

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

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 30th OF MAY, 2024

WRIT PETITION NO.13300/2017

BETWEEN:-

**SATISH KUMAR MISHRA, AGED ABOUT 31
YEARS, S/O SHRI SURESH KUMAR MISHRA,
OCCUPATION MINING INSPECTOR, MINERAL
RESOURCES DEPARTMENT, KATNI DISTRICT
KATNI (M.P.)**

.....PETITIONER

(BY SHRI SHOEB HASAN KHAN - ADVOCATE)

AND

- 1. M.P. PUBLIC SERVICE COMMISSION
DISTRICT INDORE (M.P.)**
- 2. STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY, DEPARTMENT OF
MINERAL RESOURCES, VALLABH BHAVAN,
BHOPAL (M.P.)**
- 3. DIRECTORATE OF GEOLOGY AND MINES,
DEPARTMENT OF MINERAL RESOURCES
GOVERNMENT OF M.P. THROUGH ITS
DIRECTOR, 29-A, KHANIJ BHAVAN, ARERA
HILLS, BHOPAL (M.P.)**

.....RESPONDENTS

(NO.1 BY SHRI NIKHIL BHATT- ADVOCATE)

(NO.2 BY SHRI ARNAV TIWARI – PANEL LAWYER)

.....
Reserved on: 14.05.2024

Pronounced on: 30.05.2024

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

With the consent of learned counsel for the parties, the matter was heard finally on 14.05.2024 and today the order is being pronounced.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner is claiming appointment on the post of Mining Officer.

3. As per the learned counsel for the petitioner, in a process of selection to the post of Mining Officer, the petitioner secured position at serial No.1 in the waiting list. There was one post reserved for disabled person and in the said selection process, no candidate was available under the said quota of disability. He further submitted that even in the past selection, the post of disabled category remained vacant and therefore it was carried-forward. In the selection in which the petitioner has participated and when no candidate is found available under the said category, then as per subsection (2) of Section 34 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity 'Act, 1995'), the said post can be converted into the post of unreserved category. He submitted that the under such circumstances, the petitioner should have been appointed as Mining Officer because he was in the waiting list of unreserved category.

4. Albeit a reply has been filed by the respondents but they have not answered the said factual and legal position, although they

have taken a stand in the reply that life of waiting list was of one year and after expiry of the said period, the claim of the petitioner has become redundant and as such the petition deserves merit dismissal on that ground alone.

5. In repartee, learned counsel for the petitioner submitted that during the life time of the waiting list, the dispute was raised and is pending before this Court, then the claim of the petitioner cannot be rejected on the ground that the period of validity of waiting list has expired. To reinforce his submission, he placed reliance on an order passed by this Court in **W.P. No.13241/2017 (Dhirendra Chaturvedi v. State of M.P. and others)** and also on a decision of the Supreme Court in case of **State of U.P. v. Ram Swarup Saroj (2000) 3 SCC 699**.

6. No other point has been argued by learned counsel for the parties.

7. Considering the rival submissions made by the learned counsel for the parties and perusal of record, there appears no dispute in respect of the factual position that in the advertisement issued in the year 2013 for filling-up vacancies, for the post of Mining Officer, one for Unreserved, one for Unreserved Female and one for PH with hearing disability were notified. It is also not in dispute that the petitioner secured first position in the waiting list. It is also not in dispute that the post of Mining Officer for unreserved PH (deaf) was previously notified in the year 2010 and the said post got carried forward to successive recruitment year in which the petitioner had participated and secured first place in the waiting list and there was no other person available with disability. The provisions of the Act. 1995 provide that the post if carried-forward to successive recruitment year, then it shall be filled-up by appointing a person other than person with disability where such

suitable person with disability is not available. As per the petitioner, the post of Mining Officer of physically handicapped remained unfilled in the year 2011 and was carried-forward but in the successive recruitment also no person of that category was available and therefore as per Section 36 of Act, 1995, such post shall be filled-up by appointing a person other than the person with disability. For ready reference, Section 36 of Act, 1995 is reproduced as under:-

“36. Vacancies not filled up to be carried forward.-Where in any recruitment year any vacancy under section 33 cannot be filled up due to non-availability of a suitable person with 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 disability is not available, it may first be filled by interchange among the three 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 three categories with the prior approval of the appropriate Government.”

Thus, the abovementioned provision makes it mandatory because it uses the word ‘shall’ when it directs that even after carrying forward of the vacancy to the succeeding recruitment year, no suitable person with disability is available even by interchanging among the three categories, blindness or low vision, hearing impairment, locomotor disability or cerebral palsy then the employer is mandated to fill the vacancy by appointment of a person other than a person with disability. Since using the word ‘shall’ in the provision clearly implies that it is mandatory to fill-up the vacancy by appointing a person other than person with disability and as such the respondent-employer is under obligation to fill-up the vacancy by a person belonging to general category and

petitioner who secured first position, indisputably, in the waiting list, the appointment to the post of Mining Officer against the vacancy of disabled person had to be given but when it was not done the petitioner made a representation on 19.01.2017 (Annexure-RJ/1) and then again on 27.03.2017 (Annexure-P/4) pointing out that in the select list published in 2016 the petitioner securing first position in the merit list, would have been appointed. When all endeavours of the petitioner went in vain, he again made a reminder on 11.05.2017 (Annexure-P/5) and when nothing was done, he knocked the doors of the judiciary by filing this petition in the year 2017. The respondents in their reply did not dispute the factual position, but disputed the right of the petitioner to be appointed against the post of reserved category and also pointed out that person secured position in the waiting list has no right to claim appointment that too of a selection for which final select list was published in the year 2016 and according to the respondents the life of waiting list has expired and therefore same cannot be considered at this stage.

8. Apparently, it is gathered that there is no dispute with regard to legal position as provided under Section 36 of Act, 1995 and it is also not in dispute that there was no other candidate available under the disabled category and therefore as per the mandate contained in Section 36, the said vacancy had to be filled-up. The petitioner being a candidate of waiting list securing first position, could have been appointed and said vacancy could have been filled-up. Merely because during the pendency of the representation, the validity period of waiting list expired, the respondents cannot take a stand that now appointment cannot be made on the vacant post of Mining Officer only because the petitioner secured first position in the waiting list. Thus, I am not satisfied with said submission of the respondents for the reason that the

Supreme Court in the case of **Ram Sawrup Saroj** (supra) has observed as under:-

“10. Similarly, the plea that a list of selected candidates for appointment to the State services remains valid for a period of one year only is primarily a question depending on facts and yet the plea was not raised before the High Court. Secondly, we find that the select list was finalised in the month of November, 1996 and the writ petition was filed by the respondent in the month of October, 1997, i.e., before the expiry of one year from the date of the list. Merely because a period of one year has elapsed during the pendency of litigation, we cannot decline to grant the relief to which the respondent has been found entitled to by the High Court. We may place on record that during the course of hearing of SLP before this Court, on 29.9.1999 we had directed the learned Additional Advocate General for the State of U.P. to bring on record on affidavit the status of present recruitment of the judicial officers and the present vacancy position in the subordinate judiciary. In the affidavit of Joint Secretary, Department of Appointment, State Government, Uttar Pradesh sworn in on 4.11.1999 and filed before this Court it is stated that as on 14.10.1999 there were 231 vacancies existing in the cadre of Munsif Magistrates (now Civil Judge, Junior Division/Judicial Magistrates). That being the factual position we see no reason why the direction made by the High Court should be upset in an appeal preferred by the State of Uttar Pradesh.”

9. Further, this Court in **Dhirendra Chaturvedi** (supra) taking strength from the decision of the Supreme Court has observed as under:-

“9. Here in the case at hand, the petitioner before expiry of the period made a representation to the Authority pointing out that the vacancies of the post of Additional Director are fallen vacant during life time of the select list and accordingly, his claim for promotion should be considered as he is at serial No.1 in the waiting list. By the impugned order his claim has been rejected. The stand taken by the respondents in this case that the life of the select list has expired and, therefore, the petitioner as a matter of right cannot claim that his claim for promotion be considered. However, in the facts and circumstances existing in the present case as have been discussed hereinabove, I am of the considered view that the stand taken by the respondents is not proper especially when they have not disputed the factual position. The Supreme Court in the case of **Ram Sawrup Saroj**

(supra) has finally observed that in such a circumstance, denial of promotion of the candidate, who is otherwise found fit, is not proper where admittedly there is no dispute regarding the existence of vacancies. As such, here in this case on the ground which is taken by the respondents in the order rejecting the claim/representation of the petitioner, does not seem to be justified merely because the life of the panel is expired and despite making request from the PSC for extension of life, which has been rejected. Thus, in view of the aforesaid factual circumstance and considering the law laid by the Apex Court, the right of promotion of the petitioner could not have been denied on the ground that the life of select list is of one year and now it is expired, therefore, the petitioner cannot claim any right on the said count. Further, the cases on which the respondents have placed reliance are not applicable in the present case considering the facts and circumstances of those cases because the Apex Court in these cases has held that the life of select list cannot be extended but on the contrary, it is observed by the Apex Court that the authority has to consider the candidates securing position in panel against the existing vacancies and the vacancies which were likely to occur in future. Here in this case, the vacancies occurred during the life of the waiting list and as per sub-rule 1 of Rule 15 of the Niyam, 1982, which is reproduced hereinbelow:-

15.(1) "The committee shall prepare a list of such persons who satisfy the condition prescribed in rule 14 above and are held by the Committee to be suitable for promotion/transfer to the service. The list shall be sufficient to cover the anticipated vacancies on account of retirement and promotion during the course of one year from the date of preparation of the select list. A reserve list consisting of twenty five percent of the number of persons included in the said list shall also be prepared to meet the unforeseen vacancies occurring during the course of the aforesaid period."

there is apparent arbitrariness and mala fide attitude on the part of the respondents rejecting the claim of the petitioner on the count that the life of waiting list is already expired."

10. Obviously, in the fact-situation of the case at hand, the claim of the petitioner cannot be denied on the ground that the life of waiting list has expired. Indeed, the select list was published on 01.02.2016 and the petition was filed on 25.08.2017 and in-between the petitioner represented the matter vide representation dated 19.01.2017

(Annexure-RJ/1). Although the respondents have stated that a person securing position in the waiting list has no right to claim appointment, but here in the case at hand, it is the statute which creates right in favour of the petitioner as per Section 36 of Act, 1995 and as such the claim of the petitioner for appointment to the post of Mining Officer in other category for the post reserved for disabled candidate can be considered because he secured first position in the waiting list. Thus, the petition deserves to be allowed.

11. Notably, by way of interim measure, it was directed on 12.05.2023 that respondents may continue with the selection process, but no final result shall be declared. Ergo, the respondents are directed to give appointment to the petitioner on the post of Mining Officer lying vacant for the category of disabled person within a period of three months from the date of receipt of copy of this order.

12. Petition stands allowed and disposed of.

**(SANJAY DWIVEDI)
JUDGE**