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WP-39771-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 3rd OF APRIL, 2025WRIT PETITION No. 39771 of 2024*DR. JAYSHREE DUBEY**Versus**THE CENTRAL INFORMATION COMMISSIONER AND OTHERS*

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Appearance:

*Dr. Jayshree Dubey - Petitioner is present in person.**Shri Dhananjay Kumar Mishra, learned counsel for the respondents.*
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ORDER

This petition is filed being aggrieved of order dated 24.06.2024 (Annexure P-5) passed by the Central Information Commission refusing certain information as sought by the petitioner under Right to Information Act on the ground that such information is hit by the provisions contained in Section 8(1)(j) of the Right to Information Act, 2005 and so also by the provisions contained in Section 11 of the said Act.

2. It is mentioned in the impugned order that information related to third party cannot be provided as denied by the third party and this information cannot be provided under Section 8(1)(h) of the RTI Act, 2005. It is further mentioned that information related to third party cannot be provided under Rule 11 of the RTI Act, 2005.

3. Shri Dhananjay Mishra, learned counsel for the respondents admit that the authority which passed the order has wrongly mentioned 'Rule 11' whereas it is 'Section 11'.



4 . The application which was filed by the petitioner under the Right to Information Act is Annexure P-3, in which petitioner had sought following information:-

S. No.	Information sought by the applicant	Available Information
01	Total amount of alary and NPS contribution paid/given to Dr. Prateek Maheshwari	Information related to third party cannot be provided as denied by the third party.
02	Enquiry report by both the internal committees against the charge sheeted employees in relation to the illegal selection of Dr. Prateek Maheshwari	This information cannot be provided under Section 8(1)(h) of the RTI Act, 2005
03	Copy of relieving letter given to Dr. Pratek Maheshwari.	Information related to third party cannot be provided under Rule 11 of the RTI Act, 2005.
04	Details of any recovery made from the people responsible for illegal appointment and salary paid to the illegally ap0pointed person. Or the disciplinary action taken against them.	Not available.
05	Copy of application for the post of Associate Professor of Dr. Dhanya Bhasker and Dr. Nimai Das along with the documents related to experience (appointment and relieving letters).	Information related to the third party cannot be provided as denied by the third parties.
06	Reason behind non joining by Dr. Pankaj Kumar Shah and Dr. Narandra Singh Thakur who were waitlisted for the position of Associate Professor, Technical forestry.	Please ask specific documents under the clause 2(f) of the RTI Act, 2005.

5 . Petitioner's case is that in the year 2000 certain selections were undertaken by the Indian Institute of Forest Management for giving appointments to the post of Associate Professor and Professor and it has come on record and has been admitted by the authorities that the appointment given to one Dr. Prateek Maheshwari on the post of Associate Professor was illegal, inasmuch as he was not having the necessary



qualification as can be seen from Annexure P-13, which is the proceedings of the meeting to review the recommendations of the Scrutiny Committee of Faculty Recruitment constituted vide order No. IIFM/PERS/PSC-51/2020/165 dated 30th January 2020, wherein the three member committee has admitted that "during the review it was found that the candidates who were not having post Ph.D. experience of 3 years' in case of Associate Professor and 7 years' experience in case of Professor were not shortlisted for interview which was not mentioned in the qualification communicated by MoEF vide letter F No.12-6/2020-RT dated 20th November, 2012 while revising the Pay scales of faculty members of IIFM at par with the pay scales of IIMs/IITs as per the recommendations of 6th Central Pay Commission (6th CPC)."

6. Thus, it is pointed out that the information sought is in the domain of illegal appointments, expenditure made on such illegally appointed persons and in regard to qualification and experience certificates of persons who were given appointment, which according to the petitioner are illegal appointments.

7. Dr. Jayshree Dubey places reliance on the order of Central Information Commission (a Division Bench) in the matter of **Pratap Dabar Vs. PIO, Department of Post**, and submits that in the first paragraph of facts, it is mentioned that appellant sought information about the appointment details, educational certificates of Mr. Anil Kumar who was selected for the post of Branch Postmaster in 2015. The CPIO wrote letter to Mr. Anil Kumar seeking his consent but he did not provide his consent, therefore, information



sought by the appellant was denied by CPIO and such response was upheld by the FAA.

8. Thereafter, the Central Information Commission took a decision and held that "any document, which is a certification of educational qualification and is maintained in the register of an university or examining body, is a public record which means they can be verified by any person. The appellant sought the certified copies of educational qualifications, which are prescribed as eligibility criteria for selection to the post of Branch Postmaster. This information being related to process of selection and recruitment forms part of suo-moto disclosure under 4(1)(b) of RTI Act and DoPT O.M. dated 29.06.2015. Hence under any circumstances, educational qualification related information of selected candidate cannot be considered as third party information."

Thereafter in paragraphs 6 to 9, it is held as under :-

6. Public interest is involved in the point that only eligible candidates should be appointed and a citizen has a right to verify whether the appointed candidate is eligible or not. Therefore, even if it is assumed that the information sought is private in nature, it has to be disclosed in public interest. Thus Section 8(1)(j) cannot be involved.

7. Section 11 prescribes procedure for consulting the third party. If an applicant has requested for information supplied by a third party, then such third party has to be consulted only when it has been mentioned as confidential by that third party while giving it to the Public Authority. The CPIO should initiate process under Section 11 (1) when he intends to give



the information. The third party does not have a veto power as the CPIO has a duty only to consult him.

8. The CPIO has a duty to examine the disclosure and if public interest is involved, then such information has to be disclosed by communicating the same to the third party involved. In this case, educational qualification of Mr. Anil Kumar who was selected and appointed as Branch Postmaster, cannot be considered third party information, hence, he need not have invoked Section 11(1) of RTI Act. The CPIO did not get the purport of Section 11 and simply cited the provision to refuse the appellant's RTI. Hence, the Commission finds it a fit case to impose penalty upon the CPIO.

9. The Commission finds Mr. D.S. Bhausar, CPIO liable under Section 20 of RTI Act and imposes maximum penalty on him and directs him to pay a sum of Rs.25,000/- in 5 equal monthly instalments. The Appellate Authority of respondent Public Authority is directed to recover the amount of Rs.25,000/- from the salary payable to Mr. D.S. Bhausar, CPIO by way of Demand Draft drawn in favour of 'PAO CAT' New Delhi in 5 equal monthly instalments. The first instalment should reach the Commission by 17.03.2018 and the last instalment should reach by 17.07.2018. The Demand Draft should be sent to Shri S.P. Beck, Joint Secretary & Addl. Registrar, Room No. 505, Central Information Commission, CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi-110067."

9. Annexure P-6 is the Department of Personal and Training circular dated 29th June 2015, relevant provision contained in paragraph 4 reads as under -:



"4. In order to reduce the number of RTI applications relating to service matters, the information relating to recruitment, promotion and transfers should be brought into public domain promptly."

10. Annexure P-11 is another order of Central Information Commission dated 09.04.2021 passed in the matter of **Mr. Neeraj Kumar Vs. Mr. Jit Singh** and in this case the CIS took following decision :-

Decision cited by the Appellant

The appellant Mr. Neeraj Kumar has relied on the decision in CIC/WB/A/2007/00178 dated 23rd Feb. 2007. In this case the appellant had been denied following information about the selected candidates:

1. The educational, technical qualification and experience certificate of selection candidates.
2. File noting.
3. The Educational, Technical Qualification and experience certificate of selected candidates Ms. Rekha Barasha (SC).

In this case the Commission had ruled, in the present case information sought is clearly information on a public activity which is selection for the post of HRM on 13th & 14th Sep.2006. Recourse, therefore, cannot be taken to sec. 8(1) (j) in providing information. Shri R.R. Kakde, CPIO is therefore, directed to supply point wise information to each question sought by appellant.

While deciding this case, the Commission agrees with the contention of the appellant that when a person "is holding a public office, getting salary from the public exchequer and discharging public functions in a public



institution, therefore whatever documents she has" submitted in pursuance of her appointment to public office in a public institution falls in public domain." The act of applying for a job or a selection process is not a private activity but is clearly Public activity, and disclosure of the documents and papers submitted to obtain the job cannot be held to be an invasion on privacy. This has also been held by the Commission earlier in decision CIC/WB/A/2007/00178, and the Commission agrees with the same. The Commission respectfully disagrees with the decisions relied on by the third party.

11. Similarly, vide order dated December 31, 2009 passed in CIC/OP/A/2009/000173-AD (Shri N.K. Maghala & Others Vs. Central Railway, Bhusawal), the CIS observed as under :-

"6. The Commission after hearing the submissions made by both sides holds that when an employee has been appointed in reserved category on the basis of caste certificates produced by him, the certificates can no longer be termed as personal or third party information and merit disclosure and accordingly directs the PIO to provide the information as sought by the appellants in their RTI application. The information to reach the appellant by 31.1.2010 and the appellants are directed to submit a compliance report by 07.02.2010."

12. Thus, it is submitted that the information sought by the petitioner being in public domain could not have been refused taking recourse to the provisions contained in Section 8(1)(h) or 8(1)(j) or Section 11 of the Right to Information Act.



13. I have perused the affidavit filed vide I.A. No.5646/2025 by the respondents No.2 and 3 and find that there is repetition of the stand, as is contained in Annexure P-3.

14. After hearing learned counsel for the parties and going through the record, Section 8(1)(h) provides that information which would impede the process of investigation or apprehension or prosecution of offenders, is exempt from disclosure of information. It is not mentioned that how revealing of information would impede the process of investigation. Therefore, provisions of Section 8(1)(h) is not applicable to the facts and circumstances of the case and it has been wrongly mentioned by Shri Vinod Kumar Tiwari, Chief Information Commissioner that under Section 8(1)(h) information is not liable to be given.

15. As far as, Section 8(1)(j) is concerned, it exempts information which relates to personal information, the disclosure of which, has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual. However, in the present case as held by the CIC itself in three judgments enclosed as Annexures P-10, P-11 and P-12 that disclosure of qualification or appointment to a public office or educational certificates which in the opinion of this Court will also include experience certificates cannot be said to be a private information and that information is always within the public domain and that being the case, therefore, taking cue from the order of CIC in the case of **Mr. Neeraj Kumar Vs. Mr. Jit Singh**, reproduced above, the educational, technical qualification and experience certificate of selected candidates, file noting, etc. cannot be



said to be hit by provisions contained in Section 8(1)(j) and that being an information on a public activity which is selection for the post, cannot be said to be exempt from the provisions contained in Section 8(1)(j) of the RTI Act. The Information Commissioner failed to take this vital aspect into consideration including the fact that it failed to take into consideration orders of the Central Information Commission and has failed to distinguish them before arriving at any conclusion.

16. As far as Section 11 is concerned, Section 11 of the RTI Act provides that where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the CPIO or SPIO, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the CPIO or the SPIO, as the case may, intends to disclose the information or record or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secretes protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interest of such third party.



17. Thus, perusal of Section 11 of the RTI Act reveals that information which is treated to be confidential by that third party, notice is required to be issued, but proviso below sub-Section (1) of Section 11 provides that except in case of trade and commercial secret protected by law, disclosure ,may be allowed if the public interest in disclosure outweighs in importance and possible harm or injury.

18. In the present case, disclosure is in regard to educational, technical qualification and experience certificate, file noting etc. of the candidates in regard to whom information is sought and who had admittedly participated in the selection process and further there is an admission in regard to one of such candidates Dr. Prakeek Maheshwari that his appointment was illegal, then such information will fall within the proviso to Section 11 (1) of RTI Act and its disclosure outweighs in importance any possible harm or injury to the interests of such third party and, therefore, such information can be disclosed as held by CIC in its decisions cited above.

19. Therefore, the stand of CIC in the present case vide impugned order dated 24.06.2024 (Annexure P-5) is contrary to the precedents of the Chief Information Commissioner's Office, it appears to be an attempt for non-disclosure of information, appears to be an attempt to shield unscrupulous and ineligible persons, therefore, impugned order dated 24.06.2024 (Annexure P-5) is quashed.

20. It is directed that PIO shall furnish necessary information within fifteen days from today, this information will be provided free of cost to the petitioner. Respondents shall also bear cost of this litigation which is



quantified at Rs.25,000/- (Twenty Five Thousand Only) and this amount will be paid by the respondents No.2 and 3 in favour of the petitioner through a account payee cheque within aforesaid period of fifteen days.

21. In above terms, this petition is allowed and disposed of.

22. Shri Hemant Shrivastava, learned Senior Advocate submits that he was away to Delhi and he be granted an audience both in the matter of merit of the case as well as imposition of cost.

23. This prayer of Shri Hemant Shrivastava made after dictation of the order in the open Court in presence of the rival parties, behind the back of the petitioner cannot be accepted as petitioner is now no more available to answer to the pleas of the senior counsel and even otherwise there is no merit in this submission, therefore, request of Shri Hemant Shrivastava is hereby rejected.

(VIVEK AGARWAL)
JUDGE

MTK