

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.10857/2009**

% **Date of Decision: 10.05.2010**

Rakesh Kumar Petitioners
Through Mr.K.Venkatraman, Advocate.

Versus

The Chairman, Staff Selection Commission & Respondents
Anr.
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner has impugned the order dated 4th May, 2009 passed by Central Administrative Tribunal, Principal Bench in O.A No.1968/2006 titled as Rakesh Kumar v. Chairman, Staff Selection Commission dismissing the original application of the petitioner challenging the selection to the post of Assistant Archeologist and seeking a direction to the respondent to appoint the petitioner on the post of Assistant Archeologist on the ground that he is fully qualified for the said post.

The petitioner had applied for the post of Assistant Archeologist which was advertised in the employment news by the Staff Selection Commission. 56 posts were advertised and the appointment to the post of Assistant Archeologist were made on the basis of interview of the candidates.

The petitioner had challenged the process of selection on the ground that many of the candidates were less qualified to the applicant and selection only on the basis of the interview was contrary to the law laid down by the Supreme Court and the High Court.

The petitioner asserted that he has a degree of Master of Philosophy (History) from Kurukshetra University and he had studied four papers of Archeology in his Post Graduate course. He also alleged that he participated in the national workshop on computer applications in Archeology. He also contended that he obtained a Post Graduate diploma in Archeology from the Institute of Archeology and he also participated in various training programmes.

The post of Assistant Archeologist which was advertised prescribed the educational qualifications which are as under:-

Educational Qualification:-

Masters Degree in Ancient or Medieval Indian History from a recognized University or equivalent, or,

Post Graduate diploma in Archeology from the institute of Archeology or equivalent;

Desired qualification:-

Experience in archeological field work for a minimum period of one year.”

On the basis of the applications received, candidates were interviewed. The petitioner also participated in the interview and the result of the interview was published on 19th May, 2006, however, the petitioner was not selected. The petitioner challenged his own selection only on the basis of interview relying on *Indra Prakash Gupta v. State of Jammu & Kashmir & Ors*, 2004(5) Scale 90 and *Satpal and Ors v. State of Haryana & Ors*, 1995 Suppl. (1) SCC 206 contending that not more than 25% marks should be kept for the interview. The petitioner also asserted that candidates who had done only one year diploma in Archeology had been selected by the respondent. The petitioner also alleged that the relatives of the Director, Archeological Survey of India had been appointed. Selection process was also challenged on the ground that only 42 posts out of 66 posts have been filled up and only 56 vacancies have been notified.

The petition was contested by the respondent contending inter-alia that petitioner appeared in the interview being fully aware of the selection process that the selection is based only on interview and if he has not been selected he could not challenge the process of selection. Regarding not more than 25% weightage for the interview it was contended on behalf of respondent that since there was no written examination or any other process of selection, selection on the basis of interview only could not be challenged by the petitioner. The respondent also distinguished the judgments relied on by the petitioner on this ground. Regarding not filling of the posts it was contended that 28 posts had been advertised for general category and all the posts of general category in which the petitioner had also applied being a general category candidate has been filled up and some of the posts have not been filled up in the reserved category as suitable candidates were not available.

The pleas and contentions of the petitioner of not selecting the suitable candidate was also contested on the ground that the minimum educational qualification was one year post graduate diploma and consequently the petitioner could not contend that persons not having minimum educational qualification has been selected, as persons with one year diploma were selected.

The Tribunal after hearing the pleas and contentions of the parties has repelled the contention of the petitioner. Reliance was placed on *Union of India v. S.Vinodh Kumar & Ors*, (2007) 8 SCC 100 holding that a candidate who had taken part in the selection process knowing fully well the procedure laid down there, is not entitled to question the same. Reliance was also placed by the Tribunal on *Munindra Kumar v. Rajiv Govil*, 1991(3) SCC 368 and *Rashmi Mishra v. M.P.Public Service Commission*, (2006) 12 SCC 724. In *Union of India Vs S.Vinodh Kumar* the Supreme Court in para 18 & 19 at page 107 had held as under:

“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 *Munindra Kumar v. Rajiv Govil*, (1991) 3 SCC 368.) (See also *Rashmi Mishra v. M.P. Public Service Commission*, (2006) 12 SCC 724.)

19. In *Chandra Prakash Tiwari v. Shakuntala Shukl* (2002) 6 SCC 127, 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*¹³ 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.”

In the circumstances, the findings of the Tribunal that the petitioner cannot be permitted to challenge the process of selection after participating in the same and impugning it after he has not been selected cannot be faulted. The petitioner shall not be entitled for any relief in the facts and circumstances and he cannot be permitted to contend that the selection to the post of Assistant Archeologist is vitiated.

The Tribunal distinguished the case of Praveen Singh v. State of Punjab (Supra) and relied on Mahesh Kumar and Anr v. Union of India and Ors, 151 (2008) DLT 353 to contend that the authority which is making recruitment is fully entitled to evolve its own procedure for selection and it cannot be said that the selection made solely on the basis of an interview would have so much of element of subjectivity that such a selection would be unreliable. The Tribunal noticed that if the selection is in an academic course it would be more meaningful if it is based on written test, however, the same could not be said about the selection for a post in the Government or under some other organization. The Tribunal also considered various judgments of Supreme Court and distinguished the same and noticing that in the

case of petitioner the mode of selection was not written examination and that for the post of Assistant Archeologist the selection was made through interview only and thus the selection solely by interview could not be held to be contrary to any provisions in the recruitment rules for the post or contrary to anything stated in the advertisement. The Tribunal also repelled the contention that the weightage of more than 25% to the interview could be given. Since there was no written examination, it was held that the weightage to interview could not be restricted to 25% of marks. The Division Bench of this Court in the case of Mahesh Kumar & anr. vs Union of India & ors, LPA no. 346 of 2008 decided on 12th March, 2009 had approved the selection of candidates for the post of Security Assistant Grade –II in the Rajya Sabha Secretariat on the basis of minimum 50% marks in the interview though the selection process involved written examination, physical examination and physical efficiency test.

The learned counsel for the petitioner has contended that the selection process is tarnished on account of relatives of the employees of the Director, Archeological Survey of India being employed, however, the learned counsel for the petitioner is unable to give any specific instance where any of the persons selected is a relative of the employees of Director General of Archeological Survey of India and/or he or she does not have minimum educational qualification required for the

selection. In the circumstances, the plea of malafides cannot be accepted.

The learned counsel for the petitioner also made a half hearted attempt regarding not filling of the posts. The learned counsel, however, has not been able to deny that there are 28 unreserved posts and all the posts have been filled. This is also not disputed that the petitioner had applied for unreserved posts. The plea of the learned counsel for the respondent that the reserved posts could not be filled on account of unavailability of suitable persons cannot be repelled. Consequently, on account of selection of only 28 candidates for the post of Assistant Archeologist, the entire selection process cannot be held to be vitiated.

The learned counsel for the petitioner is also unable to give a single instance of a person who has been selected to the post of Assistant Archeologist though not having the minimum educational qualification. In the circumstances, merely on the basis of his educational qualification, the petitioner cannot contend that the selection process is vitiated or that he is more suitable for selection as this Court does not have to sit over the decision of the selection body in the facts and circumstances.

In the totality of facts and circumstances, the learned counsel for the petitioner has not been able to make out any ground on the basis of which it can be held that the order of the Tribunal suffers from such illegality or irregularity or such perversity which shall necessitate any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is, therefore, without any merit and it is dismissed.

ANIL KUMAR, J.

MAY 10, 2010

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MOOL CHAND GARG, J.