

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

ON THE 2nd OF DECEMBER, 2025

WRIT PETITION No. 38868 of 2025

SONU SINGH NARWARIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Mr. Prashant Singh Kaurav - Advocate for the petitioner.

Mr. Sohit Mishra - GA for the State.

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ORDER

The petitioner has invoked the Article 226 of the Constitution of India praying for a direction to the respondents to allow him to join the service pursuant to the order, dated 16.10.2024. He has also prayed for a direction to the respondents to make payment of salary to him alongwith the interest.

2. The petitioner is a physically handicapped person certified to be suffering 40% permanent locomotor disability. A copy of his disability certificate is filed as Annexure P/1. He participated in the Uchch Madhyamik Shikshak Recruitment Examination-2023 and was selected for appointment. A provisional selection order was issued by the office of Director of Public Instructions on 16.10.2024 (Annexure P/2) whereby the petitioner was posted in Government Higher Secondary School of Excellence No.1, Bhind. The aforesaid provisional selection was however subject to verification of disability of the candidates by the concerned District/Divisional Medical

Board. As per the terms of this order, the candidates were required to appear in the office of concerned District Education Officer within one week along with their documents and the concerned District Education Officer was directed to get them medically examined by the District/Divisional Medical Board. It was upon verification of the disability by the Board, the appointment orders were to be issued.

3. Accordingly, the petitioner appeared in the office of District Education Officer and his original documents were verified by the office on 21.06.2024.

4. The District Education Officer wrote to Joint Director/Superintendent of J.A. Hospital, Gwalior, (in short 'Hospital') vide memo dated 21.10.2024, forwarded list of candidates and requested him to constitute a Medical Board for examination of their disability. The petitioner's name finds place at serial no.8 of the list. The medical examination was scheduled by Hospital on 26.11.2024. The petitioner was asked by the District Education Officer to appear before the Medical Board on 26.11.2024, vide letter dated 22.11.2024. Accordingly, the petitioner appeared before the Medical Board on the date fixed. The Joint Director/Superintendent Hospital forwarded the report to the District Education Officer vide letter dated 27.01.2025. The petitioner was found suffering from locomotor disability to the extent of 40%. The District Education Officer forwarded the report to the Commissioner, Public Instructions vide memo dated 30.01.2025. Since, the report submitted by Hospital was not containing the nature of disability *viz.* permanent or

temporary, the District Education Officer was asked to verify about the same from the Hospital. Accordingly, vide letter dated 18.02.2025, the District Education Officer requested the Hospital to certify the nature of disability. A reminder in this regard was also given on 18.03.2025. In response to the said communication, the Joint Director of the Hospital informed the District Education Officer vide letter dated 21.03.2025 that the medical report is already forwarded to his office on 24.01.2025 and the nature of disability is to be verified from the District Medical Board of concerned District Hospital as the disability certificate is issued by the said Board.

5. The District Education Officer thereafter asked the Civil Surgeon-cum-Chief Hospital Superintendent, District Hospital, Bhind to certify the nature of disability of the candidates. The Civil Surgeon accordingly certified the petitioner's disability to be permanent vide memo dated 10.06.2025 (Annexure P/5). The District Education Officer accordingly forwarded the information to the office of Commissioner, Public Instructions, vide memo 07.07.2025. Thus, as on this date, the petitioner's disability was verified to be 40% permanent locomotor disability.

6. The Commissioner, Public Instructions once again wrote to District Education Officer, Bhind vide memo dated 16.05.2025, and insisted for verification of permanent disability by the Hospital as the medical examination of the candidates was done by Medical Board at Hospital. A report was accordingly to be sought from the Hospital. The District Education Officer once again wrote to Hospital on 23.07.2025, requesting them to verify the nature of the disability. The Director, Public Instructions

also wrote the Hospital on 01.08.2025 in this regard. The District Education Officer sent a reminder in this regard to the Hospital on 02.08.2025. Ultimately, the report was made available by the Hospital to the District Education Officer, Bhind on 14.08.2025, which was forwarded by the District Education Officer to the Director, Public Instructions, vide memo dated 18.08.2025. In relation to the petitioner, it was informed that EMG and MRI examination is yet to be performed on the petitioner and his nature of disability would be informed subsequently. The petitioner's report was thereafter forwarded by the Hospital to the District Education Officer, Bhind on 01.09.2025. Thus, the petitioner is ultimately found eligible for appointment as he was suffering from 40% permanent locomotor disability.

7. While the aforesaid exercise was pending, one year validity of the select list was expiring. By the order dated 24.04.2025 (Annexure R/5), of Director, Public Instructions, the validity of the list was extended for a period of six months i.e. upto 20.08.2025. Since, the permanent disability of the petitioner was certified by the Hospital on 01.09.2025 which is after expiry of validity of select list, the petitioner is denied appointment on the ground that validity of the select list has expired on 20.08.2025. This reason has been assigned by respondents for the first time in their reply filed in this case.

8. The learned counsel for the petitioner challenged the action of the respondents and argued that the petitioner cannot be held responsible for the delay in completion of his medical examination. He submitted that as and when asked, the petitioner made himself available for his medical

examination and, therefore, if the validity of the select list has expired in between, he cannot be penalized for the delay on the part of the respondents. The learned counsel also pointed out that the petitioner was possessed of disability certificate which was already submitted by him and, therefore, he could have been appointed on the post, subject to verification of his disability. However, the respondents wasted time in getting his disability examined.

9. The learned counsel also pointed out that the nature of the disability was again certified by the District Medical Board at District Hospital, Bhind and the respondents ought to have acted upon the same. However, the Director, Public Instructions insisted for medical report from Hospital only which consumed substantial time. He also submitted that for quite some time, the selection process was stayed by this Court in W.A.No.818 of 2024 and W.A.No.819 of 2024. He also submitted that the other candidates, who were examined along with the petitioner, have been granted appointment as their report was provided by the Hospital earlier. It is thus his submission that because of delay on the part of respondents as also on the part of Hospital, the petitioner should not be punished. He thus prayed for issuance of direction to the respondents to issue appointment order to petitioner and allow him to join on the post.

10. On the other hand, the learned counsel for the respondents supported the action of the respondents and argued that the select list was issued on 20.02.2024 and the validity of one year got expired on 20.02.2025. However, the Director of Public Instructions vide order dated 24.04.2025

extended the validity of the list for a period of six months upto 20.08.2025. It is his submission that since the medical report of the petitioner was made available on 01.09.2025, i.e. after expiry of select list, the petitioner could not be given appointment. The learned counsel also submitted that the petitioner himself delayed his medical examination which has resulted in lapse of time. He submitted that after expiry of validity of select list, no appointment can be made. He also submitted that the petitioner does not get any right of appointment only because of selection, as has been held by the Apex Court, in the case of *State of Bihar & others Vs. Mohammad Kalimuddin* reported in *1996(2) SCC 7*. He thus prayed for dismissal of petition.

11. Considered the arguments and perused the records.

12. It is not in dispute that the petitioner was selected for appointment under OBC/LD category. He was accordingly issued provisional selection order on 16.10.2024. The petitioner has already submitted his disability certificate along with his application. Thus the petitioner was eligible to be appointed on the post. However, because certain certificates were found forged in other Districts, a general direction was issued for verification of disability certificate of all the selected candidates. As detailed hereinbefore, the petitioner appeared in the office of District Education Officer, Bhind on 21.06.2024 itself for verification of his documents. It is also evident from the record that the petitioner made himself available for his medical examination as and when asked for. Even though, respondents' counsel argued that the petitioner himself delayed his medical examination, however, there is no

material to this effect and even no averment in this regard has been made in the return. Therefore, the contention of respondents' counsel is not acceptable.

13. It is seen from the records that the petitioner was medically examined by the Board at Hospital on 26.11.2024. A report was forwarded on 24.01.2025, wherein the petitioner was certified to be suffering from 40% locomotor disability. However, this was not accepted as the nature of his disability *viz.* permanent or temporary, was not mentioned in the report. The District Medical Board of District Hospital certified the petitioner's disability to be 40% permanent on 10.06.2025 itself. Still, the respondents did not take steps for petitioner's appointment and insisted for the report by the Hospital. The Hospital ultimately furnished the report on 01.09.2025 but by this time, the validity of select list expired. It is thus evident that there was no delay on the part of the petitioner. The delay occurred because of the procedure adopted by the respondents for verification of petitioner's disability. Thus, the petitioner cannot be held responsible for the delay in his medical examination and consequent expiry of this select list.

14. The respondents' counsel placed reliance upon the Rules 12(4) Madhya Pradesh School Education Service (Teaching Cadre) Rules, 2018, which provides the validity of the select list to be one year which can be extended by six months. Before dealing this argument, it is profitable to refer to Apex Court judgment rendered in the case of *Asha Kaul v. State of J&K* reported in *(1993)2 SCC 573* wherein the Court was dealing with somewhat similar issue. The Court upheld the objection of Govt. that mere selection

does not give right to the candidate for appointment. However, at the same time, the Apex Court held that the action of the Govt. is expected to be fair and reasonable. The observations made by Apex Court in para 7 & 8 being relevant, are reproduced hereunder for ready reference:

"7. Construed in the above light, Rule 39, in our opinion, does not confer an absolute power upon the Government to disapprove or cancel the select list sent by the Public Service Commission. Where, however, the Government is satisfied, after due enquiry that the selection has been vitiated either on account of violation of a fundamental procedural requirement or is vitiated by consideration of corruption, favouritism or nepotism, it can refuse to approve the select list. In such a case, the Government is bound to record the reasons for its action, and produce the same before a court, if and when summoned to do so, apart from placing the same before the legislature as required by clause (2) of Article 323. Indeed, clause (2) of Article 323 obliges the Governor of a State to lay a copy of the annual report received from the Commission before the legislature "together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted (and) the reasons for such non-acceptance". Evidently, this is meant as a check upon the power of the Government. This provision too militates against the theory of absolute power in the Government to disapprove or reject the recommendations of the Commission. For the same reason, it must be held that the Government cannot pick and choose candidates out of the list. Of course, where in respect of any particular candidate any material is discovered disclosing his involvement in any criminal activity, the Government can always refuse to appoint such person but this would not be a case touching the select list prepared and recommended by the Commission. It is equally not open to the Government to approve a part of the list

and disapprove the balance. In this case, it may be remembered that the Government itself had asked for a list of twenty and the Commission had sent a list of twenty. (We are not concerned with the waiting list sent by the Commission, at this stage.) It could not have been approved in part and rejected in part. The number of vacancies available on the date of approval and publication of the list is not material. By merely approving the list of twenty, there was no obligation upon the Government to appoint them forthwith. Their appointment depended upon the availability of vacancies. A reading of Rule 41 makes this aspect clear. The list remains valid for one year from the date of its approval and publication. If within such one year, any of the candidates therein is not appointed, the list lapses and a fresh list has to be prepared. In this case, no doubt, a number of complaints appear to have been received by the Government about the selection process. We have seen the note file placed before us. It refers to certain facts and complaints. But if the Government wanted to disapprove or reject the list, it ought to have done so within a reasonable time of the receipt of the select list and for reasons to be recorded. Not having done that and having approved the list partly (thirteen out of twenty names), they cannot put forward any ground for not approving the remaining list. Indeed, when it approved the list to the extent of thirteen, it ought to have approved the entire list of twenty or to have disapproved the entire list of twenty. The objections the Government have pertain to the very process of selection i.e., to the entire list, and not individually to any of the remaining seven candidates.

8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (State of Haryana v. Subhash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : AIR 1973 SC 2216] ; Mani Subrat Jain v. State of Haryana [(1977) 1 SCC 486 : 1977 SCC (L&S) 166 : AIR 1977 SC 276] ; State of

Kerala v. A. Lakshmikutty [(1986) 4 SCC 632 : (1986) 1 ATC 735 : AIR 1987 SC 331]) but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a particular category, — in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government — the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in Shankarsan Dash v. Union of India [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] where the earlier decisions of this Court are also noted. The following observations of the Court are apposite : (SCC pp. 50-51, para 7)

“It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been

consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : AIR 1973 SC 2216] , Neelima Shangla v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or Jatendra Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174].”

15. Keeping in view the aforesaid legal proposition, if the facts of this case are seen, it is gathered that the petitioner had already submitted his disability certificate which is not doubted by anyone. It is only because certain certificates were found to be forged in various Districts, the respondents decided to verify the disability of every candidate. There can be no dispute that the respondents could have done so. However, looking to the fact that the select list is valid only for one year, the petitioner could have been appointed subject to verification of his disability. Secondly, the petitioner had made him available for verification of his disability whenever asked for. However, the delay occurred because of cumbersome procedure adopted by respondents and the delay in submitting report by the Medical Board. This has been discussed in preceding paragraphs. Therefore, the petitioner cannot be blamed for the delay. Thus, rejecting his candidature only because the select list has expired during the process, would be unreasonable for the petitioner.

16. In view of the discussion made above, since there is no delay on the part of the petitioner, merely because the validity of the select list has expired (a few days before submission of his report by Medical Board), he cannot be denied appointment on the post. Since, the petitioner has already

been certified to be suffering from 40% permanent locomotor disability and is thus eligible for appointment, the respondents are directed to issue appointment order in favour of the petitioner within a period of 60 days from the date of submission of certified copy of this order.

17. The petition is **allowed** and **disposed off**.

(ASHISH SHROTI)
JUDGE

bj/-