IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 14th OF DECEMBER, 2023

WRIT PETITION No. 14914 of 2022

BETWEEN:-

ALOK KUMAR SINGH S/O LATE SHRI GAURI NARAYAN SINGH, AGED ABOUT 34 YEARS, OCCUPATION: REVENUE INSPECTOR MUNICIPAL COUNCIL RAMPUR NAIKIN SIDHI (MADHYA PRADESH)

.....PETITIONER

(BY SHRI K.C. GHILDIYAL - SENIOR COUNSEL ASSISTED BY SHRI PRADEEP KUMAR DWIVEDI - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY URBAN ADMINISTRATION AND DEVELOPMENT DEPARTMENT VALLABH BHAWAN DISTRICT BHOPAL (MADHYA PRADESH)**

2. **THE COMMISSIONER URBAN ADMINISTRATION AND DEVELOPMENT DEPARTMENT MADHYA PRADESH BHOPAL (MP) (MADHYA PRADESH)**

3. **THE JOINT DIRECTOR URBAN ADMINISTRATION AND DEVELOPMENT DEPARTMENT REWA DIVISION REWA M.P. (MADHYA PRADESH)**

4. **MUNICIPAL COUNCIL SIDHI THROUGH ITS CHIEF MUNICIPAL OFFICER DISTRICT SIDHI (M.P.) (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI K.V.S. RAO - PANEL LAWYER FOR RESPONDENT NOS. 1 TO 3/STATE)
(SHRI NEERAJ SINGH CHAUHAN - ADVOCATE FOR RESPONDENT NO.4)
(SHRI ATUL SINGH AND SHRI RAJESH KUMAR SHARMA - ADVOCATES FOR THE INTERVENERS)

This petition coming on for admission this day, the Court passed the

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following:

ORDER

This petition has been filed by the petitioner while praying for the following reliefs:-

> *"(i) A writ order or direction in the nature of certiorari thereby quashing the impugned order dated 20/06/2022 issued by respondent No.2 (Annexure-P/4).*
>
> *(ii) A writ order or direction in the nature of Mandamus thereby directing the respondents to immediately promote the petitioner to the post of Revenue Inspector in pursuance to the DPC proceedings held on 14/10/2021 with all consequential benefits including pay and allowances, seniority, continuity of service etc.*
>
> *(iii) Any other apporpirate writ order or direction which this Hon'ble Court may deem just and proper in the nature and circumstances of the case including cost of the litigation."*

2. The facts, as put forth in the petition, reveal that the petitioner, after undergoing selection process in terms of *Madhya Pradesh Municipal Employees Recruitment and Conditions of Service Rules, 1968* (hereinafter referred to as the Rules of 1968) was appointed against the post of Assistant Revenue Inspector vide order dated 1.9.2006. Later on, the petitioner was transferred to some different Municipalities, which are detailed in Paragraph 5.1 of the petition. The petitioner performed his duties with utmost dedication and to the satisfaction of all concerned and accordingly, petitioner's performance was assessed as outstanding in all his Annual Confidential Reports (for short ACRs) by the Reporting Officers. It is further averred in the petition that as the petitioner was originally appointed with Municipal Council, Sidhi, therefore, he

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maintained his lien with his parent Council i.e. Municipal Council, Sidhi. A meeting of Departmental Promotion Committee (for short DPC) for promotion against the post of Revenue Inspector was convened on 14.10.2021 in terms of the provisions of Rule 11 of the *The Madhya Pradesh Municipal Services (Scale of Pay and Allowances) Rules, 1967* (hereinafter referred to as the Rules of 1967). In the aforesaid meeting, the cases of 5 employees were considered including the present petitioner. Upon appreciation of overall performance and confidential reports, the petitioner was awarded 20 marks and rest four candidates were awarded 15 marks, therefore, petitioner's name was recommended for promotion, as the criteria was merit cum seniority. The recommendations made by the DPC were approved by the Council vide resolution dated 29.10.2021, which is contained in Annexure P-3 and thereafter the recommendations were sent to the Government for its concurrence. However, vide impugned order dated 20.6.2022, which is contained in Annexure P-4, the Joint Director, Urban Administration and Development refused to accord sanction to the recommendations of the DPC. Thus, assailing the impugned communication dated 20.6.2022 (Annexure P-4) this petition has been filed by the petitioner seeking further direction to the respondents to promote the petitioner against the post of Revenue Inspector in terms of the recommendations of the DPC dated 14.10.2021.

3. Learned senior counsel for the petitioner contends that Rule 4 of the Rules of 1968 contains the method of recruitment and in terms of Rule 4 of the Rules of 1968, recruitment to the Municipal service or a post or class of posts may be made by direct recruitment, by promotion of a person employed in the Council or by transfer or deputation of a person serving in connection with the affairs of any local Authority or of the State. It is further contended that in terms

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of Rule 12 of the Rules of 1968, recruitment by promotion is based on consideration of merits and seniority is required to be taken into account where the merits are equal. Therefore, the criteria of merit in terms of Rule 12 of the Rules of 1968 prevails when the cases of promotion of employees of Municipal Council are considered. It is also contended that apart from the Rules of 1968, the legislature has framed the *Municipal Services (Scale of Pay And Allowances) Rules, 1967* in purported exercise of powers conferred under sub-section (2) of Section 355 read with Section 95 of the *Madhya Pradesh Municipalities Act, 1961* and in terms of Rule 11 of the Rules of 1967, there exists a provision for constitution of the District Selection Committee, which takes decision as regards, the promotion/absorption of the employees.

4. It is further contended that Schedule III appended to Rules of 1967 provides that the post of Revenue Inspector shall be filled up by the employee having experience of revenue work of 3 years and with qualification of Higher Secondary School Certificate. It is contended that aforesaid Schedule III nowhere provides that for being promoted as Revenue Inspector, the feeder post is Deputy Revenue Inspector. The only criteria which is required to be considered for promotion against the post of Revenue Inspector is that a person should have experience of revenue work of 3 years and should possess the qualification of Higher Secondary School Certificate. It is nowhere provided that a person against a particular feeder post can be considered for the post of Revenue Inspector. It is contended that the Authority while passing the impugned order has observed that the post of Deputy Revenue Inspector is the feeder post for the purpose of promotion against the post of Revenue Inspector and the promotion from the post of Moharrir (now known as Assistant Revenue

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Inspector) cannot be made to the post of Revenue Inspector. It is further contended that the State has declined to accord approval to the recommendation made by the DPC on the ground that in terms of the *Madhya Pradesh Public Service (Promotion) Rules, 2002*, (hereinafter referred to as the Rules of 2002) in the cases of promotion from Class III to Class III posts, the criteria of seniority cum merit is required to be adhered to and as one Shri Pawan Kumar Singh, who was the senior most employee out of five employees, was eligible for promotion, there was no question of extending benefit of promotion to any employee, other than Shri Pawan Kumar Singh. It is contended by learned senior counsel that the aforesaid finding, so arrived at in the impugned order by the respondents, is misconceived on the face of it, inasmuch as, there is total failure on the part of the State Government to consider the scope of Rule 12 of the Rules of 1968 as well as Schedule III appended to the Rules of 1967.

5. Learned senior counsel further contends that petitioner's performance was outstanding as he was graded **A+** in last 5 years and the DPC rightly recommended the name of the petitioner for promotion against the post of Revenue Inspector, which was not objected to by any other employee. Only one employee namely Shri Ramsiya Saket, who never objected to the recommendations of the DPC, has now chosen to seek intervention in the present case. Thus, it is contended that the Authority grossly erred in making reference to the Rules of 2002. The said Rules were only applicable to the limited extent of applying provision for reservation and marking towards grading of the employees concerned. It is further contended that the qualifying service in terms of Schedule III was taken note of by the DPC, which is evident from Para 8 of the minutes of the meeting of the DPC dated 14.10.2021

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(Annexure P-2). Though in Para-6 of the same, the Committee made reference to Rule 7 of the Rules of 2002 and concluded that the criteria of merit-cum-seniority was to be adopted, however, there was no need to make reference to Rule 7 inasmuch as, Rule 12 of the Rules of 1968 still contains the provision, which unequivocally reflects that the recruitment by promotion is made on consideration of merit and the seniority only comes into play where the merits are equal. Therefore, the Rules of 1968 being applicable in the case at hand, the interference with the recommendation made by the DPC by the State Government was not called for and therefore, the impugned order is liable to be set aside.

6. *Per contra*, the counsel for the respondents submits that the present petition is liable to be dismissed. It is submitted that when the Authority received the proposal from the Municipal Council for grant of concurrence, it was found that there was violation of the provisions of the Rules of 1967 and the Rules of 1968 read with the Rules of 2002. It was further observed by the Authority that in the cases of promotion from Class III to Class III post, seniority-cum-suitability was the criteria, which was required to be adhered to but unfortunately in the present case in complete oblivion of the provisions of the Rules of 2002, the said criteria was ignored and promotions were recommended on the basis of merit-cum-seniority. It is contended that even after passing of the impugned order, a disciplinary action was taken against all the officials, who were instrumental in recommending the name of the petitioner for promotion. Therefore, it is contended that in view of the specific stand so taken by the respondents in the return, the present petition filed by the petitioner is liable to be dismissed.

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7. The counsel appearing for the proposed intervener submits that the name of the proposed intervener finds mention at serial number 4 in the table contained in Para 13 of the minutes of the DPC (Annexure P-2) and a perusal of the same, reflects that the proposed intervener is placed over and above the petitioner, therefore, prior to petitioner's name, the name of the proposed intervener was required to be considered for promotion, as he is senior to the petitioner. Thus, the present petition is liable to be dismissed.

8. No other point is argued or pressed by the counsel for the parties.

9. Heard the submissions advanced on behalf of the parties and perused the material available on record.

10. In order to deal with the rival contentions of the parties, it would be appropriate to refer to the provisions contained in the Rules of 1967. Rule 6 of the Rules of 1967 being relevant is reproduced below for ready reference:-

> *"**6. Departmental set up and designations of posts**.- The office of a Municipal Council may consist of the departments as mentioned in Schedule II. Each such department may consist of the posts as mentioned in Schedule III. The State Government may add to or delete any post in Schedule III, in consultation with the Municipal Council concerned. The set up prescribed in Schedule III shall be deemed to have taken effect from the "appointed date".*

11. A perusal of aforesaid Rule 6 reflects that the office of Municipal Council may consist of the departments as mentioned in Schedule II. The State Government is empowered to add to or delete any post in Schedule III, in consultation with the Municipal Council concerned. It is also evident from the perusal of aforesaid Rule 6 that the set up prescribed in Schedule III shall be deemed to have taken effect from the "appointed date". The "appointed date"

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has been mentioned in Rule 2(a) of the Rules of 1967 as First of April, 1964. Schedule III appended to the Rules of 1967 contains the following entries:-

(to be quoted).....

12. A perusal of aforesaid entries of Schedule III, if are subjected to penetrating scrutiny, it would reveal that in the set up, there exists a post of Deputy Revenue Inspector, which can be filled up through direct recruitment and also through promotion and for the purpose of promotion, the employee concerned is required to be possessed with the experience of 5 years as Moharrir (ibid). Therefore, so far as promotion against the post of Deputy Revenue Inspector is concerned, undisputedly, the post of Moharrir is the feeder post and experience of 5 years as Moharrir is required to be possessed by the employee concerned, who is seeking promotion against the post of Deputy Revenue Inspector. So far as promotion against the post of Revenue Inspector is concerned, the Schedule III provides that in the cases of promotion against the post of Revenue Officer, an employee, who has experience of revenue work for 3 years and also having qualification of Higher Secondary School Certificate, can be considered for promotion.

13. Column No. 4 of Part II of the Schedule III makes it abundantly clear that there is no mention of any feeder post for the purpose of promotion against the post of Revenue Inspector. The feeder post, so far as the promotion against the post of Deputy Revenue Inspector is concerned, is clearly mentioned as Moharrir, however, the entire Part II of the Schedule III to the Rules of 1967, nowhere stipulates that the post of Deputy Revenue Inspector is the feeder post for the purpose of promotion against the post of Revenue Inspector. Therefore, in view of the aforesaid analysis of the Schedule III, if the impugned order is

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examined cogitatively, the same would reveal that in the entire impugned order dated 20.6.2022, there is no consideration by the Authority as regards the said Schedule III appended to the Rules of 1967. Though the Authority has made a reference to the Rules of 1967 in Para II of the impugned order but there is no discussion in the entire order as regards Schedule III of the Rules of 1967.

14. Now, in order to deal with the question pertaining to the criteria, which was required to be followed by the DPC, it would be apposite to deal with Rules 4, 12 of the Rules of 1968. Rules 4 & 12 of the Rules of 1968 is reproduced below for ready reference:-

> *"**4.** Methods of Recruitment. - Recruitment to the Municipal service or a post or class of posts may be made by one or more of the following methods:-*
>
> *(a) by direct recruitment;*
>
> *(b) by promotion of a person employed in the Council;*
>
> *(c) by transfer or deputation of a person serving in connection with the affairs of any local authority or of the State.*
>
> *12. Recruitment by Promotion.- (1) Recruitment by promotion shall be made on consideration of merits, seniority being taken into account where merits are equal.*
>
> *(2) In selecting candidates for promotion regard shall be had to-*
>
> *(i) tact and energy;*
>
> *(ii) intelligence and ability;*
>
> *(iii) integrity; and*
>
> *(iv) previous record of service.*
>
> *(3) In the case of posts carrying a maximum monthly salary not exceeding Rs.95/- the Chief Municipal Officer and in other cases the District Selection Committee shall consider the cases of*

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all the eligible candidates and may in his or its discretion interview any of the candidates.

(4) The Chief Municipal Officer or the District Selection Committee, as the case may be, will select candidates and will arrange their names in the order of preference. Where the Chief Municipal Officer is the competent authority for making appointments, the orders will be issued by him. In other cases the District Selection Committee shall recommend the names of the candidates found suitable for promotion to the Standing Committee. The Standing Committee will then make a final selection."

15. The aforesaid provision reflects that the recruitment in the Municipal service can be made by promotion apart from direct recruitment as well as transfer/deputation. In the cases of recruitment by promotion, the criteria for consideration is merit. As per the provision of Rule 12, the seniority shall only come into play where merits are equal. In the present case, the Rules of 1968 contains a specific provision in Rule 12 of the Rules of 1968, which contains the criteria, which is required to be applied by the DPC while considering the cases of the employee for the purpose of promotion and, therefore, in terms of Rule 12 of the Rules of 1968, the merit will prevail over the seniority. So far as Rules of 2002 are concerned, they contain criteria of seniority-cum-suitability while considering the cases of the employees from Class III to Class III post. The criteria of seniority-cum-merit or seniority-cum-suitability is to be applied in what manner when there exists no particular feeder post, is a debatable issue in the present case.

16. If the provision of Rule 12 of the Rules of 1968 are kept in mind and the order impugned dated 20.6.2022 (Annexure P-4) is scanned, the same

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would reveal that in Paragraph 6 of the order, the Authority has taken into consideration, the provision of Rule 12 of the Rules of 1968. Even the provisions of Rule 12 are quoted in Paragraph 6 of the order by the Authority while passing the impugned order. However, in subsequent Paragraph No. 7, the Authority considered the provision of the Rules of 2002 and proceeded to conclude that in terms of the provisions of Rules of 2002, the criteria of seniority-cum-suitability was required to be followed while considering the cases of promotion. The entire impugned order, however, does not deal with the effect of Rule 12 of the Rules of 1968. There is merely a reproduction of Rule 12 of the Rules of 1968 in the impugned order but there is no discussion as regards its import and applicability to the facts of the case. The Authority has further proceeded to pass the impugned order on the ground that as the promotion was to be made against the single vacant post and the senior most employee namely Shri Pawan Kumar Singh was not inclined to accept the promotion, the post was to be kept vacant till the superannuation of Shri Pawan Kumar Singh and also observed that the post of Deputy Revenue Inspector would be filled up by promotion from the post of Assistant Revenue Inspector and thereafter the Deputy Revenue Inspector so promoted would be considered for promotion against the post of Revenue Inspector.

17. A conjoint reading of Paragraphs 9 and 10 of the impugned order suggests that the Authority proceeded to pass the order under an assumption that the feeder post for promotion against the post of Revenue Inspector is Deputy Revenue Inspector whereas the said findings so arrived at in Paragraph 10 are in conflict with the provisions contained in Schedule III of the Rules of 1968.

18. It is further important to take note of the fact that the present

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petitioner was graded as **A+** for 5 years from the year 2015 to 2019. The said grading of the petitioner was not disputed by any of the employees and on the basis of said grading, 20 marks were awarded to the petitioner by the DPC. It is further important to take note of the fact that the criteria of awarding marks was fixed by the DPC in terms of Para 9 of its recommendation contained in Annexure P-2 and the DPC itself concluded that complete evaluation of the confidential reports of last 5 years should be of 20 marks and the criteria of outstanding (*Utkrisht*) category so fixed by the DPC in Paragraph 9 of the recommendations, was being fulfilled by the petitioner only, inasmuch as, none of the employees, whose names find mention in Paragraph 13 of the minutes of the DPC, were ever graded **A+** in last 5 years. Therefore, the petitioner having experience of more than 3 years of revenue work, as he was appointed with the Municipal Council in the year 2006 and was also graded **A+** (outstanding) in last 5 years, the DPC while applying the criteria of merit-cum-seniority in terms of Rule 12 of the Rules of 1968, recommended the promotion of the petitioner for the post of the Revenue Inspector. The Municipal Council by way of resolution affirmed the proposal for the promotion of the petitioner. Thus, the Director, Urban Administration and Development grossly erred in passing the impugned order dated 20.6.2022 as the same has been passed in complete ignorance of the provision of Schedule III appended to the Rules of 1967. Whether in absence of a feeder post for promotion as Revenue Inspector in Schedule III of the Rules of 1967, Rules of 2002 could be applied or not? is the key issue which requires to be mulled over by the State.

19. So far as proposed intervener is concerned, none of his rights are being affected as nary criteria of merit nor of seniority makes him entitled to be

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promoted taking into consideration his position reproduced in table in the DPC minutes.

20. In view of the aforesaid analysis, the petition is allowed. Impugned order dated 20.6.2022 contained in Annexure P-4 stands quashed. The matter is remitted back to respondent No. 2 to take decision afresh as regards concurrence to the recommendation of the DPC contained in Annexure P-2 in the light of the provisions of Schedule III of the Rules of 1967.

21. Let aforesaid entire exercise be completed within a period of 90 days from the date of production of certified copy of this order.

(MANINDER S. BHATTI)
JUDGE

PB

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