

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 21st OF AUGUST, 2024

WRIT PETITION NO.20052 of 2024

SMT. PHOOLWATI PRAJAPATI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Yadvendra Dwivedi – Advocate for the petitioner.

Shri Kamal Nath Nayak – Panel Lawyer for the respondents /State.

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ORDER

The present petition has been filed challenging the order (Annexure P-1) dated 01.07.2024 whereby the nomination of the petitioner as ASHA worker (Accredited Social Health Activist). The said order (Annexure P-1) has been issued in compliance of some order dated 21.06.2024 passed by the Chief Medical and Health Officer, Sidhi.

2. Vide order dated 30.07.2024 this Court directed the State to seek instructions in the matter and on 08.08.2024 this Court directed the State to place on record the letter dated 21.06.2024 as referred in (Annexure P-1). Today the said letter has been produced by learned counsel for the petitioner and placed on record as (Annexure D-1)

3. The challenge is made to the order (Annexure P-1) on the ground that without giving any opportunity of hearing, the nomination of the petitioner as ASHA worker has been put to an end though she was validly appointed by order dated 24.03.2023 (Annexure P-3) passed by the Block Medical Officer. She is stated to be working satisfactorily and without any thing adverse against her on record, without assigning any cause, her services have been dispensed with.

4. Per Contra, learned counsel for the State by relying on the letter dated 21.06.2024 submits that as per policy of the State if in any village more than 50% of the population belongs to SC or ST category then there would be preference in appointment of ASHA worker from concerned community. It is further argued by placing reliance on letter dated 21.06.2024 that in the village in question the population of ST category is 246, SC is 29 and OBC is 68. The petitioner belongs to SC category and population of SC community being only 29 out of more than 350 in the entire village, her appointment was found to be contrary to clause-9 of circular dated 02.08.2022 as mentioned in the order dated 21.06.2024. Thus, the services of the petitioner have rightly been dispensed with as her appointment was not in accordance with law and in violation of clause-9 of circular dated 02.08.2022.

5. Heard the learned counsel for the parties and perused the record.

6. The termination of the petitioner is sought to be defended only on the ground that as per the State policy preference is to be given to persons belonging to the SC or ST community if their population is more than 50% in the village. As the population of ST community in the village was more than 50%, hence there was a preference to the members of ST community

and the petitioner has been wrongly appointed despite belonging to ST community.

7. While testing the aforesaid contention, the merit list as placed on record vide (Annexure P-2) is seen. In the said merit list the petitioner is shown to be Class-XII pass and there was only one ST community candidate namely Manisha Kol who was class-VIII passed. As per circular (Annexure P-6) placed on record the minimum qualification for appointment of ASHA worker is formal education up to Class-X and in the event of non-availability of a woman not qualified up to Class-X then in those special circumstances a woman having qualification of Class-VIII can be appointed subject to age limit of 25 years. The relevant clauses read as under:-

“6. विवाहित महिला की न्यूनतम दसवीं कक्षा तक औपचारिक शिक्षा अनिवार्य रूप से होनी चाहिए। अधिकतम शैक्षणिक योग्यता की महिला को प्राथमिकता प्रदान की जायेगी।

7. कुछ स्थानों पर दसवीं पास महिला नहीं मिल रही है। उन विशेष परिस्थितियों में आठवीं पास महिला को चयनित किया जा सकता है, परन्तु आयु सीमा 25 वर्ष होगी।”

8. It is evident from the perusal of aforesaid clauses that the minimum educational qualification is formal education up to Class-X and preference is given to candidate having maximum educational qualification. Only in the case of non-availability of a woman having Class-X education, then in those special circumstances Class -VIII pass woman can be selected.

9. In the present case, the petitioner is Class-XII pass as evident from perusal of (Annexure P-2) which are the proceedings of Gram Sabha. The only ST candidate who applied for the post was Class-XII pass. It is settled in law that preference can be granted only in the event the other things are equal. Once minimum educational qualification was Class-X pass then the

preference could be operated only if the candidate of ST category was also atleast Class-X pass and only in that event the aspect of preference would have come into picture.

10. The Hon'ble Apex Court in the case of **Secy., A.P. Public Service Commission v. Y.V.V.R. Srinivasulu, (2003) 5 SCC 341** has held as under:- .

“10. Both on account of the scheme of selection and the various stages disclosed as necessary to be undergone by every candidate and the manner of actual selection for the appointment in question, the candidates were required to be selected finally for appointment on the basis of the ranks obtained by them in terms of the inter se ranking based on the merit of their respective performance. There is no escape for anyone from this ordeal and claim for any en bloc favoured treatment merely because, any one of them happened to possess an additional qualification than the relevant basic/general qualification essential for even applying to the post. The word “preference” in our view is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application. The procedure for selection in the case involves a qualifying test, a written examination and an oral test or interview and the final list of selection has to be on the basis of the marks obtained in them. The suitability and all-round merit, if had to be adjudged in that manner only, what justification could there be for overriding all these merely because, a particular candidate is in possession of an additional qualification on the basis of which, a preference has also been envisaged. The Rules do not provide for separate classification of those candidates or apply different norms of selection for them. The “preference” envisaged in the Rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional qualification cannot be enforced as a rule of reservation or rule of complete precedence. Such a construction would not only undermine the scheme of selection envisaged through

the Public Service Commission on the basis of merit performance but also would work great hardship and injustice to those who possess the required minimum educational qualification with which they are entitled to compete with those possessing additional qualification too, and demonstrate their superiority meritwise and their suitability for the post. It is not to be viewed as a preferential right conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all candidates who are eligible are taken for consideration and when any one or more of them are found equally positioned, by using the additional qualification as a tilting factor, in their favour vis-à-vis others in the matter of actual selection.”

11. Recently, in case of **Civil Appeal No. 6470/2021 (The Chairman Tangedco and Anr. Vs. Priyadaarshini)** the Hon'ble Apex Court has opined as under:-

“The principle of preferential candidates would apply when there is a tie between the preferential candidate and a general candidate and the person who is to be treated as a preferential can be given a mark over a general candidate. This is the most material distinction. In view thereof, the respondent could not have been treated as a “preferential candidate” much less a “priority candidate”

12. In the present case, the preference has been tried to be interpreted in the manner that in the selection no candidate of ST category having minimum educational qualification was available and despite that the selection and appointment of the petitioner has been held to be illegal by respondents holding that there was preference for ST category candidates. There was no ST category candidate having minimum educational qualification and candidates having qualification of Class-VIII have to be

considered only if candidates having educational qualification upto class-X are not available. Thus, consideration of candidates having education up to Class-VIII is not to be made unless candidates having qualification up to Class-X are available.

13. As there was no ST category candidate in the zone of consideration in the selection and thus there was no question of preference once the ST category candidate was not in the zone of consideration. The letter dated 21.06.2024 placed on record does not speak about disqualification of candidates not belonging to the community having more than 50% population. It only speaks about the candidate belonging to that community having preference. As no candidate having minimum qualification was in the zone of consideration belonging to ST category, the respondents have wrongly operated the preference by order dated 21.06.2024 and terminating the services of the petitioner by consequential order dated 01.07.2024 (Annexure P-1).

14. Consequently, the order (Annexure P-1) cannot be given stamp of approval it deserves to be and is hereby quashed. The petition is **allowed**.

(VIVEK JAIN)
JUDGE