

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 3rd OF NOVEMBER, 2023

WRIT PETITION No. 14104 of 2021

BETWEEN:-

**SUSHIL KUMAR SHARMA S/O SHRI
KAILASH PRASAD SHARMA, AGED
ABOUT 30 YEARS, OCCUPATION:
STUDENT R/O WARD NO.13,
ASHOK NAGAR, RAISEN DISTRICT
RAISEN M.P. 464551 (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI SRAJAN KASHYAP - ADVOCATE)

AND

- 1. THE STATE OF MADHYA
PRADESH THROUGH THE
SECRETARY DEPARTMENT
OF JAIL GANDHI NAGAR
BHOPAL DISTRICT BHOPAL
(MADHYA PRADESH)**
- 2. MP. PROFESSIONAL
EXAMINATION BOARD THR.
ITS MANAGING DIRECTOR
CHAYAN BHAWAN MAIN
ROAD NO.1 CHINAR PARK
(EAST) BHOPAL (MADHYA
PRADESH)**
- 3. DIRECTORATE OF
EMPLOYMENT THR. ITS
DIRECTOR DEPARTMENT OF
TECHNICAL EDUCATION
SKILL DEVELOPMENT AND
EMPLOYMENT GOVT. OF MP.
OFFICE NO.11, FIRST FLOOR
SATELLITE PLAZA AYODHYA
BYPASS BHOPAL (MADHYA
PRADESH)**
- 4. JAIL HEADQUARTERS THR**

ITS DEPUTY INSPECTOR
GENERAL JAIL ROAD ARERA
HILLS BHOPAL (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI K.S.BAGHEL – GOVERNMENT ADVOCATE)

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This petition coming on for admission this day, the court passed the following:

ORDER

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs :-

- (i) This Hon'ble Court may kindly be pleased to call for the records with respect to the petitioner.
- (ii) This Hon'ble Court may kindly be pleased to direct the Respondent No.2 to consider the candidature of the petitioner for appointment on the post of "Jail Prahri".
- (iii) This Hon'ble Court may kindly be pleased to direct the Respondent No.2 and 3 to take a decision with respect to the appointment of the petitioner in a time frame as this Hon'ble Court may deem fit & proper to grant.
- (iv) Any other relief this Hon'ble Court may deem fit & proper to grant in favour of the petitioner along with the cost of litigation throughout.

2. It is submitted by counsel for petitioner that petitioner had participated in the recruitment process for the post of Jail Prahari.

However, his candidature has been refused only on the ground that petitioner was not having live employment exchange registration card.

3. The respondents have also filed their return and they have taken a specific stand that petitioner was not having live registration with State Employment Exchange. Therefore, in the light of a specific provision in the advertisement, petitioner was not found qualified for recruitment to the post of Jail Prahari.

4. In reply, it is submitted by counsel for petitioner that similar question has already been decided by this Court by order dated 15.09.2023 passed in the case of **Ram Singh Dhurvey Vs. The State of M.P. & others** in Writ Petition No.14004/2021.

5. The counsel for State also contended that the requirement of live registration with employment exchange has already been considered and decided by the Division Bench of this Court, which has been relied upon by this Court in the case of **Ram Singh Dhurvey (supra)**.

6. Considered the submissions made by counsel for parties.

7. This Court in the case of **Ram Singh Dhurvey (supra)** has passed the following order :-

“By this common order, W.P.No.15530/2021 and W.P.No.15701/2021 shall also be decided.

2. For the sake of convenience, facts of W.P.No.14004/2021 shall be considered.

3. This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs :-

(i) Hon’ble Court may kindly be pleased to call for the entire record relating to Madhya Pradesh Jail Prahari Bharti Pariksha, 2020.

(ii) Hon’ble Court may kindly be pleased to direct respondents authorities to

consider the candidature of present petitioner against the post of Jail Prahari and on the basis of the written and physical tests, he should be declared qualified and consequently, the appointment be given to the petitioner on the post of Jail Prahari.

(iii) Hon'ble Court may kindly be pleased to pass any other writ / order which this Hon'ble Court deem fit and proper in the facts and circumstances of the case.

4. It is the case of petitioner that respondents had issued an advertisement for recruitment of Jail Prahari through Professional Examination Board, Bhopal which was known as Jail Prahari Recruitment Test, 2020. Petitioner also participated in the recruitment process and filled up his form. He cleared written examination as well as also cleared physical test. However, during scrutiny of the documents, it was verbally informed to the petitioner that since his registration with district employment exchange has expired and was not valid at the time of submission of application form, accordingly, he is being declared disqualified. It is the case of petitioner that no written information was given.

5. Respondents have filed their return and took a specific stand that there was a specific provision in the advertisement requiring live certificate with employment exchange and since petitioner's registration with employment exchange had already expired, therefore, he was not qualified to be considered for recruitment to the post of Jail Prahari.

6. The moot question for consideration is as to whether live registration with employment exchange is essential or not and if not even whether such a condition in the advertisement can be ignored or not.

7. *The aforesaid question is no more res integra. A Division Bench of this court in the case of Raksha Patel and others vs. The State of Madhya Pradesh and others, decided on 13.06.2023 in W.A. No. 1609/2022, has held as under :-*

“7.2. In view of law laid down by the Apex Court it is obvious that registration in the employment exchange is not a mandatory requirement for public employment. Thus, the corollary that follows is that the right to be considered for public employment, which is a fundamental right under article 16 cannot be curtailed or denied merely because the candidate concerned is not registered in the employment exchange. Further corollary that follows is that prescribing of a condition in the advertisement of possession of live employment exchange card on the relevant date, is not only unnecessary and irrelevant but also unlawful especially when it casts adverse shadow upon the right of a particular candidate who is otherwise eligible to be considered and appointed to public employment.”

8. *Thus, it is clear that requirement of live registration with employment exchange is not necessary and even if, such a condition is mentioned in the advertisement, still it is not only unnecessary and irrelevant but also unlawful. Under these circumstances, non-consideration of claim of the petitioners for their recruitment to the post of Jail Prahari merely on the ground that they were not having live registration certificate with employment exchange is contrary to law.*

9. Accordingly, this petition is **allowed** with the following directions:-

(i) Respondents shall henceforth consider the candidature of the petitioners by ignoring requirement of live registration certificate with employment exchange.

(ii) Candidature shall be considered purely in accordance with their merit.

(iii) If the petitioner (petitioners) is/are found eligible and meritorious then necessary action for their appointment on the post of Jail Prahari shall follow.

(iv) In case, if the petitioner (s) is / are found eligible then they shall be entitled for all consequential benefits including seniority but shall not be entitled for back wages on the principle of no work no pay.

(v) Let it is made clear that this court vide interim order dated 9.8.2021 passed in W.P.No.14004/21 had directed the respondents to keep one post of Jail Prahari vacant till the next date of hearing. Therefore, it is clear that all the post must not have been filled up. Furthermore, by order dated 24.08.2021 passed in W.P.No.15530/2021 and by order dated 29.09.2021 passed in W.P.No.15701/2021 it was specifically directed that any appointment made on the post of Jail Prahari shall be subject to final decision in the writ petitions. Therefore, candidature of the petitioners shall not be rejected on the ground of non-availability of vacancy /post.

(vi) Let the entire exercise be completed within a period of 2 months from today.

8. Since this Court has no distinguishable features and is squarely covered by the law laid down in the case of **Ram Singh Dhurvey (supra)**, this petition is also **allowed** in terms and conditions of order passed in the case of **Ram Singh Dhurvey (supra)**.

(G.S.AHLUWALIA)
JUDGE

TG/-