

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

Reserved on:25.09.2023
Pronounced on:02.11.2023

LPA No.3/2019
CM No.705/2019[1/2019]

J&K Service Selection Board,
Sehkari Bhawan, Jammu,
through its Chairman

.....Petitioner(s)

Through: Mr. Raman Sharma, AAG
Vs.

1. Bharat Vijay, S/o Parshotam Lal,
R/o Bhor Camp, Tehsil & District
Jammu.

..... Respondent(s)

2. State of Jammu & Kashmir,
through Commissioner/Secretary,
Public Works Deptt.,
J&K Civil Sectt., Jammu.
3. Chief Engineer,
Public Works Deptt. (R&B),
Srinagar
4. Roohi Akhter,
D/o Ghulam Mohi-ud-din Shah,
R/o Malimasjid, Srinagar.
5. Mehmooda Bano,
D/o Ghulam Mohd. Shah,
R/o Chew Ullar Distt. Pulwama.
6. Balqees Amin,D/o Mohd. Amin Joo
R/o Wuyan District Pulwama
7. Rafiq Akhter D/o Ali Mohd Dar
R/o Shalimar District Srinagar.
8. Khalida Jan D/o Mohd Yousuf
R/o Hergam Shopian.
9. Suhail Majid Shah,
S/o Abdul Majid Shah
R/o Qazigund, Anantnag.
- 10.Beig Ghulam Jeelani,
S/o Ali Mohd Beig
R/o Buchoo, Pulwama
- 11.Shoukat Ahmed Wani
S/o Gh. Ahmed Wani
R/o Padgampora, District Pulwama

12. Khurshid Ahmed Dev
S/o Ali Mohd Dev
R/o Authsu Kalan, District Budgam
13. Shoukat Ahmed Reshi,
S/o Ab. Rehman Reshi
R/o Chatripora District Pulwama
14. Neelofar Banoo
D/o Gh. Mohd Rather
R/o Kaloosa Bandipora
15. Gurmeet Kour D/o Shamsheer Singh
R/o 288, Adarsh Enclave, Sec.1,
Trikuta Nagar, Jammu
16. Kingpal Singh S/o Gurbaksh Singh
R/o Tral District Pulwama
17. Nazima Rashid
D/o Peerzada Abdul Rashid
R/o Zahispora Hawal,
District Srinagar
18. Jawahara Akhter,
D/o Gh. Nabi Rather,
R/o Peth Dialgam District Anantnag
19. Rafiq Akhter,
D/o Abdul Ahad Khan,
R/o Iqbal Colony, Tral District
Pulwama
20. Tasleema Jabeen
D/o Gh. Mohd. Dar
R/o Kreeri Dooru, District Anantnag
21. Shakeela Akhter,
D/o Ab. Salam Bhat
R/o Trali Payeen, District Pulwama
22. Afroza Bano D/o Gh. Rasool Wani
R/o Awantipora District Pulwama
23. Tabasum Nazir
D/o Nazir Hussain Kawa
R/o Mukadal District Srinagar
24. Basanti Dhar D/o P.N. Dhar
R/o 24, Sec.1A, Trikota Nagar,
Jammu (District Anantnag)
25. Ajazul Qadir Batloo
S/o Gh. Qadir Batloo
R/o Zainakot, District Srinagar
26. Fatima Akhter,
D/o Abdul Ahad Lone
R/o Akhran District Anantnag
27. Javeed Ahmed Chadroo
S/o Gh. Rasool
R/o Padgampora District Pulwama

28. Abul Alaa Tak
S/o Zahood Ahmed Tak,
R/o Gopalpora Wathpora
District Budgam
29. Tasleema Jan
D/o Abdul Salam Ahanger
R/o Ratnipora District Pulwama
30. Rabia Wani D/o Abdul Gani Wani
R/o Charapusharief District
Budgam
31. Tabasum Sajad Bhat
S/o Gul Mohd Bhat
R/o Nowgam Kutha District
Anantnag
32. Murifat Hussan Qureshi
S/o Peer Abdul Aziz
R/o Wandhama Ganderbal.
33. Kailash Kour D/o P.P. Singh
R/o Rangreth District Budgam
34. Rubia Jan D/o Ab. Rashid Dar
R/o Bogund District Kulgam
35. Sheeraz Ahmed Bhat
S/o Gh. Nabi Bhat
R/o Noorpora District Pulwama
36. Zanaab Rashid D/o Ab. Rashid Bhat
R/o Lawdara District Bandipora

Proforma Respondents

Through: Mr. R.K.S. Thakur, Advocate

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

JUDGMENT

(Tashi Rabstan – J)

1. This Letters Patent Appeal is directed against the judgment dated 22.11.2016 delivered by the learned Single Judge in SWP No.1157/2008, whereby the learned Single Judge while disposing of the writ petition directed the Chairman, J&K Service Selection Board to hold fresh interview of the writ petitioner and thereafter take a decision with regard to selection of writ petitioner.

2. The facts-in-brief as gathered from the appeal file are that pursuant to advertisement notice dated 03.07.2007 issued by the J&K Service Selection Board, the writ petitioner applied for the post of Draftsman Civil, Public Works Department, Division Kashmir. The prescribed criterion for selection was 70 marks for qualification and 30 marks for interview. The writ petitioner obtained 48.22 marks for his qualification out of 70 marks. The select list was published on 08.12.2007 vide which 34 candidates were selected under the open merit category, however, the writ petitioner was not selected. He made an application under the Right to Information Act seeking to provide the marks given to the selected candidates as well as to the wait list candidates. When there was no response on behalf of writ respondents, the writ petitioner filed SWP No.320/2008 which came to be disposed of on 27.03.2008 with a direction to J&K SSB to supply the information as sought for. Accordingly, the J&K SSB supplied the information in respect of 34 selected candidates which revealed that the selected candidates were awarded marks in the viva-voce between 19.33 to 29 marks, whereas the writ petitioner was awarded 5.67 marks in the viva-voce out of 30 marks. Accordingly, the writ petitioner filed SWP No.1157/2008 seeking to quash the select list dated 08.12.2007 for the post of Draftsman Civil, Division Cadre Kashmir and also to appoint the petitioner as Draftsman Civil with all consequential benefits.

3. The learned Single Judge, while disposing of the writ petition vide judgment dated 22.11.2016 delivered in SWP No.1157/2008, passed the following order:

“In the present fact situation of the case, I deem it appropriate to direct the respondent No.3 to hold a fresh interview of the petitioner by taking into account the fact that the selected candidates have been awarded marks in the range of 19.33 to 29

marks and thereafter to take a decision with regard to selection of the petitioner on the post in question. Needless to state that, in case, the petitioner is found entitled for selection to the post in question, he shall also be entitled to all consequential benefits. Let the aforesaid exercise be carried out within a period of four months from today. It is made clear that this Court has not expressed any opinion on the merits of the case.”

4. Against this judgment of the learned Single Judge, the present appeal on behalf J&K Service Selection Board came to be filed.

5. Heard learned counsel appearing for the respective parties, considered their rival contentions and also perused the appeal file.

6. In order to meet the ends of justice and to understand broader perspective of the controversy as regards writ petitioner and other similarly placed candidates, this Court vide order dated 14.05.2019 directed to the J&K Service Selection Board to provide the following information on affidavit:

“1) Names and details of the members constituting the Interview Committee.

2) Number of candidates beyond the first 34 selected, who have been given marks between 5 & 15 in the interview and their placement in the overall merit.

3) Whether the academic achievements and the merit obtained in academics by the candidates appearing before the Committee were made known to the Committee at the time of interview.”

7. Accordingly, the affidavit came to be filed on 18.09.2019, a perusal whereof reveals that there were other candidates too who could not be selected but were given 48 or more points in the basic qualification. One such candidate is Sanjay Kumar in Open Merit who was given 50 points in basic qualification and 6 points in viva voce. Similarly, one Imtiyaz Ahmad Khan in Open Merit was given 52 points in basic qualification and 11 points in viva voce but could not be selected. One Sushma Dhar in Open Merit was given 46.52 points in basic qualification and 12.33 points in viva voce, even she too could not be

selected for the post-in-question. Therefore, in our opinion, it would be wrong to allege that the selection committee was biased towards the writ petitioner in according less mark in viva voce. Further, it would be unfair and unjust if only the writ petitioner is allowed for fresh interview leaving other candidates who were having more points in the basic qualification than the writ petitioner. Otherwise too, the select list was issued in December 2007 and now about sixteen years are going to elapse and certainly the new members have taken over the board. Therefore, at this stage it would not be in the fitness of things to allow the writ petitioner for fresh interview.

8. Further, the Apex Court in a catena of judgments have held that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful and would be deemed to have waived their right to challenge the procedure of selection. What is held by a three-Judge Bench of the Apex Court in paragraphs 11 and 12 in the case of *Ashok Kumar v State of Bihar*, (2016)7 SCC 408, is reproduced hereunder:

“11. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppel would operate.

12. The law on the subject has been crystalized in several decisions of this Court. In *Chandra Prakash Tiwari v. Shakuntala Shukla*, (2002) 6 SCC 127, 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."

The same view was reiterated in Amlan Jyoti Borroah (supra) where it was held to be well settled that candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.

In Manish Kumar Shah v. State of Bihar, (2010) 12 SCC 576, the same principle was reiterated in the following observations :

"16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more 2018:JKLHC-JMU:1058 SWP No. 1755/2005 Page 5 of 7 than 19% marks have been earmarked for viva voce test, the Petitioner is not entitled to challenge the criteria or process of selection. Surely, if the Petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The Petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the Petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the Judgments in MadanLal v. State of J. and K. MANU/SC/0208/1995 : (1995) 3 SCC 486, Marripati Nagaraja v. Government of Andhra Pradesh and Ors. MANU/SC/8040/2007: (2007) 11 SCC 522, Dhananjay Malik and Ors. v. State of Uttaranchal and Ors. MANU/SC/7287/2008: (2008) 4 SCC 171, Amlan Jyoti Borroah v. State of Assam MANU/SC/0077/2009 : (2009) 3 SCC 227 and K.A. Nagamani v. Indian Airlines and Ors. (supra)."

In Vijendra Kumar Verma v. Public Service Commission, (2010) 1 SCC 150, candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. The appellants had appeared in the selection process and after participating in the

interview sought to challenge the selection process as being without jurisdiction. This was held to be impermissible.

In *Ramesh Chandra Shah v. Anil Joshi*, (2013) 11 SCC, candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that :

"18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome."

In *Chandigarh Administration v. Jasmine Kaur* (2014) 10 SCC 521, it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In *Pradeep Kumar Rai v. Dinesh Kumar Pandey* (2015) 11 SCC 493, this Court held that :

"Moreover, we would concur with the Division Bench on one more point that the appellants had 2018:JKLHC-JMU:1058 SWP No. 1755/2005 Page 6 of 7 participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted."

This principle has been reiterated in a recent judgment in *Madras Institute of Development v. S.K. Shiva Subaramanyam*, (2016) 1 SCC 454."

9. Therefore, in view of what has been discussed above, we deem it proper to allow the appeal. Accordingly, the appeal is allowed and the judgment of the learned Single Judge is set aside. Consequently, the writ petition filed by the

writ petitioner shall stand dismissed. Connected CM(s), accordingly, stands disposed of.

Jammu
02.11.2023
(Anil Sanhotra)

(Rajesh Sekhri)
Judge

(Tashi Rabstan)
Judge

