

**(2017) 04 MP CK 0079**  
**MADHYA PRADESH HIGH COURT**  
**Case No:** 4420 of 2014

Tularam Patel

APPELLANT

Vs

Kishori @ Kissu & Ors.

RESPONDENT

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**Date of Decision:** April 21, 2017

**Acts Referred:**

- Code of Criminal Procedure, 1973, Section 482 - Saving of inherent powers of High Court

**Hon'ble Judges:** Subodh Abhyankar

**Bench:** Division Bench

**Advocate:** Sanjay Kumar Patel, R.K.Patel, Anubhav Jain, V.P.Singh

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**Judgement**

**1.** The petitioner before this Court, who was appointed as Gram Rojgar Sahayak in Gram Panchayat Mehka Pipiariya, Janpad Panchayat Kesli District Sagar, is aggrieved by the order dated 6.2.2014 (Annexure P-12) passed by the respondent No.2/Commissioner, M.P. State Employment Guarantee Parishad, Bhopal arising out of order dated 14.8.2013 (Annexure P-5) passed by the Collector, Sagar whereby the appointment of the petitioner has been cancelled and the respondent No.5 herein has been appointed in place of the petitioner.

**2.** In brief the facts of the case are that an advertisement was issued by the State Employment Guarantee Parishad with the Collector-cum-District Programme Guarantee Parishad, Sagar for the post of Gram Rojgar Sahayak on 14.6.2012, and in response to this as many as 13 candidates including the petitioner and the respondent No.5 submitted their forms. After due scrutiny, a provisional list was issued by the Janpad Panchayat Kesli District Sagar and the objections were called till 27.7.2012. The respondent No.5 submitted his objections, which were decided by the committee vide its decision dated 17.8.2012 vide Annexure P-2. In the

objections, the grievance of the respondent No.5 was that he has not been given the marks for computer certificate. The committee opined that the certificate of Diploma in Computer Application (for short DCA) submitted by the respondent No.5 is not valid, but still, the same was sent for verification to the concerned University. Without waiting for the verification of the petitioner's DCA, the final list of the selected candidates was issued wherein the petitioner secured first position on merit and on the basis of which, the appointment order was issued to the petitioner by the Gram Panchayat Mahak Pipariya, Janpad Panchayat Kesli on 19.10.2012.

**3.** Being aggrieved by the appointment of the petitioner, the respondent No.5 preferred an appeal before the Collector on the ground that the diploma certificate of DCA submitted by him is valid and therefore he is entitled for 50 marks for his diploma. The Collector vide its order dated 14.8.2013 (Annexure P-5) has allowed the appeal preferred by the respondent No.5 and has held that the respondent No.5 cannot be denied the marks merely on the ground of suspicion in respect of his diploma. Thus, the Collector, after giving 50 marks for DCA diploma and adding them with the percentage of his 12th examination, which was 56.6%, held that the respondent No.5 has secured 106.6 marks and thus replaced the petitioner from the top of the list, as the petitioner had secured only 74.88% marks including computer as well as the percentage secured in 12th examination. Being aggrieved with the order dated 14.8.2013 passed by the Collector, the petitioner preferred an appeal before the State, who vide its order dated 6.2.2014 (Annexure P-12) has confirmed the order passed by the Collector.

**4.** The contention of the learned counsel for the petitioner is that the respondent No.5 had obtained the diploma of DCA from a private University of Sikkim known as Eastern Institute for Integrated Learning in Management University, Jorethang, Sikkim (for short EIILM University). It is further submitted that the EIILM University was recognized only for one year i.e. for the year 2009-10 for conducting three programs through distance, they were BA, BCA and MBA, but on account of illegal activities of the said University, an FIR was registered vide Crime No.51/2012 for commission of offence punishable under Sections 406, 420, 467, 120- B/34 of IPC, and against the registration of the aforesaid FIR, the Registrar of EIILM University filed a petition under Section 482 of Cr.P.C. in the Court of Sikkim Gangtok, which was decided by the High Court on 15.10.2014 whereby the petition filed for quashing the aforesaid FIR has been dismissed.

**5.** It is further submitted by the learned counsel for the petitioner that the Collector in its order dated 14.8.2013 has discussed the letter issued by the EIILM University bearing No.EIILM/EXAMINATION/ENQ/272 wherein the name of the respondent No.5 appears at Sl.No.4, but the aforesaid letter is forged and cannot be relied upon as the validity of the institution for the year 2009-10 was for BA, BCA and MBA only

and not for DCA, whereas the respondent No.5 had passed the examination of DCA in the year 2011. It is further contended by the petitioner that once the committee had sent the matter for enquiry, then there was no justification for the Collector to award 50 marks to the respondent No.5 towards DCA diploma, which itself was under cloud. It is further contended that the Collector is not the appointing authority for the post of Gram Rojgar Sahayak, hence the Collector has exceeded its jurisdiction while passing the impugned order. The petitioner has also raised an objection regarding the name of respondent No.5 in the voter list of Surkhi Constituency. Under these circumstances, it is prayed that the State has also erred in confirming the order passed by the Collector and hence the petition may be allowed and the impugned orders may be quashed.

**6.** In the return filed by the respondents No.1 to 4, the respondents have supported the orders passed by the Collector as well as the State and have submitted that no illegality has been committed by the Collector as well as State in passing the impugned orders.

**7.** So far as the respondent No.5 is concerned, it is submitted that the DCA certificate was issued to the respondent No.5 by the EIILM University on 17.9.2012, as the said University was duly recognized by the UGC, and as such no illegality has been committed by the Collector in awarding 50 marks to the respondent No.5 towards DCA certificate. It is further submitted by the respondent No.5 that the contention raised by the petitioner that the name of respondent No.5 does not appear in the voter list has no bearing on the appointment of the respondent No.5.

**8.** Heard the learned counsel for the parties and perused the record.

**9.** It is apparent that the District Level Committee vide its order dated 17.8.2012 had directed to verify the DCA certificate obtained by the respondent No.5 from the concerned University to be verified, but the same was ignored by the Collector as well as by the State/appellate authority and the appointment of the respondent No.5 has been made. If there was a doubt in the minds of the concerned authorities, then it should have been cleared before making any appointment or before dismissing the appeal filed by the petitioner, as the verification of the DCA certificate of the respondent No.5 was necessary, and it should have been easily done by sending it to the concerned University. In the advertisement also, in Clause 10 it is provided that the objections are to be filed with the Programme Officer and the same are to be placed before the committee comprising of various personnel. Thus, all the powers are vested in the Committee. In the present case, the Committee has passed the reasoned order that the DCA certificate of the respondent No.5 shall be verified before proceeding further.

**10.** In the advertisement, it is provided that the eligibility or criteria for the said post

would include a computer diploma from all the Universities recognized by UGC, diploma from all Open Universities recognized by UGC and diploma level examination from DOEACC. In the advertisement, it is also provided that the resolution of the dispute shall be done by the committee whose decision would be final.

**11.** Apart from the above, the respondent No.5 has not filed any document to demonstrate that EIILM University was recognized on the date when the DCA diploma was issued to him. As per the Annexure P-10, admittedly the statement of marks of the certificate was issued on 3.8.2012 but till date no verification has been made by the concerned authorities to ascertain the veracity of the diploma issued by the EIILM University to the respondent No.5. The petitioner has also filed a document (Annexure P-14) issued by the UGC, which includes the list of recognized University as on 11.9.2016 and at Sl.No.178 of the aforesaid list, the name of the EIILM University is mentioned and date of its notification is mentioned as 24.3.2006, and in the same document the recognized courses like BA, BCA & MBA are given at Sl.No.151 and duration of recognition is 2009-10. Thus, there is nothing on record to show that the said EIILM University was competent to issue a certificate in Diploma in Computer Applications and there appears to no recognition for the same by the UGC. In support of his contention, the petitioner has relied upon the judgement of the Hon'ble Apex Court in the case of Mohd. Sartaj and another Vs. State of UP reported in AIR 2006 SC 3492 wherein the Hon'ble Apex Court has held that qualification should have been seen which candidate possessed on the date of recruitment and not at a later stage. Applying the aforesaid principle to the facts and circumstances of the present case, it is apparent that on the date of his recruitment, the respondent No.5 had no valid certificate in respect of Diploma in Computer Applications issued by the EIILM University. As a matter of fact, there is nothing on record to show that the EIILM University ever got recognition for the courses in Computer Applications, and surprisingly, the appellate authorities, instead of hearing it from the horses mouth i.e. by calling a report from the university itself or from the UGC or from both, that whether the certificate is valid or not, has taken upon themselves to decide the issue which was totally uncalled for.

**12.** In the facts and circumstances of the case, the impugned orders passed by the Collector as well as appellate authority cannot be sustained and deserve to be quashed. Accordingly, the writ petition is hereby allowed and the impugned orders dated 14.8.2013 (Annexure P-5) passed by the Collector and the order dated 6.2.2014 (Annexure P-12) passed by the State are hereby quashed.

**13.** This Court is also conscious of the fact that the verification of the Respondent No.5's DCA certificate is still pending at the District Level Committee's end and the conclusions have been given only on the basis of conjectures and surmises. Hence, it is necessary to give specific directions to the respondents to meet the ends

of justice and it is hereby directed that:-

(i) The District Level Committee shall verify the DCA certificate issued to the respondent no.5 at the earliest, and on verification if it is found that the DCA certificate was not valid, then, after inviting the respondent No.5's objections in this behalf and affording an opportunity of hearing to the petitioner also, the Committee shall pass an appropriate order preferably within a period of 4 months from today.

(ii) On the other hand if it is found that the DCA certificate issued to the respondent No.5 is valid, in that case also, by following the principles of natural justice, objections of the petitioner be invited and after hearing the respondent No.5 also, appropriate orders be passed within the same period of 4 months.

(iii) In no case, the aforesaid time limit provided to the respondents be extended beyond a period of 5 months. Accordingly, the petition is disposed of with no order as to cost.