IN THE HIGH COURT OF MADHYA PRADESH

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 12th OF NOVEMBER, 2024

WRIT APPEAL No. 1333 of 2023

RICHA TAMRAKAR AND OTHERS

Versus

STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Rameshwar Singh Thakur – Advocate for petitioners.

Shri S.S.Chouhan – Government Advocate for respondents/State.

ORDER

Per*: *Justice Sanjeev Sachdeva

1. Additional documents have been filed in court, same are taken on record.

2. Appellants impugn order dated 11.07.2023 whereby the writ petition filed by the appellants has been dismissed. Appellants also impugn the review order dated 14.8.2023 whereby the review of order dated 11.07.2023 was declined.

3. Learned counsel for the appellants relied on the decision of this Court in Writ Petition No.23629/2023.

4. Petitioners seek modification in their order of appointment and seek appointment as per their respective choice in a school of School Education Department.

5. An advertisement was issued by respondent - Professional Examination Board for 7429 posts of Directorate of Public Instructions and about 11,000 posts for Tribal Welfare Department. Petitioners filled their applications and submitted their candidature for the post of Prathmik Shikshak. Petitioners had applied in their respective reserved categories. When the result was declared it transpired that petitioners have scored marks which were much higher than marks obtained by candidates in the unreserved category and accordingly petitioners were migrated to unreserved category.

6. Clause 15 of the subject advertisement dated 27.10.2022 provided for stages of selection and Clause 15.6 of the stages of selection *interalia* provides as under.:-

> (15.6) "**अंतिम चयन सूची में चयनित अभ्यर्थियों को पोर्टल पर दर्शाई गई रिक्तियों के आधार पर पदस्थापना हेतु विकल्प च्वाईस फिलिंग करनी होगी। पदस्थापना हेतु रिक्त पदों की सूची में स्कूल शिक्षा विभाग एवं जनजातीय कार्यविभाग दोनों की शालाएं सम्मिलित होंगी। स्कूल के आगे** (TWD) अथवा (SED) **लिखा होगा। अभ्यर्थी दोनों विभागों की शालाओं अथवा किसी एक विभाग की शाला का चयन कर सकता है किन्तु सबंधित विभाग की प्रवर्गवार रिक्तियों के आधार पर मेरिट कम में उसे जो विद्यालय आवंटित होगा**, वह **विद्यालय जिस विभाग का होगा उसे उसी विभाग द्वारा नियुक्ति दी जाएगी। किसी भी स्थिति में विभाग परिवर्तन संभव नहीं होगा। च्वाइस फिलिंग के आधार पर अभ्यर्थी यह दावा नहीं कर सकेगा कि उसे विकल्प अनुसार ही पदस्थापना दी जाए। अतः अभ्यर्थियों को सलाह दी जाती है कि वे न्यूनतम**

50 अथवा अधिक से अधिक दिकल्पों का चयन करें अन्यथा मेरिट एवं जिलावार प्रवर्गवार विभाग वार रिक्तियों के कम में उन्हें विकल्प न मिलने पर विभाग द्वारा रिक्त पदों पर उनकी पदस्थापना की जाएगी।"

7. Clause 15.6 stipulated that out of the final select list, the candidates would be placed in terms of the choice of posting that they will have to choose. The candidates were required to give options against the school. It was indicated as to whether the school belongs to the Tribal Welfare Department (TWD) or School Education Department (SED). The candidates would be required to choose school of Tribal Welfare Department (TWD) or School Education Department(SED) however, allocation of seats would be based on the merit of the candidates.

8. As per petitioners, petitioners had opted for the School Education Department at their respective choice. Petitioners contend that the school opted by the petitioners were not allotted to them, but they were allotted school in the Tribal Welfare Department and the choices which were filled by the petitioners have been given to a person who is lower in merit to the petitioners. Particulars of each petitioner regarding their category, choice filling and rank are given under:-

Sr. No	**Name of petitioner**	Rank	**Category**	**Serial No. & Choice of School selected by petitioner**	**Preference of District opted by petitioners.**	**Name and Rank of less meritorious candidates to whom the School was alloted**
1	Richa Tamrakar	3694	OBC (F)	Sr. No.15, SED PS Boys Khaderi Damoh,	Damoh	Minki Sahu, Rank 4124

				District Damoh		
2	Shivani Sharma	2894	EWS (F)	Sr.No.5, Govt. P.S. Motipur, Guna	Guna, Ashoknagar & Raisen	Anjali Shrivastava, Rank 5983
3	Gopal Sen	7145	OBC	Sr.no.45, Govt. P.S. Tighra Ahamad, District Guna	Guna, Ashoknagar, Ujjain	Ghanshyam Meena, Rank 9786
4	Sharukh Khan	1453	OBC	Sr.no.8, Govt. P.S. Rajvans, District Sagar	Sagar, Raisen,	Shivraj Lodhi, Rank 1956
5	Madhav Gupta	1206	EWS	Sr.no.34, Govt. P.S. Surru, District Sagar	Sagar, Raisen, Ashoknagar.	Udaybhan Rajput, Rank 2403
6	Shubham Yadav	1611	OBC	Sr.no.24, Govt. P.S. Khurd, District Morena	Morena	Rohit Yadav, Rank 2111

9. Learned counsel submits that merit has proved to be a demerit for the petitioners and they have been allotted a school in the Tribal Welfare Department

whereas they opted for a school of School Education Department which has been allotted to a candidate lower in merit.

10. Learned Deputy Advocate General appearing on behalf of respondents/State submits that since the petitioners were treated as unreserved candidate based on their merit their allocation of seat were done as per the unreserved category and thereafter, the left over seats were allotted in order of merit to the reserved category. He further submits that the posts have already been filled and it would now be very difficult to give the petitioners their respective choice.

11. Reference may be had to the judgment of the Supreme Court dated 24.02.2022 in ***Civil Appeal No.7663 of 2021 Praveen Kumar Kurmi vs. State of M.P. and Others*** wherein, the Supreme Court has held that the working out of reservation policy is in accordance with the judgment of the Supreme Court in ***Indra Sawhney and Another vs. Union of India, 1992 Supp 3 SCC 217,*** however, the allocation of service would be based on merit and a more meritorious candidate would not be put to disadvantage on account of working out of the reservation policy in terms of judgment of the Supreme Court in ***Indra Sawhney*** *(supra)*.

12. The supreme Court in ***Praveen Kumar Kurmi****(supra)* has held as under:-

> *"In view of the aforesaid position, we are not required to pen down a detailed judgment but would only like to make some observations so that the problem doesn't arise in the future. There is no cavil to the proposition sought to be advanced by learned counsel for the respondent that the manner of working out of the reservation policy is in accordance with the judgment of this Court in Indra Sawhney & Anr. Vs. Union of India & Anr. 1992 Suppl. 3 SCC 2017. However, the allocation of the service is a different aspect. The appellant got selected, on merit without being required to avail of the benefit of the*

reservation. If he had availed of the benefit of the reservation, he would have been allotted District Police Force. He has been allotted Special Armed Force. The quibble 1 was only with the particular service being allocated to the appellant and the result of what the respondents did was that the person lower in merit to the appellant who in fact availed of the reservation policy benefit was entitled to the District Police Force while the appellant was denied his first preference and allotted the Special Armed Force.

This issue is really no more res integra in view of a catena of judicial pronouncements1 for the proposition that the scenario where a person, though from the reserved category, is not required to avail of the benefit of the same on account of his merit, would be required to be adjusted against the general seat, at the same time it should not work out to the disadvantage of such a candidate and he may not be placed in a more disadvantageous position than the other less meritorious reserved category candidates.

We have penned down so to ensure that the respondents do not find themselves in a predicament as in the present case for the future.

It is directed that the appellant would be entitled to the first preference of District Police Force with all benefits of pay and seniority of that force from the date he joined the Special Armed Force.

The civil appeal is accordingly allowed, leaving parties to bear their own costs."

13. As per the Supreme Court though working out of the reservation policy is in accordance with ***Indra Sawhney*** *(supra)*,wherein a person who applies in the reserved category however, secures marks more than the cut off marks for an unreserved category, is to be treated as an unreserved candidate and allotted a seat in order of merit as per the unreserved category, the reserve seat which then falls vacant is allotted to an unreserved category person. However, in terms of the judgment of the Supreme Court in ***Praveen Kumar Kurmi****(supra),* a more meritorious candidate cannot be put to a disadvantage merely because he secures marks more than the cut off for unreserved candidates.

14. In the instant case, this is exactly what seems to have been done by the department. Petitioners who applied in the reserve category and secured marks more than the cut off marks of the unreserved category, have been put to a great disadvantage. Petitioners as per their merit were entitled to be placed in the School Education Department, whereas petitioners have been allotted a school in the Tribal Welfare Department. The candidate much lower in merit who has secured a seat in the reserved category has been allotted the school opted by the petitioners. The Supreme Court in ***Praveen Kumar Kurmi****(supra)* has categorically held that a person, though from the reserve category, who is not required to avail the benefit of reservation on account of his merit would be required to be adjusted against the general seat but at the same time that should not work out to disadvantage of such a candidate and he should not be placed in a more disadvantageous position then the other less meritorious reserve category candidate.

15. Petitioners in the instant case being more meritorious, are being put to a more disadvantageous position which cannot be countenanced.

16. Further, learned counsel for the petitioners submit that petitioners are not insisting for their first choice of school but are willing to be accommodated in any school of the School Education Department in their respective choice.

17. In view of the above, the petition is allowed and respondents are directed to allot the choice as per the choice filling in order of merit. In case, there is no vacancy in any school as per their first choice of District, then petitioners shall be

allocated a seat in a school of School Education Department as per their other chosen districts.

18. Necessary allocation be done by the respondents within a period of four weeks from today.

19. Petition is allowed in the above terms.

(SANJEEV SACHDEVA)
JUDGE

(VINAY SARAF)
JUDGE

Irfan

Certified Copy Key	App. No.	Delivery Date	Amount (Rs/-)	Purpose	CRN
dbkz - i6sc - uxr4	54304/2024	20-11-2024	45	Private	LAW003020112024010010
Valid along with certificate of the authorized officer.					

IN THE HIGH COURT OF MADHYA PRADESH, MAIN SEAT JABALPUR
CASE NO. : WA-01333-2023 (DISPOSED)

APPLICANT DETAILS:

Application No.: 54304/ 2024 **Applicant Name:** RAMESHWAR SINGH THAKUR **Type:** Ordinary

PARTY DETAILS:

Petitioner	**RICHA TAMRAKAR D/o SHRI RAJESH TAMRKAR** , Aged about **26 years** , **SERVICE , R/o R/P WARD NO. 16, PATERA NEAR SHEETLA MATA MANDIR PATERA DISTRICT- DAMOH, District- Damoh (Madhya Pradesh)**
	SHIVANI SHARMA D/o SHRI SHIVESH SHARMA , Aged about **28 years** , **SERVICE , R/o R/O GULABGANJ DISTRICT VIDISHA M.P. AT PRESENT RESIDENT OF VILLAGE TIKRATOLA TEHSIL NIWAI DISRICT MANDLA ROLL NO 22569887, District- Mandla (Madhya Pradesh)**
	GOPAL SEN S/o SHRI LAXMAN SINGH SEN , Aged about **27 years** , **SERVICE , R/o R/O WARD NO 1 LATERI DISTRICT VIDISHA AT PRESENT RESIDENT OF VILLAGE BASGARHI TEHSIL NIWAS DISTRICT MANDLA M.P. ROLL NO 23185394, District- Mandla (Madhya Pradesh)**
	SHAHRUKH KHAN S/o SHRI RAHEESH KHAN , Aged about **24 years** , **SERVICE , R/o R/O TENYONDA DISTRICT VIDISHA AT PRESENT R/O VILLAGE AND POST NARAYANGAJ DISTRICT MANDLA M.P. ROLL NO 22706305, District- Mandla (Madhya Pradesh)**
	MADHAV GUPTA S/o LATE VINOD GUPTA , Aged about **29 years** , **SERVICE , R/o R/O GULABGANJ DISTRICT VIDISHA AT PRESENT R/O VILLAGE CHHINDGAON TEHSIL BIJADANDI DISTRICT MANDLA M.P. ROLL NO. 23135924, District- Mandla (Madhya Pradesh)**
	SUBHAM YADAV S/o SHRI KAMLESH YADAV , Aged about **27 years** , **SERVICE , R/o RESIDENT OF JAURA KHURD MORENA AT PRESENT R/O GADARWARA DISTRICT NARSINGHPUR M.P. ROLL NO 22665274, District- Narsinghpur (Madhya Pradesh)**
Respondent	**STATE OF MADHYA PRADESH** , **THROUGH PRINCIPAL SECRETARY EDUCATION DEPARTMENT , R/o VALLABH BHAWAN, MANTRALAYA, BHOPAL, District- Bhopal (Madhya Pradesh)**
	COMMISSIONER , PUBLIC INSTRUCTIONS , R/o **GAUTAM NAGAR BHOPAL**, District- **Bhopal (Madhya Pradesh)**
	COMMISSIONER,/ ASST, COMMISSIONER TRIBAL WELFARE DEPARTMENT BHOPAL , R/o **BHOPAL DISTRICT BHOPAL**, District- **Bhopal (Madhya Pradesh)**
	PROFESSIONAL EXAMINATION BOARD THROGH ITS DIRECTOR CHAYAN BHAWAN , R/o **MAIN ROAD NO.1 CHINAR PARK (EAST) BHOPAL**, District- **Bhopal (Madhya Pradesh)**

Advocates Details:

Petitioner Advocates	RAMESHWAR SINGH THAKUR,RAM BHAJAN LODHI
Respondent Advocates	,ADVOCATE GENERAL[R-2],ADVOCATE GENERAL[R-1],ADVOCATE GENERAL[R-3]

LAST LISTED ON DETAILS:

Judge	HONBLE SHRI JUSTICE SANJEEV SACHDEVA	**Date**	12-11-2024

LOWER COURT DETAILS:

Case Type	WP(+MP) WRIT PETITIONS-10780-2023	**District**	JABALPUR MAIN SEAT, HIGH COURT OF M.P.	**Police Staion**		**Crime No.**	/0
Judge	---HON\'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA	**Decision Date**	11-07-2023				

EXTRA DETAILS:

Subject Heading/Category/Sub-Category	**(1) SERVICE RELATING TO STATE GOVT.-17100 / Selection-17141/-**
Provision of law	WRIT APPEAL U/S 2(1) OF MADHYA PRADESH UCHCHA NAYAYALAY (KHAND NYAY PEETH KO APPEAL) ADHINIYAM 2005
Act- U/Section	-
Brief Description of the Judgment/ Order/Award impugned	CHALLENGING THE ORDER DATED 11.07.2023, PASSED IN W.P. 10780/2023 (ANNEXURE A/1)
Des of Relief Claimed	TO SET ASIDE THE ORDER DATED 11.07.2023, PASSED IN W.P. 10780/2023 (ANNEXURE A/1)

CERTIFICATE:

1 that I Omprakash Borle (name) am employed as Head Copyist in the High Court of Madhya Pradesh, Main Seat Jabalpur.

2 that the High Court of M.P. is engaged in dispensation of Justice and various activities connected there to.

3 that by virtue of my employment as Head Copyist, I am authorized to use the computer system in High Court of Madhya Pradesh, Jabalpur.

4 that the computer terminals of the system used by me were functioning regularly to store or process information at all times.

5 that the contents of the certified copy are retireved from my computer stored in High Court Server which was scanned through original records verified and digitally signed by the competent authority and certified by me.

Signature Not Verified
Signed by: OM PRAKASH BORLE
Signing time: 20-11-2024 16:13:58

Certified Copy Key	App. No.	Delivery Date	Amount (Rs/-)	Purpose	CRN
dbkz - i6sc - uxr4	54304/2024	20-11-2024	45	Private	LAW003020112024010010
Valid along with certificate of the authorized officer.					

6 that the above certificate, therefore, in the facts and circustances of the case, is sufficient compliance of **Section 65B of the Evidence Act**. The above certified copies/ print outs as taken out from the computer, therefore, can be treated as certified copy.

7 Accordingly, I certify that the certifed copy of the desired document annexed hereto is/are reproduced or is derived from the electronic record which was regularly fed into/transmitted through my computer termianl in High Court of Madhya Pradesh, Jabalpur, in the ordinary course of activites. During the activity the computer system utilized by me were operating properly and there is no distortion in the accuracy of the contents of the certified copy of the desired document.

Head Copyist
Omprakash Borle

Signature Not Verified
Signed by: OM PRAKASH BORLE
Signing time: 20-11-2024 16:13:58

Certified Copy Key	App. No.	Delivery Date	Amount (Rs/-)	Purpose	CRN
dbkz - i6sc - uxr4	54304/2024	20-11-2024	45	Private	LAW003020112024010010
Valid along with certificate of the authorized officer.					

GCPB-1982-DCGPB-18-3-05-1,00,000

II-10
C.J.

Application received on	Applicant told to appear on	Applicant appeared on	Application (with or without further /correct particulars) sent to Record Keeper / Dealing Assistant on	Application (with record or without record, and for further or correct particulars, if any required) received from the Record Keeper / Dealing Assistant on	Applicant given notice for further or corrcet particulars on	Applicant given notice for further funds on	Notice in Sr.No. (6) or (7) complied with on	Copy ready on	Copy delivered on	Court-fee realized
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
20-11-2024	23-11-2024	20-11-2024					20-11-2024	20-11-2024	20-11-2024	40

Copyist

Head
Copyist

Signature Not Verified
Signed by: OM PRAKASH BORLE
Signing time: 20-11-2024 16:13:58