

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.379 OF 2023

APOORVA PATHAK

...PETITIONER

Versus

**THE HIGH COURT OF MADHYA
PRADESH & ANR.**

...RESPONDENTS

O R D E R

1. In the above writ petition, the petitioner was selected as Judicial officer (Civil Judge, Junior Division) for Madhya Pradesh Judicial Services for the selection process initiated in the year 2019. The name of petitioner was, however, not recommended for appointment for the reasons that she had a criminal case against her, which she had not disclosed. On 05.12.2022, notice was sent in the above case. Shri Saurabh Mishra, Learned Additional Advocate General, now appears for the High Court of Madhya Pradesh.

Apart from the above case, there are three other cases today, for the same selection process, on broadly similar footing, where notices were earlier issued and today a statement was made in the Court by the learned counsel Shri Saurabh Mishra that subsequent to the notice sent in those cases, the Full Court of Madhya Pradesh High Court on a rethinking have decided to recommend the case of the three petitioners for appointment as Civil Judge (Junior Division), namely of Mohammad Saify, Arun Singh Thakur and Niranjana Malviya respectively. The only reservation the High Court has is as to their seniority, which would be decided by the full court. These Writ Petitions [Niranjana Malviya (being Writ Petition (C) No.1038/2023); Mohammed Saify (being Writ Petition (C) No.388/2023) and Arun Singh Thakur (being Writ Petition (C) No.423/2023)], have been disposed of today in terms of the statement made by Learned AAG for the Madhya Pradesh High Court, with further directions that their seniority will operate as per the original seniority from the date of selection, in order of merit.

- 2.** Coming back to the present case, the High Court reiterates its stand that on the facts and circumstances of the case, the present case is not liable to be recommended for appointment as Civil Judge (Junior Division).

The petitioner had qualified Madhya Pradesh Judicial Examination 2019 (Phase II) and was selected for the post of Civil Judge (Junior Division), but her name did not figure in the list of candidates who were given appointment. On enquiry, she was told that the reasons why her name had been deleted from the list of selected candidates was that an FIR had been earlier registered against her for an offence under Section 289¹ of the Indian Penal Code. Although, she had been acquitted in the said case long back but since she had not disclosed about this case in the selection process, her name was deleted from the list of selected candidates. It has further been stated here that

1 289. Negligent conduct with respect to animal.— Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

the petitioner was even selected earlier in 2017 for the same post, but her candidature was rejected for the same reason, even earlier. Moreover, this fact (denial of appointment to her in the year 2017), has not been disclosed by her even in her Writ Petition before this Court (i.e., before us).

- 3.** The petitioner has been selected as Civil Judge (Junior Division) after qualifying in the prelims, the mains examination and viva-voce. Moreover, we find that the fact that she had a criminal case against her earlier and that she was acquitted in the said case by the Trial Court was not concealed by her. The order of acquittal has attained finality. The petitioner before us is a gold medalist in B.A.LL.B and has a degree of LLM. As far as the criminal case is concerned, the facts are as follows:

The complainant (Shri Dinesh Mishra) was a neighbour of the petitioner in Bhopal, who had lodged an FIR against the petitioner and her father (Shri Devdutt Pathak). It was stated by the complainant that on 22.02.2018 at about 08.30 in the night, while he was

returning from the market and was at the gate of his house, the pet dog of the accused Shri Devdutt Pathak (i.e., father of the petitioner) and the petitioner, attacked him and bit him on his right leg for which he had to get himself treated in a hospital the next day. Thereafter on 13.03.2018, the dog again attacked and barked at him and therefore the complainant was forced to lodge an FIR against the father of the petitioner and the petitioner herself. The petitioner and her father were released on personal bond the same day, as the offence under Section 389 IPC is a bailable offence. Finally, in the Trial Court, both the accused were acquitted as it was not proved that the pet dog of the accused had bitten or attacked the complainant and both the accused were acquitted vide an order dated 23.05.2018 passed by Judicial Magistrate, First Class, Bhopal. This order of the Trial Court was never challenged in appeal, and hence it had attained finality. So much for the criminal case against the petitioner!

4. In the present selection process, initiated for the year 2019, for the post of Civil Judge (Junior Division), the petitioner at the time of her interview had filled a form where she had clearly stated that there was a case against her in the year 2018 under Section 289 of the IPC in which she was acquitted. She was also asked this question in the interview where she stated the facts, and therefore it is not correct to say that she had concealed this fact of her so-called “criminal antecedent” in the selection process or before the concerned authority. This fact has not been denied by the respondent.
5. The reasons which have now been given before us by the High Court are that it is not the gravity of the offence which counts, but the fact that the petitioner had not disclosed the fact that in the earlier selection process which was for the year 2017 her candidature was rejected for the same reason. A reference has been given to same selection which was made for the year 2017 where evidently the petitioner had not disclosed the fact and therefore, she was not appointed although she had qualified the examination.

The Full Court of the Madhya Pradesh High Court decided not to appoint her for the post. This decision was accepted by the State Government. The petitioner preferred a Writ Petition before the High Court of Madhya Pradesh which was dismissed as was her Review. She had even filed a Special Leave Petition (being SLP (C) Diary No.4821/2021) against the High Court orders before this Court, in which one of us was a member (Sanjay Kishan Kaul, J.) which was ultimately dismissed as withdrawn.

- 6.** Now in the present case, which relates to the subsequent selection process (year 2019), for the same post, one of the reasons given by the High Court for not giving appointment to the petitioner is her non-disclosure in the earlier selection process (year 2017) and the fact that she had lost her case from all the Courts including the Supreme Court. The fact that in the present selection process the petitioner had disclosed her so called “criminal case” and acquittal has been admitted by the High Court. The second objection of the High Court is that the aforesaid fact has

not been stated by her in the present Writ Petition, before the Supreme Court.

- 7.** As far as her not disclosing the fact relating to the 2017 examination and the reasons for removal of her name in the earlier selection round are concerned, we have perused the petition filed by the petitioner and find that this fact has been stated by her in the List of Dates, wherein the statement made by her for 29.11.2019 is as under:

The petitioner has also appeared and cleared the Madhya Pradesh Judicial Services examination in the year 2017 and secured merit no. 13 bearing roll no. 1899. But at that time also all the hard work of the Petitioner has gone in vain just because of the aforementioned criminal case was registered against her. Although, there was another candidate named Ashish Dhurve who was also ineligible on the ground that a criminal case under section 325/34 of Indian Penal Code is being registered on him but it again shocked the petitioner that a petty offence which has been falsely registered on her makes her candidature ineligible.

- 8.** We have heard the learned counsel for the petitioner as well as of the High Court. In our considered opinion the grounds which have been made by the High Court for not

giving appointment to the petitioner are not tenable. The objections being raised by the High Court that she has not appeared before this Court with clean hands, is not correct, as her statement in the petition referred by us in the preceding paragraphs makes it clear. The nature of the offence against the petitioner is itself an extremely minor offence under IPC. For the non-disclosure of this offence, she has already suffered inasmuch as in the first round of selection for the year 2017 although she was selected but was not given appointment, and she lost her case right up to the Supreme Court. To punish her again for the same reason in the next selection process, is not justified in our opinion. To put it simply, the petitioner was charged of an offence under Section 289 IPC, for which she was acquitted in the year 2018. This fact she had disclosed in the present selection process, a fact which is admitted by the High Court. Under these circumstances it is not correct to deny her appointment which she has secured on her merit.

- 9.** We have absolutely no doubt in our mind that the decision of the High Court taken on its administrative side though

well intentioned, is causing a grave injustice to the petitioner. Consequently, this Writ Petition is allowed, impugned order dated 05.12.2022 is quashed and set aside. The petitioner shall be given appointment to the post of Civil Judge (Junior Division) and we also make it clear that her seniority will be given as per the original seniority, i.e., from the date of her selection, in order of her merit. She will, however, be entitled for her salary only from the date of her joining the post.

.....**J.**
[SANJAY KISHAN KAUL]

.....**J.**
[SUDHANSHU DHULIA]

New Delhi,
October 17, 2023.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 1038/2023

NIRANJANA MALVIYA

..PETITIONER(S)

VERSUS

THE HIGH COURT OF MADHYA PRADESH
& ANR.

..RESPONDENT(S)

WITH

WRIT PETITION (CIVIL) NO. 388/2023

WRIT PETITION (CIVIL) NO. 423/2023

O R D E R

It is stated before us that in the subject matter of Writ Petitions Nos. 1038/2023, 388/2023 and 423/2023, the High Court has taken a decision to appoint the concerned candidates but the issue of seniority has been left to the Full Court.

In our view, there is nothing left to be decided by the Full Court as the seniority must be given as per the principles laid down in the judgment of this Court in the case of *C. Jayachandran vs. State of Kerala and Ors.* (2020) 5 SCC 230 and must operate as per the original seniority from the date of selection in order of merits. However, these petitioners not having worked, albeit for no fault of theirs, will not

be entitled for any monetary entitlements.

Necessary action for appointment will be taken within a period of one month from today.

The petitioners will, however, be entitled for their salary only from the date of their joining the post.

The writ petitions are disposed of accordingly.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[SUDHANSHU DHULIA]

NEW DELHI,
OCTOBER 17, 2023.

ITEM NO.27 COURT NO.2 Revised SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 379/2023

APOORVA PATHAK

Petitioner(s)

VERSUS

THE HIGH COURT OF MADHYA PRADESH & ANR.

Respondent(s)

(FOR ADMISSION

IA No. 141548/2023 - EXEMPTION FROM APPOINTMENT OF OFFICIAL
TRANSLATOR)

WITH

W.P.(C) No. 1038/2023 (X)

(FOR ADMISSION and IA No.194275/2023-EXEMPTION FROM FILING O.T.)

W.P.(C) No. 388/2023 (X)

(IA No. 60392/2023 - EXEMPTION FROM FILING O.T.

IA No. 118158/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

W.P.(C) No. 423/2023 (X)

(FOR ADMISSION and IA No.67272/2023-GRANT OF INTERIM RELIEF and IA
No.67273/2023-EXEMPTION FROM FILING O.T. and IA No.72971/2023-
PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

W.P.(C) No. 412/2023 (X)

(IA No. 65203/2023 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 65204/2023 - EXEMPTION FROM FILING O.T.)

Date : 17-10-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Petitioner(s)

Mr. Niraj Sharma, AOR
Ms. Mahima Sharma, Adv.
Ms. Tanya Raizada, Adv.
Mr. G.A.V. Ravi Kumar, Adv.
Mr. Sumit Kumar Sharma, Adv.
Mr. Ragav Gupta, Adv.

Mr. S.k Gangele, Sr. Adv.
Ms. Priya Sharma, Adv.
Mr. Prathvi Raj Chauhan, Adv.

Mr. Arjun Sain, Adv.
Ms. Shashi Kiran, AOR

Mr. Namit Saxena, AOR
Mr. Awnish Maithani, Adv.
Mr. Shivam Raghuwanshi, Adv.
Mr. Swapnil Jain, Adv.

Ms. Meenakshi Arora, Sr. Adv.
Mr. Nikhil Jain, AOR
Ms. Divya Jain, Adv.
Ms. Monica Dhingra, Adv.

For Respondent(s) Mr. Arjun Garg, AOR
Ms. Sagun Srivastava, Adv.
Ms. Shreya Bansal, Adv.
Mr. Aniket Singh, Adv.

Mr. Sunny Choudhary, AOR
Mr. Sandeep Pathak, Adv.
Mr. Sandeep Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

W.P.(CIVIL) NOS. 1038/2023, 388/2023, 423/2023

The writ petitions are disposed of in terms of
the signed order.

Pending applications stand disposed of.

W.P.(CIVIL) NO. 379/2023

The writ petition is allowed in terms of the
signed order.

Pending application stands disposed of.

W.P.(CIVIL)NO. 412/2023

List on 20.10.2023.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)

[Two separate signed orders are placed on the file]

ITEM NO.27

COURT NO.2

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 379/2023

APOORVA PATHAK

Petitioner(s)

VERSUS

THE HIGH COURT OF MADHYA PRADESH & ANR.

Respondent(s)

(FOR ADMISSION

(IA No. 141548/2023 - EXEMPTION FROM APPOINTMENT OF OFFICIAL TRANSLATOR)

WITH

W.P.(C) No. 1038/2023 (X)

(FOR ADMISSION and IA No.194275/2023-EXEMPTION FROM FILING O.T.)

W.P.(C) No. 388/2023 (X)

(IA No. 60392/2023 - EXEMPTION FROM FILING O.T.

IA No. 118158/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

W.P.(C) No. 423/2023 (X)

(FOR ADMISSION and IA No.67272/2023-GRANT OF INTERIM RELIEF and IA No.67273/2023-EXEMPTION FROM FILING O.T. and IA No.72971/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

W.P.(C) No. 412/2023 (X)

(IA No. 65203/2023 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 65204/2023 - EXEMPTION FROM FILING O.T.)

Date : 17-10-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Petitioner(s)

Mr. Niraj Sharma, AOR

Ms. Mahima Sharma, Adv.

Ms. Tanya Raizada, Adv.

Mr. G.A.V. Ravi Kumar, Adv.

Mr. Sumit Kumar Sharma, Adv.

Mr. Ragav Gupta, Adv.

Mr. S.k Gangele, Sr. Adv.

Ms. Priya Sharma, Adv.

Mr. Prathvi Raj Chauhan, Adv.

Mr. Arjun Sain, Adv.
Ms. Shashi Kiran, AOR

Mr. Namit Saxena, AOR
Mr. Awnish Maithani, Adv.
Mr. Shivam Raghuwanshi, Adv.
Mr. Swapnil Jain, Adv.

Ms. Meenakshi Arora, Sr. Adv.
Mr. Nikhil Jain, AOR
Ms. Divya Jain, Adv.
Ms. Monica Dhingra, Adv.

For Respondent(s) Mr. Arjun Garg, AOR
Ms. Sagun Srivastava, Adv.
Ms. Shreya Bansal, Adv.
Mr. Aniket Singh, Adv.

Mr. Sunny Choudhary, AOR
Mr. Sandeep Pathak, Adv.
Mr. Sandeep Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

W.P.(CIVIL) NOS. 1038/2023,388/2023, 423/2023

The writ petitions are disposed of in terms of
the signed order.

W.P.(CIVIL)NO. 412/2023

List on 20.10.2023.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)

[Signed order is placed on the file]