IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 18th OF APRIL, 2024

WRIT PETITION No. 4196 of 2023

BETWEEN:-

BHARTI SOHANI D/O POONAMCHAND SOHANI, AGED ABOUT 31 YEARS, OCCUPATION: UNEMPLOYED H. NO. 29, HASIDDHI DHAM COLONY KASRAWAD, DISTRICT INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SUNIL JAIN, SENIOR ADVOCATE WITH SHRI KUSHAGRA JAIN, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH SCHOOL EDUCATION DEPARTMENT PRINCIPAL SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

2. COMMISSIONER LOK SHIKSHAN SANCHALNALAY 6CMQ JQM, GAUTAM NAGAR, HOUSING BOARD COLONY, BHOPAL (MADHYA PRADESH)

3. JOINT DIRECTOR LOK SHIKSHAN VIBAG,SAMBHAG INDORE PVF7 R23, GROUNG FLOOR JAIL ROAD CHIMAN BAG, USHA PATHAK, NAGAR NIGAM, INDORE (MADHYA PRADESH)

4. CONTROLLER PROFESSIONAL EXAMINATION BOARD, BHOPAL, CHINAR PARK EAST BHOPAL (MADHYA PRADESH)

5. DISTRICT EDUCATION OFFICER SCHOOL EDUCATION DEPARTMENT KHARGONE (MADHYA PRADESH)

.....RESPONDENTS

(MS. PRANJALI YAJURVEDI, P.L. FOR THE STATE AND MS. URMILA MALVIYA, ADVOCATE FOR RESPONDENT NO.4)

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

ORDER

1] This writ petition has been filed by the petitioner Bharti Sohani under Article 226 of the Constitution of India against the order dated 03/02/2023, passed by the Joint Director, Lok Shiksha Vibhag, Indore (M.P.) whereby the petitioner's candidature for the post of Middle School Teacher (Maths) has been rejected on the ground that the petitioner was not having 'Maths' as the main subject in her graduation.

2] The petition has been filed on the ground that the petitioner is a graduate, having done her B.Sc. in computer science with physics and maths as subjects, and in-fact the petitioner, throughout her graduation has studied maths as a subject with 12 papers of mathematics, apart from physics.

3] Shri Sunil Jain, learned senior counsel for the petitioner has also submitted that only because the petitioner had completed her B.Sc. along with maths as subject, she was allowed to do her M.Sc. in mathematics and thus, it cannot be said that the petitioner has no exposure in the subject maths. Counsel has submitted that the petitioner fulfils all the requisite criteria and merely because she has not done her graduation in mathematics, the respondents were not justified in rejecting her candidature. Counsel has also drawn the attention of this Court to the additional reply filed by the State dated 28/08/2018, wherein the procedure for appointment for the post of Primary, Middle and High School Teachers has been provided, and

so far as the Teachers applying for the Middle Schools are concerned, it is stated that for the purposes of maths, they must have completed the graduation along with maths or physics or engineering as subjects. Thus, it is submitted that since the petitioner has already completed her graduation along with maths and physics as subjects, in such circumstances, it was necessary for the petitioner to have degree in graduation exclusively in mathematics only.

4] Counsel has submitted that in the aforesaid circular dated 28/08/2018, the State has clearly given a different treatment to the subject mathematics than the other subjects, because it is also provided in the circular that a person is required to have the qualification as per the rules. Thus, it is submitted that the impugned order be set aside and the petitioner may be declared as a successful candidate.

5] Counsel for the petitioner has also submitted that the respondents have already dealt with the aforesaid conditions in the advertisement and in the subsequent circular, and it has been held on as many as three occasions, viz., in the case of Mr. Vipin Nath Yogi, Ms. Khushboo Jilani and Ms. Charulata Deshmukh. So far as Vipin Nath is concerned, he had applied for the post of Teacher in mathematics, and mathematics was the only subject along with computer science subject, whereas, in the case of Ms. Khushboo Jilani, she was bachelor in engineering and mathematics was also one of her subjects, and so far as Ms. Charulata Deshmukh is concerned, she applied for the post of Middle School Teacher for English Teacher, but she was not even graduate in English, as she was a

commerce graduate having English in the first two years only, and despite she has been selected. Thus, it is submitted that the petitioner cannot be discriminated by the respondents by interpreting the aforesaid advertisement and the subsequent order in a different manner.

6] Learned counsel for the State, on the other hand has opposed the prayer and it is submitted that no case for interference is made out. It is submitted that the advertisement clearly provides that the candidate is required to have graduate degree, para 7 of which provides that a candidate must be graduate in the related subject, and has also referred to the rules which provide that the education qualification must be the bachelor degree in the relevant subject and thus, it is submitted that no case for interference is made out. So far as the reliance placed in respect of the other candidates is concerned, it is submitted that negative parity cannot be claimed by the petitioner and thus even if the other persons have been wrongly given the appointment by a wrong interpretation of the conditions of the advertisement and the rules, the same are not binding on the State.

7] Heard. Having considered the rival submissions and on perusal of the documents filed on record, it is not disputed that the petitioner has completed her B.Sc. in Computer Science along with maths as a subject and has passed 12 papers of mathematics in her graduation on the basis of which, she has also been given M.Sc. in mathematics. So far as the governing rules are concerned, the same are known as M.P. Rajya School Shiksha Seva (Shekshnik Samvarg) Seva Sharten Avam Bharti Niyam, 2018 (hereinafter referred as the Rules of 2018)

are applicable, the eligibility is provided in Schedule 3 appended to rule 8 and column 5 of the same, it is mentioned that the candidates must be graduate in the relevant subject in addition to two years diploma in education.

8]   After the aforesaid Rules were notified on 28/08/2018 in which it is also provided that if any question arises as to the interpretation of these rules, it shall be referred to the Government and its decision thereon shall be final, thus, a separate circular has been issued by the State Govt. on 28/08/2018, to all the Commissioner, Divisional Commissioner and District Education Officer of the State of M.P. in which, the procedure for employment has been provided by referring to the Rules of 2018. In para 1.2 of the same, it is provided as under:-

> "(1.2) माध्यमिक विद्यालयों में अध्यापन कार्य हेतु नियोजित किये जाने वाले माध्यमिक शिक्षक की पात्रता परीक्षा विषयवार होगी। परीक्षा के विषय गणित, विज्ञान, सामाजिक विज्ञान, हिन्दी, अंग्रेजी, संस्कृत एवं उर्दू होंगे। *गणित विषय अंतर्गत अभ्यर्थी को गणित अथवा भौतिक शास्त्र अथवा इंजीनियरिंग विषयों के साथ स्नातक उपाधि धारित करना अनिवार्य होगा।* विज्ञान विषय अन्तर्गत रसायन शास्त्र, वनस्पति विज्ञान, प्राणी विज्ञान, माईक्रो बायोलॉजी, बायोटेक्नोलॉजी, बायोइन्फरमेट्रिक्स में से किन्ही दो विषयों के साथ स्नातक उपाधि धारित करना एवं सामाजिक विज्ञान विषय अंतर्गत इतिहास, राजनीतिशास्त्र, अर्थशास्त्र, भूगोल, समाजशास्त्र एवं वाणिज्य विषय में से किसी एक विषय के साथ स्नातक उपाधि धारित करना अनिवार्य होगा। स्नातक उपाधि निर्धारित प्रतिशत के साथ नियम में उल्लेखित प्रावधान अनुसार धारित करना अनिवार्य होगा।"

9]   A bare perusal of the aforesaid circular clearly reveals that the respondents have given a different treatment to the subject mathematics subject than the other subjects, and in case of maths, it is provided that the candidate must have obtained the degree of graduation with maths or physics or engineering subject, and that he must be a graduate in Mathematics, and since the petitioner has

already filed her mark sheets of the graduation, it is apparent that she has completed her graduation in Computer Science along with 12 papers of maths as also with physics. In such circumstances, the petitioner cannot be said to have suffered with any disqualification for her appointment as the teacher. This Court also finds that the other two candidates who are also not holding the degree of bachelor in mathematics but were having maths as subject, have been given the appointment in the same selection process though for the Tribal Welfare Department and School Education Department, and in such circumstances, the respondents could not have distinguished the case of the petitioner. In view of the same, this Court is inclined to allow the present petition.

10] Accordingly, the writ petition is **allowed**, impugned order dated 03/02/2023, is quashed and the respondents are directed to issue appointment order to the petitioner. Needless to say, the petitioner shall be entitle to claim all the consequential benefits except monetary benefits from the date on which the other similarly placed candidates have been given the joining. Petition stands **allowed** and **disposed of**.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

krjoshi