



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPOA No.450 of 2019

Decided on: 13th April, 2023

Santosh Nanta

....Petitioner

Versus

State of H.P. & Ors.

...Respondents

Coram

Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge

¹ *Whether approved for reporting? Yes.*

For the petitioner:

Mr. Vikram Thakur, Advocate.

For the respondents:

Ms. Seema Sharma, Deputy Advocate
General, for respondents No. 1 and 2.

Mr. Surender Sharma, Advocate, for
respondent No.3.

Jyotsna Rewal Dua, Judge

Respondent No.3's selection to the regular post of Drawing Master, reserved for Orthopedically Handicapped General Category, and his appointment as such on 29.02.2008, has been questioned in the instant writ petition instituted on 29.07.2010.

2. Heard learned counsel on both the sides and considered the case file.

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

3. The petitioner, respondent No.3 and others received interview calls in the year 2008 for one post of Drawing Master, reserved for Orthopedically Handicapped General Category. They participated in the selection process. In the result drawn by the official respondents, respondent No.3 emerged successful with 13.57 marks, whereas, the petitioner secured 13.07 marks. Respondent No.3 was accordingly selected and appointed as Drawing Master on 29.02.2008. Two years later, the petitioner assailed the appointment of respondent No.3 on the ground that additional marks given to respondent No.3, for his possessing diploma in Library Science, ought not to have been granted to him as this qualification, possessed by respondent No.3 had no nexus with the post of Drawing Master, for which selection process was undertaken by the respondents.

4. During the course of hearing, learned Deputy Advocate General produced the record and referred to the office letter dated 13/19.02.2008, copy of which has been placed on record, under which, the criteria was laid down for filling up the post in question. As per this criteria, 5 marks were delineated as weightage to be given for additional

qualification (percentage obtained divided by 25). The result (Annexure P-4) prepared by the respondents for the post in question reflects that the marks for additional qualifications possessed by the participants were awarded not only to respondent No.3, but to the other candidates as well. Apart from the marks awarded to the petitioner for possessing diploma in Art & Craft, separate marks were awarded to him for possessing 10+2 qualification. Respondent No.3 (the selected candidate) was not awarded any additional marks for his possessing 10+2 qualification, even though, he did possess the same. He was awarded additional marks for his possessing diploma in Library Science. Award of marks to respondent No.3 for possessing additional qualification was in terms of the criteria for award of marks prepared by the respondents. It is an admitted position that the petitioner has not laid any challenge to the criteria formulated by the respondents for award of marks. In fact, no reference has been made in the writ petition to the criteria laid down by the respondents for awarding marks for filling up the post in question. After participating in the selection process under particular set of terms, it would be too late in the day for the

petitioner to contend that award of marks for possessing additional qualification had no nexus for filling up the post of Drawing Master. In case the petitioner was aggrieved by the selection criteria, he was required to assail the same at the appropriate stage.

5. As already noticed above, respondent No.3 was appointed on 29.02.2008 on the post in question. Even at that stage, no challenge was made to his appointment. This writ petition filed almost two years after the selection and appointment of respondent No.3 as Drawing Master (Orthopedically Handicapped General Category), suffers from unexplained delay and laches.

6. It would be appropriate to refer to a recent decision of the Hon'ble Apex Court, delivered on 28.03.2023, in **Civil Appeal Nos. 2164-2172 of 2023 (Tajvir Singh Sodhi and others Vs. State of Jammu and Kashmir and others)**. In the said case, some candidates, who remained unsuccessful in the selection process, had prayed to quash appointment of selected candidates as Drug Inspectors. Outlining its several authoritative previous pronouncements on the issue, the Hon'ble Apex Court observed that the

Courts recognize that the process of selection involves a high degree of expertise and discretion and that it is not appropriate for Courts to substitute their judgment for that of a selection committee. It would be indeed, treading on thin ice, if the Courts were to venture into reviewing the decision of experts who form part of a selection board. It is not within the domain of the Courts, exercising the power of judicial review to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene. With respect to the contention of the writ petitioners (therein), that the entire selection process was vitiated as the eligibility criteria enshrined in the advertisement was recast without any justifiable reason, the Hon'ble Court adverted to following case law: -

“68 The next aspect of the matter which requires consideration is the contention of the writ petitioners to the effect that the entire selection process was vitiated as the eligibility criteria enshrined in the Advertisement Notice dated 5th May, 2008 was recast vide a corrigendum dated 12th June, 2009, without any justifiable reason. In order to consider this contention,

regard may be had to the following case law:

i) In *Manish Kumar Shahi vs. State of Bihar*, (2010) 12 SCC 576, this Court authoritatively declared that having participated in a selection process without any protest, it would not be open to an unsuccessful candidate to challenge the selection criteria subsequently.

ii) In *Ramesh Chandra Shah vs. Anil Joshi*, (2013) 11 SCC 309, an advertisement was issued inviting applications for appointment for the post of physiotherapist. Candidates who failed to clear the written test presented a writ petition and prayed for quashing the advertisement and the process of selection. They pleaded that the advertisement and the test were ultra vires the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. After referring to a catena of judgments on the principle of waiver and estoppel, this Court did not entertain the challenge for the reason that the same would not be maintainable after participation in the selection process. The pertinent observations of this Court are as under:

"24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

iii) Similarly, in *Ashok Kumar vs. State of Bihar*, (2017) 4 SCC 357, a process was initiated for promotion to Class-III posts from amongst Class-IV employees of a civil court. In the said case, the selection was to be made on the basis of a written test and interview, for which 85% and 15% marks were earmarked respectively as per norms. Out of 27 (twenty-seven) candidates who appeared in the written examination,

14 (fourteen) qualified. They were interviewed. The committee selected candidates on the basis of merit and prepared a list. The High Court declined to approve the Select List on the ground that the ratio of full marks for the written examination and the interview ought to have been 90:10 and 45 ought to be the qualifying marks in the written examination. A fresh process followed comprising of a written examination (full marks - 90 and qualifying marks - 45) and an interview (carrying 10 marks). On the basis of the performance of the candidates, results were declared and 6 (six) persons were appointed on Class-III posts. It was thereafter that the appellants along with 4 (four) other unsuccessful candidates filed a writ petition before the High Court challenging the order of the High Court on the administrative side declining to approve the initial Select List. The primary ground was that the appointment process was vitiated, since under the relevant rules, the written test was required to carry 85 marks and the interview 15 marks. This Court dismissed the appeals on the grounds that the appellants were clearly put on notice when the fresh selection process took place that the written examination would carry 90 marks and the interview 10 marks. The Court was of the view that the appellants having participated in the selection process without objection and subsequently found to be not successful, a challenge to the process at their instance was precluded. The relevant observations are as under:

"13. The law on the subject has been crystalized in several decisions of this Court. In *Chandra Prakash Tiwari v. Shakuntala Shukla*, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In *Union of India v. S. Vinodh Kumar* (2007) 8 SCC 100, this Court held that: "18. It is also well settled that those

candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same (See also Munindra Kumar v. Rajiv Govil (1991) 3 SCC 368 and Rashmi Mishra v. M.P. Public Service Commission (2006) 12 SCC 724)".

69 *It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence."*

7. The exposition of above law is squarely applicable to the facts of the instant case. The selection criteria for the concerned post is not even in question in the instant writ petition. The selection committee is not impleaded as party respondent. The petitioner had participated in the selection

process under the selection criteria which he has now questioned on the alleged ground of the same having no nexus with the post in question. Allegation of malafide do not find place in the petition. The selection and appointment of respondent No.3 pertains to the year 2008, assailed by the petitioner in the year 2010. No explanation for the delay in filing the writ petition has been offered.

For the aforesaid reasons, there no merit in the present writ petition. The same is accordingly dismissed. The pending miscellaneous application(s), if any, also stand disposed of.

Jyotsna Rewal Dua
Judge

April 13, 2023
R. Atal