

**Court No. - 1**

**Case :-** WRIT - A No. - 672 of 2023

**Petitioner :-** Lalita Gupta

**Respondent :-** High Court Of Judicature Allahabad Thru. Registrar  
General And Others

**Counsel for Petitioner :-** Asim Kumar Singh

**Counsel for Respondent :-** Gaurav Mehrotra, C.S.C.

**Hon'ble Ramesh Sinha, J.**

**Hon'ble Subhash Vidyarthi, J.**

1. Heard Ms. Akansha Rajpoot, Advocate holding brief of Sri Asim Kumar Singh, the learned counsel for the petitioner as also Sri Gaurav Mehrotra, the learned counsel for the respondent, Sri Anand Kumar Singh, the learned counsel for the State-respondent and perused the records.

2. By means of the instant writ petition the petitioner has challenged the final select-list dated 12.9.2022 issued in furtherance of Uttar Pradesh Higher Judicial Service Examination 2020 and has prayed for issuing a direction for conducting the interviews again in accordance with the statutory mandate, stipulation in the advertisement and various judgments of the Hon'ble Supreme Court of India.

3. Briefly stated, the facts of the case are that on 17.12.2020 the High Court of Judicature at Allahabad had issued a notification for making selections for filling up 98 vacancies of Addl. District Judges/Addl. Sessions Judges in Uttar Pradesh Higher Judicial Services. The petitioner had applied in pursuance of the aforesaid notification and she was declared successful in the Preliminary Examination as also in the Main Examination.

4. In the Main Examination only 50 candidates were declared to be successful, whereas the number of vacancies was '91'. On

15.7.2022 call-letters were issued to the candidates for appearing for interviews, which were scheduled to be held on 1.8.2022 and 2.8.2022 and the candidates were required to report at 08.15 a.m., which time was subsequently changed to 11.30 a.m. through a notice issued on 31.7.2022.

5. Ms. Akansha Rajpoot, the learned counsel for the petitioner has submitted that as per the Schedule, 25 candidates were to be interviewed on 1.8.2022 and the remaining 25 candidates were to be interviewed on 2.8.2022, however, on 1.8.2022 only 15 candidates could be interviewed. The petitioner has alleged that each candidate was given only 3-7 minutes for the interview.

6. The petitioner has submitted that Rule 18 of the Uttar Pradesh Higher Judicial Service Rules 1975 (hereinafter referred to as 'Rules of 1975') provides as follows:

*"Rule 18. Procedure of Selection-(1) The selection Committee referred to in Rule 16 shall scrutinize the applications received and shall thereafter hold a written examination as prescribed in Appendix (G) for judging the suitability of the candidates. The Committee shall call for interview such of the applicants who in its opinion have qualified for interview after scrutiny and written examination.*

*(1.A) The Selection Committee may hold a preliminary examination for judging the suitability of the candidates to be admitted in the written examination as referred in sub-rule (1). The preliminary examination shall consist of one paper consisting of 100 marks of two hours duration from the syllabus prescribed for the written examination in Appendix "G" of the Rules:*

*Provided that only those candidates shall be treated to be eligible for the main written examination who secure minimum 45% marks in the preliminary examination subject to 20 times of the number of vacancies category-wise i.e. General, Scheduled Castes, Scheduled Tribes and Other Backward Classes.*

*(2) In assessing the merits of a candidate the Selection Committee shall have due regard to his professional ability, character, personality and health.*

*(3) The Selection Committee shall make a preliminary selection and submit the record of all candidates to the Chief Justice and recommend the names of the candidates in order of merit who, in its opinion, are suitable for appointment to the Service.*

*(4) The Court shall examine the recommendations of the Selection Committee and having regard to the number of direct recruits to be taken, prepare a list of selected candidates in order of merit and forward the same to the Governor."*

7. Appendix-G appended to the aforesaid Rules mentions that the suitability of the candidate for employment in the Uttar Pradesh Higher Judicial Service will be tested with reference to his merit, giving due regard to his ability, character, personality and physique.

8. A note inserted at the foot of Appendix-G mentions that:-

*"(i) The candidates securing minimum aggregate 45% marks in the written examination shall be called to appear in the interview subject to maximum thrice the number of vacancies category-wise.*

*The interview shall be in a thorough and scientific manner and shall take any thing between 25 and 30 minutes for each candidates.*

*(ii) The candidates securing minimum 40% marks in the interview shall only be eligible to be included in the select list. The marks obtained in the interview will be added to the marks obtained in the written papers and the candidate's place in the select list will depend on the aggregate of both."*

9. Ms. Akansha Rajpoot, the learned counsel for the petitioner has also submitted that as against 25-30 minutes contemplated for conducting interview of each of the candidates, they were interviewed for 3-7 minutes only, which vitiates the selection held in furtherance of the interviews.

10. *Per contra*, Sri Gaurav Mehrotra, the learned counsel for the High Court of Judicature at Allahabad has opposed the writ petition on three counts. Firstly, he has submitted that the interviews were held on 1.8.2022 and 2.8.2022 and the instant

petition has been filed on 19.1.2023, after the final result was published on 12.9.2022. His submission is that the writ petition has been filed after an unreasonable delay and the same is liable to be dismissed on the ground of laches. Secondly, he has submitted that the appointment-letters have already been issued to the selected candidates, whose names find place in the final result published on 2.9.2022 and in case the writ petition is allowed and the final select-list is quashed, it will affect the appointed persons adversely. In such circumstances, the selected candidates are necessary parties to the writ-petition and as all the selected candidates have not been impleaded as opposite parties, the writ petition suffers from the defect of non-joinder of necessary parties. The third submission of Sri Mehrotra is that the petitioner has made a bald assertion that candidates were not interviewed for sufficient length of time, without any particulars to substantiate her case and to establish as to what prejudice was caused to the petitioner by the duration of her interview.

11. We have considered the aforesaid facts and circumstances of the case and submissions made by the learned counsel for the parties.

12. As is evident from the facts stated in the writ petition itself, the petitioner appeared for the interview on 1.8.2022 and immediately after being interviewed she came to know that she had been interviewed for a duration which, as per her, was not as per the provisions contained in the Rules of 1975, yet she elected not to challenge the interview process, rather she waited for declaration of the final result of selection, apparently under a hope that the result of the interview would be favourable to her. The final select-list was published on 12.9.2022, which did not contain the name of the petitioner and it is only thereafter,

that she filed the writ petition on 18.1.2023.

13. It appears that although the petitioner was aware that the interview was not conducted in accordance with the Rules, as alleged by her, the petitioner took a calculated chance of her being successful in the interview and chose not to challenge the selection process till after issuance of the final select list. Having taken such a chance and having elected not to challenge the process of interview before issuance of the final select-list, the petitioner cannot be allowed to turn around and challenge the selection process after publication of the final select list by alleging that the interviews were not held in accordance with the Rules.

14. In **Madan Lal v. State of J&K**, (1995) 3 SCC 486, the Hon'ble Supreme Court held that: -

*“9.....Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.”*

15. In **Union of India v. S. Vinodh Kumar**, (2007) 8 SCC 100, the Hon'ble Supreme Court held that: -

*“19. In Chandra Prakash Tiwari v. Shakuntala Shukla, it was held: (SCC p. 148, para 32)*

*“32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status — the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhavan pertaining to the doctrine of estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not*

*bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in Om Prakash Shukla v. Akhilesh Kumar Shukla a three-Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise.”*

*It was further observed: (SCC p. 149, para 34)*

*“34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not ‘palatable’ to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.”*

16. The final select-list was issued on 12.9.2022 and appointment-letters in furtherance of the final select-list have already been issued and posting orders have also been issued. The selected candidates having been appointed would have joined their duties. The writ petition filed seeking quashing of the select-list, without impleading all the selected persons who have thereafter been appointed and have joined their duties, certainly suffers from the defect of non-joinder of necessary parties.

17. In **Rashmi Mishra v. M.P. Public Service Commission and ors.**, (2006) 12 SCC 724, where 17 candidates had been selected and only two candidates had been impleaded purportedly in the representative capacity, the Hon'ble Supreme Court held that :-

*"15. In the aforementioned situation, all the seventeen selected candidates were necessary parties in the writ petition. The number of selected candidates was not large. There was no difficulty for the appellants to implead them as parties in the said proceeding. The result of the writ petition could have affected the appointees. They were, thus, necessary and/or in any event proper parties."*

18. The Hon'ble Supreme Court concluded that as all the selected candidates were not impleaded as parties in the writ petition, no relief can be granted to the appellant.

19. Examining the facts in the present case, in the light of the law laid down by Hon'ble the Supreme Court it is apparent that the interviews were held on 1.8.2022 and 2.8.2022, whereas the final select-list was published on 12.9.2022. Thereafter, the selected candidates have already joined their duties. The writ petition has been filed without impleading the selected candidates. Till issuance of the final select-list the petitioner did not make a challenge to the selection process alleging that she was not given sufficient time during the interview, although this became known to her immediately after she appeared in the interview. Apparently the petitioner waited till publication of final select-list in a hope that she would get selected. Thus, the petitioner took a calculated chance of being successful in the interview, but when the result was not favourable to her, she has challenged the select-list. Apparently till issuance of the final select-list the petitioner was not aggrieved by having given insufficient time in the interview and she has acquiesced with the aforesaid situation.

20. In view of the aforesaid discussion we do not find any reason to entertain the writ petition filed by the petitioner challenging the select-list issued on 12.09.2022.

21. The writ petition is accordingly **dismissed**. There will be no order as to costs.

(Subhash Vidyarthi, J.) (Ramesh Sinha, J.)

**Order Date :- 25.1.2023**

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