in W.P.No.9091 of 2003 are neither in select list nor in the waiting list and, therefore, they do not have any locus standi to challenge selection and appointment. He has also contended that the name of Hari Prasanna Dwedi, who is petition in W.P.No.9748/2003, was also not in the select list as well as in waiting list and, therefore, he is also not having any locus standi to challenge the select list and appointment. Apart from this submission Shri Shrotri and Shri Tiwari learned counsel have also submitted that since all the petitioners did apply their candidature and since they have not been selected, now they cannot challenge selection process as well as selection and the appointment of private respondents. In support of their contention, they have placed reliance on the cases of *University of Cochin Vs. N.S.Kanjoonjamma*, (1997) 4 SCC 426 and *Union of India Vs. Tarun K.Singh*, AIR 2001 SC 2196.

(6) Shri Shrotri, learned counsel for respondent No.1 as well as Shri Hemant Shrivastava, learned counsel appearing for Public Service Commission have invited my attention to Rule 17 of M.P. Education Service (School Branch) Recruitment and Promotion Rules, 1982 and have contended that the life of the select is maximum 18 months and since this period has already

expired, therefore, neither the select list nor appointment can be challenged. In support of their contention, they have placed reliance on the following decisions:-

- (i) Sri Kant Tripathi Vs. State of U.P. (2001) 10 SCC 237
- (ii) State of U.P. Vs. Harish Chandra and others (1996) 9 SCC 309

Shri Udayan Tiwari, appearing for private respondents apart from above said case laws, has also placed reliance on the decision in the case of Government of Orissa Vs. Haraprasad Das, AIR 1998 SC 375.

(7) Apart from aforesaid submissions it has been vehemently contended by Shri Hemant Shrivastava, appearing for Public Service Commission that if this Court comes to the conclusion that certain candidates were wrongly selected and given appointments dehors conditions laid down in the advertisement, then, this Court should confine its order against those persons only and entire selection process should not be quashed.

(8) One important fact which cannot be marginalised and blinked away is that all the petitioners who are now challenging the selection and appointment of respondents, were candidates as they submitted their applications for their appointment. It is equally true that except petitioners Anil Nema, Ramraj Tripathi and Ku. Prem Lata Sharma, none of the petitioners were selected. These three candidates were wait listed as their names are appearing in the supplementary list. What would be the fate of those candidates who appeared in the selection process and were not selected has been answered by the Apex Court in the case of N.S.Kanjoonjamma (supra). In this case the Apex Court in page 4 has held as under:-

“4. It is not in dispute that Rules 14 to 17-A having specifically been adopted by the aforesaid Resolutions of the Syndicate and approved by the University, the power of the University to adopt the Rules has not been challenged. The aforesaid Resolutions do indicate that the University has properly made Rules 14 to 17-A applicable in relation to the recruitment of non-teaching staff to the University in certain posts, viz., Class I, Class III and Class IV. In furtherance thereof, the Vice-Chancellor was authorised by the Syndicate to advertise the posts and constitute a Selection Committee for recruitment of the candidates. In furtherance thereof, a Committee was constituted. Advertisement came to be made. It is seen

that when the general rules have been made applicable there is no necessity by the University to make a special reservation rule for special recruitment. Therefore, the non-mention of the special recruitment in the Resolution is of little consequence. As seen, the Syndicate adopted the Rules in relation to the non-teaching staff of the University. As a consequence, the advertisement came to be made for special recruitment of the Scheduled Castes and Scheduled Tribes to the posts of reserved for them. In fact, the first respondent also had applied for and sought selection but remained unsuccessful. Having participated in the selection, she is estopped to challenge the correctness of the procedure.”

[emphasis supplied)

(9) According to me since all the petitioners were well aware that what was the criteria of selection and after going through the advertisement they did apply their candidature for selection and appointment and if on the scrutiny they were not selected, they are estopped from challenging selection process since they themselves adopted selection process and appeared. Thus there is sufficient force in the contention of Shri Shrotri and Tiwari that all the petitioners do not have any locus standi to challenge selection process.

(10) The Government received a complaint and in furtherance to it a Committee was constituted having 4 members presided by District Education Officer. In the return it has been stated that on account of the stay order passed by the Tribunal further proceedings of the Committee has been stopped in respect of Ramprasad Gupta. Since the Government itself has taken a decision that the candidature of Respondents Shyamnarayan Sharma, Mohammed Habif and Smt. Urmila Tomar are to be tested by the Committee that whether they are having requisite qualification or not, the Committee may proceed to do so and may pass necessary order for them. Needless to emphasis, if any adverse order is to be taken against them, an opportunity of hearing must be provided to them, these respondents shall be free to satisfy that they were rightly selected and appointed.

(11) In view of above all these petitions are disposed of.