

IN THE SUPREME COURT OF INDIA

WRIT PETITION (C) No. 606/2025

IN THE MATTER OF:

NISHCHAY SONBIRSE & ORS

...PETITIONER

Versus

THE STATE OF MADHYA PRADESH AND ORS.

...RESPONDENT(S)

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO 4
(MADHYA PRADESH PUBLIC SERVICE COMMISSION) IN
THE ABOVESAIID PETITION

COUNSEL FOR THE RESPONDENT 4

ANURADHA MISHRA

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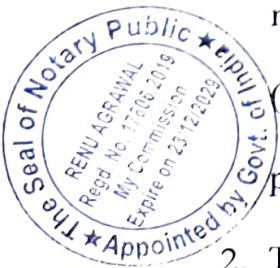
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COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO 4
(MADHYA PRADESH PUBLIC SERVICE COMMISSION) IN
THE ABOVE SAID PETITION

MOST RESPECTFULLY SUBMITTED:

I, Sushant Puneekar, S/o: Sh. Late Dr. L. K. Puneekar aged about 53 years, working as Deputy Examination Controller in Madhya Pradesh Public Service Commission presently at New Delhi do hereby solemnly declare and affirm:

1. That the counter affidavit is filed on behalf of Respondent no. 4, i.e. Madhya Pradesh Public Service Commission (hereinafter referred to as "answering respondent") in the present Writ Petition.



2. That the averments and contentions made in synopsis, list of dates and grounds of the writ Petition are denied in their

entirety, save and except to the extent that they may be specifically admitted hereinafter.

3. That the present petition has been filed seeking 27% reservation for the OBC category of candidate in the various recruitment exam conducted by the answering Respondent. That on the basis of Notification no 7-46/2021/AA.Pr./1 dated 29.09.2022 direction was issued that the result of the State Service and various other recruitment examinations be declared in two part, one main for 87% post and other provisional for examination result for 13% post - for which name of 13% of OBC and 13% of unreserved category of candidate shall be declared.
4. That the notification dated 29.09.2022 was issued considering the interim order passed by Hon'ble High Court in W.P. 5901 of 2019 and other related matter.
5. That the present writ petition is premature and the issue raised in the present matter is pending consideration before the Hon'ble High Court. Therefore the present Writ Petition does not deserve indulgence of this Hon'ble Court. Issue pertaining to violation of fundamental right of the Petitioners are premature at this stage , while the leading/main cases are pending for adjudication. It is



most respectfully submitted that the present Writ Petition is devoid of merits and deserves to be dismissed.

PRELIMINARY OBJECTION

6. It is humbly submitted that the Answering Respondent No.4 is merely recruiting agency which selects candidates as per the conditions laid down by the Employer/State of M.P. in the requisition letter and recommends the name of the selected candidates to the to the Department of the State of M.P.

7. It is humble submitted that the present petition is not maintainable at this stage because the petitioner never challenges the interim order dated 13.07.2021 passed by Hon'ble High Court in Writ Petition No. 5901 (connected matter), by which Hon'ble Court directed the answering respondent to proceed with the process of the selection and publish the list of all categories including the OBC seats upto 14%, where, in paragraph 6 it was states as under-



“Para 6- Having regard to the submissions made and considering that the hearing and final disposal of the writ petitions may take time, we are inclined, for the time being, to modify the order dated 31.1.2020 passed in WP No.5901/2019, allowing the State Government as well as Public Service Commission to go ahead with the process of selection and publish the list of all the categories including reservation to the extent of only 14% to the

candidates of OBC and proceed accordingly to issue appointment on the posts of Medical Officers. It is further directed that a stipulation may be made in the appointment order of the candidates appointed against the posts reserved for EWS Category that their appointment shall be provisional, subject to final outcome of the writ petitions.”

COMPLIANCE OF THE DIRECTION GIVEN BY RESPONDENT NO.1 STATE OF MADHYA PRADESH

8. That in pursuant to the requisition letter dated 29.09.2022 from the office of Respondent 1, answering respondent has issued /declared the result only on the 87% of the post advertised and hold the result of 13% of seats come under the unreserved category. The result of unreserved 13% post will depend upon the final adjudication.
9. That the Hon’ble High Court by issuing the direction of appointment on the 87% post just to follow the doctrine of reasonable classification and Intelligible differentia. It is submitted that the instruction dated 29.09.2022 has been issued considering the interim order dated 13.07.2021 passed by Hon’ble High Court in Writ Petition No. 5901 (connected matter), whereby the Respondents were directed to proceed with the process of selection. There is no dispute with respect to advertisement pertaining to 87% of the post, the issue for consideration before Hon’ble High Court is with respect to reservation policy effecting 13% of post. There is



no dispute with respect to appointment to 87% of vacant post thereby creating a different class. In the present case, candidate whose appointment can be proceeded without adversely effecting substantive right of other candidate can be proceeded should not be allowed to suffer.

10. That Hon'ble High Court has furthered the principal of justice, and Hon'ble High Court has followed the utilitarian principal. John Rawl in his "A Theory of Justice" advocated for theory of "*veil of ignorance*". It encapsulates:

The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain. For given the circumstances of the original position, the symmetry of everyone's relations to each other, this initial situation is fair between individuals as moral persons, that is, as rational beings with their own ends and capable, I shall assume, of a sense of justice. The original position is, one might say, the appropriate initial status quo, and thus the fundamental agreements reached in it are fair. This explains the propriety of the name "justice as fairness": it conveys the idea that the principles of



justice are agreed to in an initial situation that is fair. The name does not mean that the concepts of justice and fairness are the same, any more than the phrase “poetry as metaphor” means that the concepts of poetry and metaphor are the same.

11. That the only objective of the Respondent to issued the notification dated 29.9.2022 to come up with a way out to proceed with the recruitment process which is pending since last 2-3 years, otherwise the interest of majority of the candidates will suffer, who had appeared in Preliminary Examinations held in 2020 & 2022 and are still waiting for their appointments in various State Administrative Services.
12. That the only objective of the Hon'ble Court to issue such direction to smooth integration of the candidate and to minimize the pendency heard-burning faced by hundreds of candidates who are only waiting to know their fate since last about 2/3 years, without any reason. At least 87% of the candidates has benefited by issuance of their appointment orders in the light of impugned order.
13. It is pertinent to mention here that the only 87% of advertised posts has filled up based on the reservation computed @ 16% for SC candidates, 20% for ST candidates and 14% for OBC candidates. The it was clearly mentioned in the impugned order and statement of the answering respondent that in respect to the remaining 13%

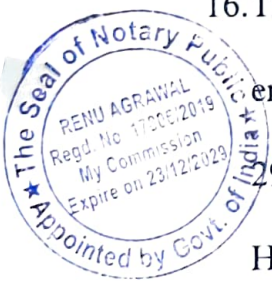


vacancies two separate select lists shall be prepared; one being equal to 13% of vacancies comprising exclusively of OBC candidates and another of 13% comprising of only unreserved candidates.

14. That the issue of petitioner is premature and hypothetical. Once notification passes muster of article 14 it cannot be quashed on hypothetical assumption of petitioner. In any eventuality, eligible SC candidates would be considered against seats vacant due to migration, if writ is allowed against OBC candidates.

15. That in the light of aforesaid paragraphs, it is respectfully submitted that the petitioner should not be granted any relief or interim relief as grounds for interim relief and relief are based upon misinterpretation of law and wrong application of rulings.

16. That is humbly submitted that the instant petition may not be entertained in view of the fact that the notification dated 29.09.2022 has been issued in consonance with order of the Hon'ble High Court. It is further submitted that the petitioner is not entitled to any interim relief and main relief on the basis of plea taken by Petitioner in the instant Petition and therefore, it is most respectfully and humbly prayed that this Hon'ble Court be pleased to dismiss the present Petition filed by the Petitioner herein.



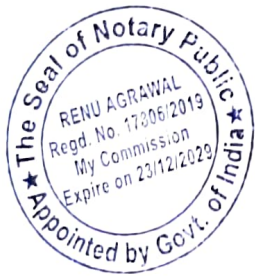
17. That the respondent seeks leave of this Hon'ble Court to appraise the developments took place in due course.

18. That the answering respondents seek further liberty to file additional affidavit in case it is required in due course.

PRAYER

Therefore, keeping in view the facts and circumstances of the present case it most humbly and respectfully prayed before this Hon'ble Court may graciously be pleased to dismiss the present Writ Petition (Civil), and pass any such further order as this Hon'ble Court may deem fit in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.



Dr. Sushant
21/9/22/2021
I identified the deponent who
has signed in my presence

Verification:

Verified at New Delhi on this 08 day of August 2025 that the contents of the above Counter Affidavit from Paras 1 to are true and correct to the best of my knowledge belief, no part of the foregoing Affidavit is false and nothing material has been concealed therefrom.

ATTESTED
NOTARY PUBLIC
(INDIA)

08 AUG 2025

[Signature]
DEPONENT
Dr. Sushant Punekar
Deputy Examination Controller
M.P. Public Service Commission
INDORE (M.P.)

[Signature]
DEPONENT
Dr. Sushant Punekar
Deputy Examination Controller
M.P. Public Service Commission
INDORE (M.P.)