

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

WRIT PETITION No. 19248 of 2024

VAISHALI CHATURVEDI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Mr. Prashant Singh Kaurav - Advocate for the petitioner.

Mr. G.K. Agrawal – Government Advocate for the State.

Mr. Shashank Indapurkar – Advocate for respondent no.2.

ORDER

Reserved on : 15.10.2025

Delivered on : 29.10.2025

ORDER

The issue raised by the petitioner in this petition is a complex but an interesting one relating to interpretation of Section 34(2) of Right of Persons with Disabilities Act, 2016 (hereinafter referred as “Act of 2016”).

2. The respondent no.2, Employees Selection Board (earlier known as Professional Examination Board) issued Joint Examination Advertisement-2023 for recruitment for various posts which also included 8 backlog posts (direct recruitment) of Shorthand Typists (Group III) reserved for physically handicapped candidates of Un-reserved (UR) category for respondent no.3

Department. The posts are identified in advertisement as Post Code-022. The advertisement also clarifies that out of 8 posts, 2 posts are identified for Visually Handicap (VH), 4 posts are identified for Locomotor Disability (LD) and 2 posts are identified for Multiple Disability (MD) category.

3. The posts for as many as 135 departments were advertised including aforesaid 8 backlog posts for respondent no.3 department. The examination was conducted by Board in accordance with provisions of M.P. Junior Service (Joint Qualifying) Examination Rules, 2013, (in short Rules of 2013). As per the said Rules, every candidate is required to submit his candidature preference wise for as many posts on which he is eligible for appointment.

4. The petitioner is a candidate belonging to LD category suffering 50% Orthopedically Handicap. She also submitted her candidature as UR/EWS/LD category candidate for various posts giving her preference for as many as 108 departments. Her application is placed on record as Annexure P/2 which shows that her first preference was for the post of Hindi Stenographer while her fourth preference was for the post of Shorthand Typist in respondent no.3 department.

5. The result of the examination was published by the Board in February' 2024 wherein the petitioner got selected for appointment on the post of Hindi Stenographer (Post Code-020) as per her first preference, in respondent no.3 department. However, when she went for joining, she was told that the advertisement for Post Code No.020 has been withdrawn by the department. The petitioner then laid her claim for appointment on Post Code No.022. However, the same has also been denied to her on the ground that against four posts of LD category, other candidates, with more merit, have been

appointed and the petitioner, being at serial no.5 in the merit list, is not qualified for appointment. During the pendency of this petition, for the aforesaid reason, the result of petitioner has been cancelled vide order, dated 18.06.2024, (Annexure P/5) which has been challenged by petitioner by amending her petition.

6. The learned counsel for the petitioner has challenged the action of respondent no.3 in withdrawing the advertisement for Post Code No.020 after declaration of result inasmuch as the same has seriously jeopardized her right of appointment on the said post. He further submitted that one post advertised under MD category has been admittedly not filled up for non-availability of candidate of the said category and, therefore, by virtue of provisions of Rule 34(2) of Act of 2016, she can be appointed on the said post. It is his submission that the posts advertised relates back to year 2019 and are backlog posts, as stated in the advertisement itself. He further submitted that the recruitment year for these posts is 2019 and they were carried forward to year 2020, 2021 and then 2022. Lastly, they have been advertised in the year 2023. Therefore, the conditions for interchanging the posts under Section 34(2) of the Act have been duly satisfied and the petitioner can be appointed on the remaining one post of MD category.

7. The learned counsel further submitted that the object of various provisions of Act of 2016 is to ensure proper representation of PH candidates in Government employment. Since, the post in question could not be filled up in 2019 and was carried forward and further since no candidate is available in MD category, the petitioner can be appointed on the said post under Section 34(2) of the Act of 2016. The learned counsel also referred to definition of “recruitment year” as defined under Rule 2(k) of Rules of 2013

to say that the post in question relates to recruitment year of 2019 and was carried forward as the same could not be filled upon in that year. He thus prayed for setting aside of impugned order, dated 18.06.2024, and for issuance of direction to the respondent no.3 to appoint petitioner on the remaining post of Shorthand Typist under MD category.

8. On the other hand, learned Government Advocate supported the impugned action of respondent no.3 and submitted that the petitioner is misinterpreting provisions of Section 34(2) of the Act of 2016. As per his submission, a post can be said to be carried forward only when it is once advertised and could not be filled up for non-availability of candidate in the relevant category. It is his submission that, even though the post in question was identified in the year 2019, the same could not be advertised because of Covid-19 pandemic and has been advertised for the first time by way of advertisement in question in the year 2023. He thus submitted that posts are not carried forward and, therefore, the provisions of Section 34(2) of Act of 2016 are not attracted.

9. The learned counsel for the respondent no.2, in his turn, submitted that the issue in question needs to be answered by respondent no.3.

10. Heard the arguments and perused the records.

Meaning of term 'Recruitment Year' under Rules of 2013:

11. The recruitment process in question has been conducted under provisions of Rules of 2013. These rules have been framed by Governor of Madhya Pradesh under Article 309 of Constitution of India providing for recruitment on such posts under various Departments which are outside the ambit of M.P. Public Service Commission through a Joint Selection Examination. The Rules are thus having statutory binding effect. The Rules

also prescribe criteria for selection and authorizes respondent Board to conduct Joint Selection Examination.

12. By virtue of Rule 3(1) of Rules, all the departments/institutions are restrained from conducting selection at their own or through any other agency except through respondent Board. Rule 8 thereof provides that all the departments/institutions shall send their requisition to the Board essentially by 30th September every recruitment year for all such posts which are to be filled and likely to fall vacant in the ensuing recruitment year. Further, Rule 9 provides for conducting recruitment examination by the Board between months of January to March every year.

13. The term ‘recruitment year’ is defined under Rule 2(k) to mean “the period from 1st January to 31st December of the year concerned. Though, from definition of recruitment year, the meaning of term ‘year concerned’ is not clear. It may mean either the year in which the vacancy arose or the year in which recruitment process is initiated. However, Rule 8 provides that all departments shall send their requisition forms to the Board by 30th of September of every recruitment year. Further, Rule 9 provides that the Board shall conduct examination every year. Thus, Rule 2(k) when read conjointly with Rule 8 & 9 of Rules of 2013, it becomes evident that the year of identification of a vacancy is the recruitment year for that vacancy. When the vacancy is not filled up, it is carried forwarded to next recruitment year. This is also because a “recruitment year” means the period from 1st January to 31st December of the year concerned. If the term is to mean actual year of selection, it may spread over more than one year. In other words, it may travel from one year to another, like in the present case, advertisement published in 2023 and result declared in February’ 2024. Thus, actual year of

recruitment does not fit into the definition of recruitment year under Rules of 2013. Therefore, on harmonious construction of the aforesaid provisions of Rule of 2013, it is to be held that the year of identification of vacancy is the recruitment year for that vacancy. In the case in hand, for the vacancy in question, the recruitment year would be 2019 when the vacancies were first identified.

Meaning of the term Backlog Vacancy:

14. As stated in para 9 & 10 of additional return filed by respondent no.1 & 3, the vacancies in question were identified in the year 2019. However, due to Covid-19 pandemic, the same could not be sent for recruitment to the Board. Later on, the requisition was sent to Board for recruitment in the year 2022. Thus, as per the averments made, these posts are published for the first time by way of advertisement in the year 2023. The respondents thus say that these are not the backlog vacancies. However, this averment made in the return runs contrary to the stipulation made in the advertisement which mentions Post Code-022 as “backlog posts (direct recruitment)”.

15. The term ‘backlog’ is not defined in the Rules. However, in general parlance, backlog means the vacancies which are identified in previous year but could not be filled due to any reason. Thus, the remaining unfilled vacancies of previous year(s) are called as backlog vacancies.

16. The learned counsel for respondent no.1 & 3 submitted that a vacancy would be a backlog vacancy only when it was once advertised but could not be filled for non-availability of suitable candidate in the category. Before examining this submission, it is profitably to refer to a coordinate bench judgment of this Court in the case of *Shekhar Singh vs. State of M.P.* reported in **2014(2) MPLJ 580**. In this case, the Court was examining the

provisions of M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargeon Ke Liye Arakshan) Adhiniyam, 1994. The submission made before the Court and the ratio of the Court are as under:

“12. The bone of contention of the petitioners is that the respondents have erred in clubbing the backlog vacancies of earlier recruitment year with that of present year which amounts to exceeding 50% “width test”. Before dealing with this aspect, it is apt to quote Article 16(4-B), which was inserted by 81st amendment in the Constitution. It reads as under:—

“(4-B) Nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4-A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.”

(Emphasis supplied)

A bare perusal of this provision itself shows that whenever certain reserved vacancies are carried forward and filled up in the next year/years, such class of vacancies shall not be counted and considered together with the vacancies of the year in which they are being filled up for determining the ceiling of 50% reservation on total number of vacancies of that year.

13. In Madhya Pradesh, Adhiniyam/enabling provision aforesaid was already in force. Section 4(3)(b) makes it clear that the carried forward vacancies shall not be counted against the quota of vacancies reserved for concerned category of persons for the recruitment year to which it is carried forward. Subsection (3)(c) of section 4 also makes it clear that such carried forward vacancies shall form a

separate distinct group and will not be counted with the reserved vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

14. If section 4 of the Adhiniyam is read conjointly with Article 16(4-B) of the Constitution, it makes it clear like noon-day that carried forward vacancies shall not form part of the vacancies of a later recruitment year nor it shall be counted to work out the percentage of reservation. Thus, the petitioners' contention that there is more than 50 per cent reservation is devoid of merits. To work out/calculate the percentage the petitioners have included the backlog vacancies (75 SC + 198 ST). These vacancies of backlog cannot be taken into account in view of the aforesaid provisions to determine the percentage of reservation in the subsequent recruitment year. Thus, this contention of petitioners completely fails."

17. From the aforesaid legal proposition, it becomes clear that carried forward vacancies form a separate and distinct group and are different than the vacancies of the year of actual recruitment. In other words, the carried forward vacancies shall not form part of the vacancies of a later recruitment year nor it shall be counted to work out the percentage of reservation. Thus, whether or not the vacancy were advertised, the carried forward vacancies of previous years are the backlog vacancies. The submission of respondents' counsel that since the vacancies in question were not advertised, the same are not backlog vacancies, is not acceptable. It is to be held that the vacancies in question since were identified by department in the year 2019, these are the backlog vacancies for purposes of subsequent recruitment year.

Interpretation of Section 34(2) of Act of 2016:

18. After having held that the vacancies in question are the backlog vacancies of previous year 2019, various provisions of the Act of 2016 assume relevance and importance. Section 3(1) of the Act mandates the

appropriate Government to ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others. Sub-section 2 thereof provides that the appropriate Government shall take steps to utilize the capacity of persons with disabilities by providing appropriate environment.

19. Besides this, Section 34 of the Act also has relevance for present discussion. For ready reference, Section 34 of the Act is reproduced hereunder:

“34. Reservation.- (1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely—

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

*(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or **for any other sufficient reasons**, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:*

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.”

xxx xxx xxx

20. Thus, Section 34(1) of the Act mandates that every Government shall appoint in every establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities. Meaning thereby, the effort of the Government should be to ensure that the earmarked posts are filled up by persons with benchmark disability.

21. Then comes the role of sub-section (2) of Section 34 of the Act which provides that where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or **for**

any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability.

22. Interpreting Section 34(2) of the Act, the learned counsel for petitioner contends that since the unfilled MD vacancy in this case pertains to year 2019, it was carried forward to year 2020, 2021 and then to 2022, the same is now required to be filled up by interchange from LD candidate i.e. the petitioner. On the other hand, the learned counsel for respondents on the other hand contends that since the vacancies are notified for the first time, they cannot be treated to have been carried forward and, therefore, the interchange is not permissible.

23. There can be only two situations in which a vacancy can go unfilled. Firstly, it was advertised but could not be filled up because of non-availability of suitable candidate in the category. Secondly, the post is not advertised and, therefore, it remained unfilled. Section 34(2) takes care of both the situations. It provides interchange of vacancy when in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or *for any other sufficient reasons*. For any other sufficient reason would mean that the post was not advertised. If the contention made by respondents' counsel is accepted, the words "*for any other sufficient reasons*" shall become meaningless.

24. Thus, the vacancies in question having been identified in the year

2019, they were carried forward to 2020, then to 2021 & 2022 and thereafter they are now advertised in the year 2023. Therefore, the learned counsel for the petitioner is right in submitting that the vacancy having been carried forward after 2019, it is liable to be filled up by interchange as the candidate in MD category is not available. This section deserves such interpretation also in view of the mandate of Section 34(1) of the Act.

25. The respondent Board also interpreted Section 34 in the similar manner and, therefore, in the impugned order it is stated that “*shesh 01 MD pad hetu MD ka abhyarathi uplabdh nahin hone ke karan UR/X/OPEN me LD ke 01 abhyarathi ko post code 022 avantit hua hai*”. The extract of impugned order is reproduced hereunder:

“पोस्ट कोड 022 में 04 LD के विज्ञापित पदों के विरुद्ध 04 LD आवेदक, 02 VH के विज्ञापित पदों के विरुद्ध 02 VH एवं 02 MD के विज्ञापित पदों के विरुद्ध 01 MD आवेदक आवंटित हुआ है। इस प्रकार पोस्ट कोड 022 में कुल 08 विज्ञापित पदों में से 07 दिव्यांगता के आधार पर आवंटित हुए हैं। शेष 01 पद MD का था। MD के अभ्यर्थी उपलब्ध नहीं होने के कारण UR/X/OPEN हेतु उपलब्ध अन्य अभ्यर्थियों को आवंटित किए गये हैं। पोस्ट कोड 22 में दिव्यांग के अतिरिक्त किसी अन्य श्रेणी के आवेदकों को आवेदन प्रस्तुत करने का प्रावधान नहीं था एवं आवेदित शेष समस्त आवेदक केवल दिव्यांग हैं अतः शेष समस्त आवेदक UR/X/OPEN के पदों हेतु पात्र नहीं होते हैं। वह केवल दिव्यांगजनों हेतु अरक्षित पदों के लिये पात्र होते हैं। शेष 01 MD पद हेतु MD का अभ्यर्थी उपलब्ध नहीं होने के कारण UR/X/OPEN में LD के 01 अभ्यर्थी को पोस्ट कोड 022 आवंटित हुआ है। उक्त अभ्यर्थी द्वारा अपने आवेदन पत्र में भरी गयी प्राथमिकता एवं अंको के आधार पर अभ्यर्थी को अन्य कोई पद आवंटित नहीं हो सकता है। अतः पोस्ट कोड 022 में UR/X/OPEN में चयनित हुए LD के अभ्यर्थी (वेशाली चतुर्वेदी, रोल नं. 11115943) का परिणाम निरस्त किया जाता है।”

26. Still, the result of petitioner is cancelled by respondent Board for the reason not clear from the impugned order.

27. In view of the discussion made above, this Court is of the considered

opinion that the petitioner is entitled to be appointed on remaining unfilled post of MD category in view of provisions of Section 34(2) of the Act of 2016.

28. The petition is accordingly **allowed**. The respondent no.3 is directed to appoint petitioner on the unfilled post of Shorthand Typist as advertised vide Post Code-022 for MD category. Let needful be done in this regard within 90 days from the date of submission of certified copy of this order.

(ASHISH SHROTI)
JUDGE

bj/-