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NITESH KUMAR PANDEY

v.

THE STATE OF MADHYA PRADESH AND ORS.

(Civil Appeal No. 1215 of 2020)

B

FEBRUARY 07, 2020

**[R. BANUMATHI AND A. S. BOPANNA, JJ.]**

*Panchayat:*

C        *Selection – To the post of ‘Gram Rojgar Sahayak’ – To be  
conducted under the guidelines dated 2.6.2012 – The Collector of  
District Rewa, Madhya Pradesh, by the revised time schedule dated  
17.6.2014 provided for computer efficiency test – Some candidates’  
names were removed from the ‘Select List’ based on the result of  
computer efficiency test – The candidates filed writ petition  
D        contending that computer efficiency test was not contemplated as a  
criteria for selection – Single Judge of High Court allowed the  
petition – Order was further affirmed in writ appeal as well as in  
review petition – Appeal to Supreme Court – Held: The guidelines  
dated 2.6.2012 was applicable to the entire State of Madhya Pradesh  
E        – Alteration of the guideline by prescribing an additional criteria  
only in respect of one District i.e. Rewa was without authority – The  
additional criteria, having been introduced after commencement of  
selection process, was not justified.*

**Dismissing the appeals, the Court**

F        **HELD: 1.1 Though the guidelines dated 2.6.2012 refer to  
the requirement of computer knowledge as a desired qualification,  
the same also provides for such qualification in computer exam  
from the institutions depicted therein and the selection process  
provides for the assignment of marks. The said guidelines are  
G        applicable to all the Districts in the entire State of Madhya  
Pradesh. The Revised Time Schedule dated 17.6.2014 issued by  
the Collector, Rewa, Madhya Pradesh is only in respect of one  
District namely District Rewa. [Para 11][653-F-H; 654-A]**

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1.2 Therefore, at the outset when the scheme applicable to the entire State is made under a common guideline, the alteration of the requirement by prescribing an additional criteria only in respect of one District without such authority do so will not be sustainable. Furthermore, the application for the post of Gram Rojgar Sahayak was to be made in terms of the revised guidelines dated 2.6.2012. By the Revised Time Schedule dated 17.6.2014 what is provided for essentially is the time frame for carrying out each of the requirement relating to the initiation of the recruitment till the selected candidate joins the post. It is under the said time schedule, as date has been fixed for holding the computer efficiency test. Therefore, it would indicate that the additional criteria has been introduced after the selection process has commenced and when such requirement was not indicated in the fresh guidelines dated 2.6.2012 issued in respect of the entire State. Therefore, the conclusion reached by the High Court that the requirement has been altered after the commencement of the selection process is justified and unassailable. [Para 12] [654-A-E]

2.1 The well accepted position in law is that the person who has acceded to a position and participate in the process cannot be permitted to approbate and reprobate. It is a norm that if a person/candidate having taken note of a requirement in the notification and even if it is objectionable does not challenge the same but despite having knowledge of the same participates in the said process and takes a chance, on failing the process, such person/candidate cannot turn around and assail the same. Though that is the position in law, the said position of law will not be applicable to the present case. [Para 14][655-C-E]

2.2 In the instant case, firstly, the Revised Time Schedule issued by the Collector, Rewa cannot be termed as the recruitment notification indicating all the criteria for selection; but can only be termed as a time schedule prescribed pursuant to the recruitment process as provided under the fresh guidelines dated 2.6.2012. Therefore, a candidate already in selection list who has appeared in the computer efficiency test on the date depicted in

A the revised time schedule cannot be considered to have appeared  
 after having knowledge that the same will also be a part of the  
 assessment for selection and cannot be put on the same pedestal.  
 This is more so in a circumstance wherein the schedule for “18<sup>th</sup>  
 December” as prescribed reads.....”holding of computer  
 B efficiency test of selected candidates and those at the top of merit  
 list”. A perusal of the same would indicate that the entire selection  
 would be based on the criteria prescribed and the marks as  
 assigned under the fresh guidelines dated 2.6.2012 and  
 appearance for the computer efficiency test would be treated as  
 C a requirement which would enable the authorities to assess a  
 person who has otherwise qualified and has been found fit to be  
 in the selected list or is at the top of the merit list. [Para 14]  
 [655-F-H; 656-A-B]

2.3. Therefore, mere indication of the date for computer  
 efficiency test in the time schedule and the participation therein  
 D cannot be considered as if the candidate has acceded to the same  
 so as to estop such candidate from challenging the action of the  
 respondent if the name of such candidate is removed from the  
 select list thereafter treating the same as the basis. Hence in the  
 instant case it cannot be considered as a typical case of approbate  
 E and reprobate. [Para 15][656-B-C]

*Ashok Kumar and Another v. State of Bihar and Others*  
 (2017) 4 SCC 357 : [2016] 8 SCR 815; *Subhash*  
*Chandra and Another v. Delhi Subordinate Services*  
*Selection Board and Others* (2009) 15 SCC 458 : [2009]  
 F 12 SCR 978 – distinguished.

3. A perusal of the order passed by the single judge of the  
 High Court as also the order passed in the writ appeal and the  
 review petition in the relied upon cases would indicate that a  
 detailed discussion has been made by the High Court and there  
 G is no reason to differ from the same. [Para 11][653-F]

#### Case Law Reference

[2009] 12 SCR 978	distinguished	Para 13
[2016] 8 SCR 815	distinguished	Para 13

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NITESH KUMAR PANDEY v. STATE OF MADHYA  
PRADESH AND ORS.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1215 A  
of 2020.

From the Judgment and Order dated 06.08.2018 of the High Court  
of Madhya Pradesh, Main Seat Jabalpur Case No. WA-533/2018.

With

Civil Appeal Nos. 1216, 1217-1218 of 2020. B

Anoop George Chaudhari, Santosh Paul, Sr. Advs. Ms. June  
Chaudhari, V. Elanchezhian, Ms. Sumeeta Chaudhari, Vivek Yadav,  
A. Radhakrishnan Sriharsh N. Bundela, Subhranshu Dash, Akshay  
Kumar, Abhay Kumar, Rahul Kaushik, Ms. Bhuvneshwari Pathak, C  
Ms. Shilpi Satyapriya Satyam, Rahul Khatri, Advs. for the appearing  
parties.

The Judgment of the Court was delivered by

**A. S. BOPANNA, J.**

1. Leave granted. D

2. The appellant in the appeal arising out of SLP No.27200 of  
2018 was the appellant in WA No. 509/2018 before the High Court of  
Madhya Pradesh. In the said writ appeal, the appellant was assailing the  
order passed by Learned Single Judge dated 02.04.2018 in W.P.No.  
1494/2017 and W.P.No. 21425/2016. The appellant in the appeal arising  
out of SLP No. 28123 of 2018 was the appellant in WA No. 533/2018 in  
the High Court of Madhya Pradesh. The said appeal was filed assailing  
the order of Learned Single Judge dated 29.07.2016 in W.P.No.12689 of  
2016. The appellant in the appeal arising out of SLP(C) D.No. 41845,  
was the appellant in W.A No. 207/2017 before the High Court of Madhya  
Pradesh. The said appeal was disposed of by order dated 28.08.2018 in  
terms of the order dated 06.08.2008 in R.P.No. 682/2018. Though two  
separate orders dated 06.08.2018 passed in WA Nos. 509 and 533/2018  
and order dated 28.08.2018 in W.A.No.207/2017 are assailed in these  
appeals, since the issue is common and all the writ appeals have been  
disposed of by the High Court relying upon its earlier orders, these appeals  
were taken up together, heard and are being disposed of by this common  
judgment. E  
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A           3. The issue relates to the selection to the post of Gram Rojgar  
Sahayak in the Panchayat of the Rewa District in Madhya Pradesh.  
Though the issue presently pertains to the method adopted in the selection  
process in Rewa District, the scheme applicable to the entire state of  
B           Madhya Pradesh for such recruitment of Gram Rojgar Sahayak for  
implementation of the Mahatma Gandhi National Rural Employment  
Guarantee Scheme ('MGNREGS' for short) is to be taken note and the  
matter is to be decided in that background. As noted, the issue presently  
being limited to the selection process in Rewa District assailing the method  
that was followed therein, it is seen that a batch of writ petitions relating  
C           to the same process were earlier considered by a Learned Single Judge  
through the order dated 15.07.2016 and had allowed the writ petitions  
bearing W.P.No.17183/2014 and the analogous matters. Challenge to  
the said order had concluded through the order passed by the Division  
Bench in W.A.No.479/2016 and the second Review Petition in  
D           R.P.No.682/2018. In that circumstance, since in the present case the  
contentions put forth by the appellants herein before the Division Bench  
of the High Court was similar to the said cases, the Division Bench of  
the High Court had dismissed the said writ appeals bearing W.A.Nos.509/  
2018, 533/2018 and W.A.No.207/2017. The appellants claiming to be  
aggrieved are, therefore, before this court in these appeals.

E           4. At the outset, it is to be noted that though the orders dated  
06.08.2018 and 28.08.2018 passed in the Writ Appeals relating to the  
appellants herein are assailed, the relied upon order which contains the  
reasoning adopted by the High Court is not assailed in these appeals.  
That apart the SLP against the earlier order is already dismissed. Be  
F           that as it may, since the issue urged herein is to assail the relief granted  
to the writ petitioners by the High Court, the consideration of the  
correctness or otherwise is to be made in that regard.

G           5. Heard Mr. Anoop G. Chaudhari, Ms. June Chaudhari and Mr.  
Satyam Reddy, respective learned Senior Advocates for the appellants,  
Mr. Santosh Paul, learned Senior Advocate for the private respondent  
and Mr. Rahul Kaushik, learned Advocate for the State of Madhya  
Pradesh. In that light we have also perused the appeal papers.

H           6. The brief facts are that the official respondents invited  
applications for appointment to the post of Gram Rojgar Sahayak. The  
said appointment was to be made in terms of the fresh guidelines dated

02.06.2012 issued by the Madhya Pradesh State Employment Guarantee Parishad which is a registered institution constituted under the Panchayat and Rural Development Department. As per the same, one Gram Rojgar Sahayak per panchayat was to be appointed under the MGNREG scheme. The said guidelines provided for the qualifications which were classified as (a) Compulsory qualifications and (b) Desired qualifications. The compulsory qualifications specified was with regard to the basic education qualifications and under the Desired qualifications it referred to computer exam pass from any one institution mentioned in the memo of General Administration Department. Clause (8) of the said guidelines also provided with regard to the Selection process whereunder sub-Clause (8) therein further provided for the assignment of maximum marks under each of the criteria stated therein. In so far as the computer examination, the pass certificate from the different Universities are named therein and the maximum marks of '50' is provided thereunder.

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7. Though the selection process was to be conducted based on the criteria and the method of assessment provided under the guidelines dated 02.06.2012, the office of Collector, Rewa, Madhya Pradesh issued a Revised Time Schedule for recruitment of Gram Rojgar Sahayak, dated 17.06.2014 and the date for initiation of recruitment was indicated as ... 'before 20<sup>th</sup> June, 2014'. Similarly, the schedule for the different stages in the selection process was indicated. At serial No.9 of the Revised Time Schedule, the outer date was indicated for holding of computer efficiency test of selected candidates and those at the top of the merit list, which was to be held before 18<sup>th</sup> September. Pursuant to the same, the process was conducted but the writ petitioners were removed from the select list based on the result of the computer efficiency test. Since the computer efficiency test was not contemplated as a criteria for selection under the fresh guidelines dated 02.06.2012, the writ petitioners assailed the same before the Learned Single Judge, in the said batch of writ petitions.

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8. The Learned Single Judge after taking note of the above facts arrived at the conclusion that the reading of the scheme shows that the selection procedure and methodology of giving marks do not include the computer efficiency test and the marks arising out of such test. The writ petitioners were meritorious and their names were in the merit list, but for the marks of the computer efficiency test being included. In view of that position, the writ petitioners were taken out of the select list which

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- A was held, not justified. In that regard, the Learned Single Judge had taken note that the method was altered after the selection process had commenced which is not permissible. It was held that the introduction of the computer efficiency test mid-way was contrary to the settled legal position and as such disapproved the action of the respondents in prescribing the computer efficiency test, *dehors* the common guidelines.
- B Accordingly, the writ petitions were allowed. The candidates who had benefitted in the selection process due to the holding of computer efficiency test preferred the writ appeals claiming to be aggrieved. The Division Bench of the High Court having taken note of the factual aspects had agreed with the reasons assigned by the Learned Single Judge and
- C dismissed the writ appeals. The review petitions in R.P.No.611/16, 612/16 and connected matters were also rejected through order dated 17.10.2016, save certain observations made relating to the protection of meritorious candidates who had also appeared for the computer efficiency test. The Special Leave Petitions filed before this Court by some of the
- D appellants had also been dismissed.

9. The learned senior Advocate for the appellants while assailing the order passed by the High Court would contend that the implementation of the MGNREG Scheme required skill in computer application as the entire process was computerised and the various functions relating to
- E the same could only be implemented by a person having efficiency in handling the computers. In that view it was contended, when the Gram Rojgar Sahayak was to undertake such work, the computer efficiency was an aspect to be tested, which was a part of the selection process and, therefore, in that circumstance when the office of the Collector had chosen to include the computer efficiency test as a criteria, the High
- F Court ought not to have accepted the contention put forth by the writ petitioners. It is contended that the Revised Time Schedule was issued on 17.06.2014 and the process was commenced on 20.06.2014, therefore, the change had not been introduced after the commencement of the process. It is, in that view, contended that the writ petitioners being aware
- G of the schedule, had appeared in the computer efficiency test and having failed to qualify cannot thereafter turn around to challenge the same. It is contended that the law is well settled in that regard, which has been ignored by the High Court. Therefore, the order passed is to be treated as *per incuriam*.

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10. The learned senior Advocate for the private respondent would seek to justify the order passed by the High Court. It is contended that the Collector, Rewa District had exceeded his powers and had introduced a criteria which was not contemplated in the fresh guidelines dated 02.06.2012. It is pointed out that the guidelines dated 02.06.2012 provided that the Desired qualification relating to computer course should be from the institutions specified and had also provided for assigning marks under that criteria which alone is the prescribed norm for selection under the guidelines and did not provide for efficiency test. The selection process had commenced pursuant to the said guidelines and the Revised time Schedule, whereunder the computer efficiency test was introduced is in alteration of the process which had already commenced. Hence the High Court was justified in its conclusion is the contention. It is further contended that the writ petitioners were not estopped from challenging the action inasmuch as the Revised Time Schedule had only indicated that the computer efficiency test was for the selected candidates and those at the top of the merit list. It was submitted that the revised time schedule did not specify the qualification in computer efficiency test to be a pre-condition to secure inclusion in the select list. The writ petitioners were already in the select list. The exclusion from the merit list is also not indicated therein and, therefore, the writ petitioners in that light had not acceded to any criteria while appearing for the computer efficiency test as the same was shown only as a process subsequent to the selection list. In any event the High Court has taken note of the said aspect, addressed the contentions and thereafter arrived at its conclusion and, therefore, the order cannot be termed as per incuriam as contended.

11. In the light of the contention, a perusal of the order passed by the learned single judge as also the order passed in the writ appeal and the review petition in the relied upon cases relating to Amit Kumar Mishra and Others would indicate that a detailed discussion has been made by the High Court and we see no reason to differ from the same. In this regard we have noticed the fresh guidelines dated 02.06.2012. Though the said guidelines refer to the requirement of computer knowledge as a Desired qualification, the same also provides for such qualification in computer exam from the institutions depicted therein and the selection process provides for the assignment of marks which has been extracted and taken note by the Learned Single Judge. The said guidelines are applicable to all the Districts in the entire state of Madhya Pradesh as



A confirmed by the learned Advocate for the State of Madhya Pradesh. The Revised Time Schedule dated 17.06.2014 issued by the Collector, Rewa, Madhya Pradesh is only in respect of one District namely District Rewa.

B 12. Therefore, at the outset when the scheme applicable to the entire State is made under a common guideline, the alteration of the requirement by prescribing an additional criteria only in respect of one District without such authority do so will not be sustainable. Furthermore, the application for the post of Gram Rojgar Sahayak was to be made in terms of the revised guidelines dated 02.06.2012. By the Revised Time  
C Schedule dated 17.06.2014 what is provided for essentially is the time frame for carrying out each of the requirement relating to the initiation of the recruitment till the selected candidate joins the post. It is under the said time schedule, a date has been fixed for holding the computer efficiency test. Therefore, it would indicate that the additional criteria has been introduced after the selection process has commenced and  
D when such requirement was not indicated in the fresh guidelines dated 02.06.2012 issued in respect of the entire State. Therefore, the conclusion reached by the High Court that the requirement has been altered after the commencement of the selection process is justified and unassailable.

E 13. The learned senior Advocate for the appellants while contending that the writ petitioners having participated in the computer efficiency test are estopped from raising any grievance subsequently has placed strong reliance on the decision of the Supreme Court in the case of *Ashok Kumar and Another vs. State of Bihar and Others* (2017) 4 SCC 357 wherein it is held as hereunder:-

F 13. The law on the subject has been crystallised in several decisions of this Court. In *Chandra Prakash Tiwari v. Shakuntala Shukla*, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The  
G question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In *Union of India v. S. Vinodh Kumar*, this  
H court held that:

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See *Munindra Kumar v. Rajiv Govil and Rashmi Mishra v. M.P. Public Service Commission.*)”

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In that light it is further contended that the Supreme Court in the case of *Subhash Chandra and Another vs. Delhi Subordinate Services Selection Board and Others* (2009) 15 SCC 458 has held that a decision rendered in ignorance of a binding precedent will have to be held as a decision rendered per incuriam.

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14. Having taken note of the decisions cited, we have no doubt in our mind that the well accepted position in law is that the person who has acceded to a position and participated in the process cannot be permitted to approbate and reprobate. It is a norm that if a person/candidate having taken note of a requirement in the notification and even if it is objectionable does not challenge the same but despite having knowledge of the same participates in the said process and takes a chance, on failing in the process such person/candidate cannot turn around and assail the same. Though that is the position in law, the said position of law will not be applicable to the present case as the facts in the case on hand is not the same. In the cited case of *Ashok Kumar*, it was a situation where the subsequent notification for written examination was issued after nullifying the result of the earlier written examination. The petitioner therein who had appeared for the examination earlier, having knowingly participated in the process by once again appearing for the examination which was notified had thereafter challenged, which was a clear case of approbate and reprobate. On the other hand in the instant case, firstly, the Revised Time Schedule issued by the Collector, Rewa cannot be termed as the recruitment notification indicating all the criteria for selection; but can only be termed as a time schedule prescribed pursuant to the recruitment process as provided under the fresh guidelines dated 02.06.2012. Therefore, a candidate already in selection list who has appeared in the computer efficiency test on the date depicted in the revised time schedule cannot be considered to have appeared after having knowledge that the same will also be a part of the assessment for selection and cannot be put on the same pedestal. This is more so in a circumstance wherein the schedule for “18<sup>th</sup> December” as prescribed reads.....

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- A “holding of computer efficiency test of selected candidates and those at the top of merit list”. A perusal of the same would indicate that the entire selection would be based on the criteria prescribed and the marks as assigned under the fresh guidelines dated 02.06.2012 and appearance for the computer efficiency test would be treated as a requirement which would enable the authorities to assess a person who has otherwise qualified and has been found fit to be in the selected list or is at the top of the merit list.

15. Therefore, in that circumstance the mere indication of the date for computer efficiency test in the time schedule and the participation therein cannot be considered as if the candidate has acceded to the same so as to estop such candidate from challenging the action of the respondent if the name of such candidate is removed from the select list thereafter treating the same as the basis. Hence in the instant case it cannot be considered as a typical case of approbate and reprobate. In that view since the high court has addressed this issue taking note of the decision which was cited before it and has thereafter arrived at its conclusion, the decision relied on by the learned senior counsel for the appellants, in the case of *Ashok Kumar and Another vs. State of Bihar and Others* will not be of any assistance. Hence it cannot be held that the decision of the High Court is per incuriam as contended.

16. Further what cannot escape the attention is also that certain other persons who were similarly placed as that of the petitioners have already approached this court in SLP Nos.3239-3242/2017 wherein the relied upon decision in the review petition was assailed but this court has dismissed the special leave petitions. Therefore, taking into consideration all the aspects of the matter we see no reason to interfere with the orders impugned herein.

17. During the course of the argument, the learned senior Advocate for the appellants also referred to certain observations contained in the order dated 17.10.2016 passed by the Division Bench in the review petition where certain protection is provided to the meritorious candidates who have been selected under the policy dated 02.06.2012. In that regard we do not find it appropriate to advert and make any comment since we have already arrived at conclusion that the orders impugned do not call for interference.

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18. The appeals are accordingly dismissed without any order as to costs. Pending applications if any, shall also stand disposed of. A

Kalpana K. Tripathy

Appeals dismissed.