

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
ON THE 8th OF MARCH, 2022

WRIT PETITION No. 5096 of 2022

Between:-

**ADAM KHAN S/O KHURSHID AHSAN KHAN, AGED
 ABOUT 24 YEARS, OCCUPATION: UNEMPLOYED**

.....PETITIONER

SHRI AMAN JAIN, ADVOCATE FOR PETITIONER

AND

1. **THE STATE OF MADHYA PRADESH THROUGH
 PRINCIPAL SECRETARY GENERAL
 ADMINISTRATION DEPARTMENT VALLABH
 BHAWAN, BHOPAL (MADHYA PRADESH)**
2. **DIRECTORATE OF EMPLOYMENT THROUGH
 EMPLOYMENT COMMISSIONER VINDHYACHAN
 BHAVAN**
3. **MADHYA PRADESH PUBLIC SERVICE
 COMMISSION THROUGH SECRETARY RESIDENCY
 AREA, INDORE (M.P.) (MADHYA PRADESH)**

.....RESPONDENTS

***SHRI MANHAR DIXIT, PANEL LAWYER FOR THE STATE
 ALONGWITH SHRI M.S.MARKAM, DEPUTY DIRECTOR
 (EMPLOYMENT), DISTRICT EMPLOYMENT EXCHANGE, JABALPUR
 SHRI PARAG TIWARI, LEARNED COUNSEL FOR THE MADHYA
 PRADESH PUBLIC SERVICE COMMISSION***

This writ petition is taken up for hearing and the Court has passed

the following:

ORDER

Petitioner Adam Khan, a resident of the State of Jharkhand, has filed this writ petition seeking a direction to the respondents to open application forms for the Madhya Pradesh State Civil Services Examination, 2021 for which advertisement was issued on 22.12.2021 and the last date of submission of the application forms is 12.3.2022 to all the candidates irrespective of the domiciles.

It is submitted by learned counsel for the petitioner that as per the

practice, if a candidate wishes to apply for recruitment to the Madhya Pradesh State Civil Services Examination, which is to be organized in three phases, namely, Preliminary Examination on 24.4.2022 followed by the Main Examination and its Interview to fill different posts consisting of Class-II Gazetted Category starting from Deputy Collector to Block Development Officer & Class-III Posts starting from Naib Tahsildar to Madhya Pradesh Subordinate Account Service. The Madhya Pradesh Public Service Commission has made it mandatory to have a live registration with any of the Employment Offices in the State.

The Madhya Pradesh Rojgar Portal only makes a list of Districts and Tahsils of the Madhya Pradesh and, therefore, the outsiders are precluded from registering their candidature on the Portal, namely, Madhya Pradesh Rojgar Portal maintained by the Directorate of Employment (Madhya Pradesh). It is submitted that due to the said anomaly, the persons, who are otherwise eligible to participate in the competitive examination, are precluded from participating in the State Civil Services Examination.

On 3.3.2022, this Court had asked the instrumentality of the respondent/State and the Madhya Pradesh Public Service Commission to seek instructions & apprise this Court about the anomalies pointed out by the petitioner.

Learned counsel for the Madhya Pradesh Public Service Commission submits that they are acting on the instructions of the State Government.

Shri M.S.Markam, Deputy Director (Employment), District Employment Exchange, Jabalpur is present in Court representing the State Government. He submits that as per National Employment Service Rule Book Part-1 Paragraph No.7.4, there is a provision for place of registration. The applicants, unless especially exempted by the State Director or the Director General, shall be registered at the Employment

Exchange in whose jurisdiction, they normally reside. However, he submits that even the outsiders can register but the General Administration Department vide Circular No. C3-8/2016/3-One, Bhopal dated 12.5.2017 has made it mandatory that for Class-III & Class-IV posts, the candidates must have registration with the Employment Office in the State of Madhya Pradesh. He has produced a copy of communication received from Smt.Kshanmukh Priya Mishra, Employment Commissioner, Bhopal (MP) contained in DO No. Ros/Portal/2021-2022/140, Bhopal Dated 17.1.2022 to the effect that in case of Class-I & Class-II posts, the mandatory requirement of registration with Employment Exchange of the State of Madhya Pradesh can be thought to be dispensed with.

The petitioner has not challenged the General Administration Department Circular Dated 12.5.2017.]

Petitioner has enclosed a screenshot of Portal on which application forms are uploaded. It is evident that there is a Clause that whether a candidate has live registration with the Employment Exchange of the State of Madhya Pradesh. There are two options "Yes" & "No". If a candidate fills the option "No" then a popup appears saying that dear candidate as per the conditions of the advertisement, you are not entitled to apply for this post. If a candidate fills the "Other Option" and when the person goes to select the district then only names of Districts of Madhya Pradesh is shown. There is no mention of any district outside the Madhya Pradesh and this in a way amounts to making 100% reservation in favour of the domiciles/residents of the State of Madhya Pradesh.

The petitioner had made an application as contained in Annexure P/6 requesting the authorities to correct the anomaly on the website but one Ms.Ankita Saxena, Rojgar Sewa Adhikari, Rojgar Sewa Kendra (Government of Madhya Pradesh) managed by Yashyashvi Academy for

Talent Management (PPP Partner) had informed the petitioner that 'the other State people are not eligible to register there selves on Madhya Pradesh Rojgar Portal if the person is not residing in Madhya Pradesh'.

It is evident that though Shri M.S.Markam submits that the people from other States can also register but he is not in a position to contradict the official response given to the petitioner by the PPP Partner of the State of Madhya Pradesh as is evident from Annexure P/7. Thus, when read in conjunction with the Communication dated 17.1.2022 issued by the Employment Commissioner, it is evident that indirectly the State of Madhya Pradesh is trying to reserve all the posts advertised by the Public Service Commission for the domiciles/residents of the Madhya Pradesh.

Article 16(1) of the Constitution of India guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. Article 16(2) clarifies that no citizen, shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence shall become ineligible for, or discriminated against in respect of, any employment or office under the State. Article 16(3) provides that nothing in this Article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office. Article 16(4) provides that nothing in this Article shall prevent the State from making any provisions for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Article 19(1)(e) provides for right to reside and settle in any part of the territory of India.

Thus, it is evident that Article 16(2) of the Constitution of Indian prohibits discrimination against a citizen on the ground of religion, race, caste, sex, descent, place of birth, residence, subject, ofcourse to Article 16(3). The Courts have held that the general right given by the first two

Clauses of Article 16 of the Constitution of India should be construed liberally and the exception may be construed strictly.

The judgments in the cases of **General Manager, Southern Railway & Another versus Rangachari, respondent, Gurbux Das, Intervener AIR 1962 SC 36 & C.A.Rajendran versus Union of India & Others AIR 1968 SC 507** are authorities on the point.

When the aforesaid pronouncement of law & object of Article 16 of the Constitution of India, which is to create a constitutional right to equality of opportunity & employment in Public Offices are taken into consideration then the decision of the authorities of the State to reserve Class-III & Class-IV posts for the domiciles of the State of the Madhya Pradesh cannot be given seal of approval.

Similarly, there is tacit admission by the Employment Commissioner that they can think of terminating the compulsory nature of registration with the State Employment Exchanges for Class-I & Class-II posts brings us to the issue that the authorities are trying to implement reservation for its domiciles/residents through a backdoor and that being not permissible needs to be curbed.

The Three Judges Bench of the Supreme Court in the case of **Magan Mehrotra & Others versus Union of India & Others (2003) 11 SCC 186** relying on the judgment in the case of **Dr.Pradeep Jain & Others versus Union of India & Others (1984) 3 SCC 654** has held that no preference can be given to the candidate on the basis of the domicile to compete for an institutional quota of the State.

In **Dr.Pradeep Jain & Others versus Union of India & Others (supra)**, the Three Judges Bench of the Supreme Court has observed thus:-

"Wholesale reservation made by some of the State Governments on the basis of 'domicile' or residence requirement

within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the university or the State excluding all students not satisfying this requirement, regardless of merit, is unconstitutional and void being in violation of Article 14. But certain percentage of reservation based on residence or institution in a State for admission to MBBS course cannot be said to be irrational or irrelevant and can be introduced as a condition for admission without violating Article 14. (Paras 19 & 20).

Anyone everywhere irrespective of his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth training facility, specialty or employment. The equality of opportunity cannot be made dependent upon where a citizen resides. The primary consideration in selection of candidates for admission to the medical colleges must be merit. The object of any valid scheme of admission must be to select the best candidate for being admitted to medical colleges and if any departure is to be made from the principle of selection on the basis of merit it must be justified on the touchstone of Article 14. Merit consists of a high degree of intelligence coupled with a keen and incisive mind, sound knowledge of the basic subjects and infinite capacity for hard work and also calls for a sense of social commitment and dedication to the cause of the poor. (Paras 10 & 12)"

In that view of the matter, it is directed that all the candidates not belonging to the State of Madhya Pradesh will be permitted to participate in the competitive examination for which the Madhya Pradesh Public Service Commission shall make adequate improvisation in its website &

permit these candidates to send their application forms for which if the need arises the Madhya Pradesh Public Service Commission shall consider & notify a new date for filling up the application forms giving them atleast seven days' further time to do the needful.

In above terms, this writ petition is disposed of.

Certified copy as per rules.

(VIVEK AGARWAL)
JUDGE

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