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WP-32834-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 21st OF NOVEMBER, 2024WRIT PETITION No. 32834 of 2024

*ANUSUCHIT JATI, EVAM JAN JATI ADHIKARI KARMACHARI
SANGH (AJJAKS)*

Versus

MP HIGH COURT OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Rameshwar Singh Thakur and Shri Vinayak Prasad Shah -

Advocates for the petitioner.
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ORDER

Per. Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice

The petitioner has filed this petition seeking the following reliefs :-

(i) The Hon'ble Court may kindly be pleased to issue a Writ in the nature of Mandamusto direct the respondents to call for all records relating to recruitments process, relating to examination Conducted by Examination Cell of the MP High Court.

(ii) The Hon'ble Court may kindly be pleased to issue a Writ in the nature of Mandamus to direct the respondents to select the Meritorious Reserve Category Candidates against unreserved posts at every stage of selection process including preliminary and the main examination conducted by the examination Cell of the MP High Court, to secure a birth in U.R. category, if they have received same or more marks than the unreserved category.

(iii) The Hon'ble Court may kindly be pleased to issue a Writ in the nature of Mandamus to direct the respondents to strictly follow the judgment of Division Bench of this Hon'ble High Court in case



o f Kishore Choudhary vs State of MP & Others reported in 2022SCC Online MP 5442. ILR (2022) M.P. 1671 , in view of the judgment of full bench of this high court in case of Jabalpur Bus Operators Association and others Vs. State of Madhya Pradesh (Supra), while recruiting any posts.

(iv) Any other relief which deems fit and proper looking to facts and circumstances of the case may also be awarded in favour of the petitioners with cost of the petition.

2. Shri Ashish Shroti, Advocate accepts notice on behalf of respondent No.1 and Shri Amit Seth, Additional Advocate General accepts notice on behalf of respondent No.2.

3. With the content of the parties, the present petition is taken up for final disposal.

4. The contention raised by counsel for the petitioner is that in the recruitments of Madhya Pradesh Judicial Services conducted by the exam cell of the M.P. High Court benefit of migration is not provided to the meritorious reserved category candidates at every stage of selection process despite the fact that they have secured equal or more marks than the lowest candidates of unreserved category. No meritorious reserved category candidate has been placed against the unreserved seats in the preliminary examination but only in final results after mains examination and interview thereby causing grave injustice to the reserved category candidates and the right of reserved category (i.e. OBCs, SCs and STs) candidates is adversely affected which is guaranteed by Articles 14 and 16 of the Constitution of India.

5. It is further contended that while shortlisting the candidates in preliminary stage candidates against the unreserved seats should have been



selected by meritorious candidates including meritorious reserved category candidates.

6. A Coordinate Bench of this court in *Kishore Choudhary Vs. State of Madhya Pradesh and another* in W.P. No. 542/2021 and other connected matters has held as under:-

“45.....We are of the considered view that the principles laid down by the Supreme Court in Indra Sawhney (supra) can be translated into reality only when reserved category candidate secured equal or more marks with U.R. category candidate is given birth in U.R. category in all stages of selection including preliminary and the main examination. Any other interpretation will defeat the purpose and the constitutional scheme flowing from Article 14 and 16 of the Constitution of India.....”

7. Later another Coordinate Bench of this Court in *Pushendra Kumar Patel and others Vs. State of M.P. and others in W.P. No. 8750/2022* taking contrary view held as under:-

“14.2 However, the Coordinate Bench of this Court in the case of Kishore Choudhary (supra) taking queue from the decision of Indira Sawhney (supra) held that the essence of Indira Sawhney’s case (supra) can be translated into reality only when the principle of migration / mobility is made available to be availed at all stages of examination. This observation of Coordinate Bench in Kishore Choudhary (supra), in the humble opinion of this Court, does not find support by any observation or ratio laid down in Indira Sawhney (supra). For the obvious reason that in Indira Sawhney (supra) there arose no occasion to deal with the question of stage at which right of migration can be availed by reserved category candidates and, therefore, decision of Indira Sawhney (supra) is not an answer to the question involved herein. As such to the extent the Coordinate Bench in Kishore Choudhary (supra) held that right of migration is available even at Preliminary Examination stage (where merit is not being assessed) is rendered per incuriam Indira Sawhney’s case (supra). Thus, said observation of Coordinate Bench in Kishore Choudhary (supra) loses its precedential value and is thus not binding on this Court.”

8. It is pertinent to mention here that recently the Hon’ble Supreme



Court of India in the case of *Deependra Yadav and others Vs. State of Madhya Pradesh and other* reported in *2024 SCC Online SC 724*, while dealing with the aspect of extending benefit of migration to meritorious candidates of reserved category at the preliminary examination stage itself has drawn curtains on the issue and has held as under:-

30. We may also note that Rule 4(3)(d)(III) of the Rules of 2015 patently harmed the interests of the reservation category candidates, as even meritorious candidates from such categories, who had not availed any reservation benefit/relaxation, were to be treated as belonging to those reservation categories and they were not to be segregated with meritorious unreserved category candidates at the preliminary examination result stage. As a result, they continued to occupy the reservation category slots which would have otherwise gone to deserving reservation category candidates lower down in the merit list of that category, had they been included with meritorious unreserved category candidates on the strength of their marks.

31. In Saurav Yadav v. State of U.P. (2021) 4 SCC 542, a 3-Judge Bench of this Court affirmed the principle that candidates belonging to any of the vertical reservation categories would be entitled to be selected in the 'open category' and if such candidates belonging to reservation categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories of vertical reservation that they belong to. It was further observed that reservations, both vertical and horizontal, are methods of ensuring representation in public services and these are not to be seen as rigid 'slots', where a candidate's merit, which otherwise entitles him to be shown in the open general category, is foreclosed. The Bench further observed that the 'open category' is open to all and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type was available to him or her.

"32. This being the settle legal position, it appears that the State of Madhya Pradesh itself realized the harm that it was doing to the reservation category candidates and chose to restore Rule 4, as it stood earlier, which enabled drawing up the result of the preliminary examination by segregating deserving meritorious reservation category candidates with meritorious unreserved category candidates at the preliminary examination stage itself. As this was the process that was undertaken after the judgment in Kishore Choudhary (supra), whereby a greater number of reservation category candidates cleared the preliminary examination and were held eligible to appear in the main examination, there can be no dispute with the legality and validity of such



process.”

9. The Hon’ble Supreme Court in **Deependra Yadav (supra)** has approved the legality and validity of extending the benefit of migration to meritorious reserved category candidates in unreserved category in all stages of selection as held by Coordinate Bench of this Court in **Kishore Choudhary (supra)**.

10. In view of the above, we direct that henceforth in all future recruitment exams conducted by Examination Cell of High Court of Madhya Pradesh benefit of migration shall be extended to meritorious reserved category candidates in unreserved category in all the stages of selection process. It is however clarified that ongoing recruitment examination conducted by the Examination Cell wherein examination (preliminary or mains as the case may be) has already been conducted shall not be affected by this order.

11. Petition is accordingly disposed of.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

SKM