

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

Reserved on : 06.06.2024

Pronounced on: 11.07.2024

WP(C) No.2281/2023

1. Shakeel Ahmad Mir (Age: 53 years)
S/o Wali Mohammad Mir,
R/o Inder, Pulwama.
2. Bashir Ahmad Mantoo (Age: 53 years)
S/o Abdul Gani Mantoo
R/o Kesrigam, Kakapora, Pulwama.
3. Bashir Ahmad Khanday (Age: 59 years)
S/o Assadullah Khanday
R/o Bamnoo, Pulwama.
4. Ghulam Mohammad Kully (Age: 54 years)
S/o Abdul Ahad Kully
R/o Liter, Crawi, Pulwama.
5. Mohammad Dar (Age: 54 years)
S/o Abdul Ahad Dar
R/o Wagar Tral, Pulwama.
6. Abdul Rashid Khanday (Age: 58 years)
S/o Ghulam Mohi-ud-Din Khanday
R/o Chandergam, Tral, Pulwama.
7. Waheeda Banoo (Age: 54 years)
D/o Abdul Gani Lone
R/o Awantipora, Tral, Pulwama.
8. Imtiyaz Ahmad Ganie (Age: 54 years)
S/o Ghulam Hassan Ganaie
R/o Arihal, Pulwama.
9. Sakeena Akhter (Age: 52 years)
D/o Ghulam Mohammad Wani,
R/o Dursoo, Pulwama.
10. Mushtaq Ahmad Malik (Age: 53 years)
S/o Ghulam Ahmad Malik
R/o Malikpora, Pulwama.
11. Mehraj Ahmad Mir (Age: 53 years)
S/o Ghulam Qadir Mir
R/o Aripthal, Tral, Pulwama.

.....Petitioners

Through: Mr. Nissar Ahmad Bhat,
Advocate.

versus

1. Government of Jammu & Kashmir
through Commissioner/Secretary to Govt.,
Education Department, Civil Secretariat,
Jammu/Srinagar.
2. Director School Education,
Kashmir, Srinagar.
3. Chief Education Officer,
Kashmir, Pulwama.
4. Superintendent,
Industrial Training Institute, Pulwama. **...Official Respondents**
5. Fayaz Ahmad Bhat,
S/o Ghulam Rasool Bhat
6. Mohd. Arshid Bhat,
S/o Late Mohd. Ramzan Bhat
7. Shiraaz Ahmad Dar, S/o Nazir Ahmad Dar
8. Manzoor Abdullah,
S/o Mohd. Abdullah Mir
9. Tawseef Ahmad Wani
S/o Mohd. Ramzan Wani
10. Junaid Rashid, S/o Abdul Rashid
11. Aamir Aftab, S/o Mohd. Aftab
12. Danish Sameer Mehraj,
S/o Mehraj Ahmad
13. Farasheed Gaffar, S/o Abdul Gaffar
14. Muzaffar Hussain Mir
S/o Mohd. Hussain
15. Ishrat Ahmad Bhat,
S/o Abdul Rehman Bhat
16. Owain Aziz, S/o Abdul Aziz Dar
5 to 16 residents of District Pulwama. **...Private Respondents**

Through: Mr. Fahim Shah, GA for 1 to 4.
Mr. R.A. Jan, Sr. Adv., with
Mr. M. Syed Bhat, Adv., for 5
to 16.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE M.A. CHOWDHARY, JUDGE**

JUDGMENT

(Tashi Rabstan – J)

1. This petition is directed against the order dated 24.08.2023 passed by the Central Administrative Tribunal, Srinagar Bench in TA No.1382/2021, whereby the learned Tribunal dismissed the TA filed by the petitioners herein holding that no ground is made out to interfere.
2. The facts-in-brief, as gathered from the file, are that the petitioners herein were appointed against different posts of Peon/Orderly, Chowkidar, Safaiwala and Lab Bearer between 1983 to 1990. It is claimed by the petitioners that even after discharging their duties for a considerable period of time, they were not promoted to higher posts. In the year 2008, the Government promulgated the J&K School Education (Subordinate) Service Recruitment Rules, 2008 notified vide SRO 308 dated 16.10.2008. In terms of said rules, Orderlies, Peons, Chowkidars, Safaiwallas along with other similarly situated posts were put in Class VIII of Schedule II-A and modes of promotions were provided for Class VIII posts. Order No.642 dated 06.04.2010 and Order No.2785 dated 20.11.2015 provided that the promotion of Class VIII posts to the Lab Assistant and Junior Assistant shall require qualifying the certificate course in Library and the type test with typing speed of 30 words per minute respectively. Thereafter, in the year 2015, on different dates, the petitioners were promoted on incharge basis against the post of Junior Assistant. Thereafter, when the petitioners failed to qualify the

mandatory typing test, they filed TA No.1382/2021 before the learned Central Administrative Tribunal, Srinagar Bench. However, the learned Tribunal vide order dated 24.08.2023 dismissed the TA holding that no ground is made out to interfere. Hence, the present petition.

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

4. Admittedly, the petitioners are governed by the J&K School Education (Subordinate) Service Recruitment Rules, 2008 notified vide SRO 308 dated 16.10.2008 and Schedule IIA attached thereto clearly provided that for appointment against the post of Junior Assistant, 75% quota of the available vacancies shall be filled up by direct recruitment, whereas 25% quota of the available vacancies shall be filled up from amongst the employees of Class VII and Class VIII having matriculation qualification and shall require to qualify the type test with typing speed of 30 words per minute. If the petitioners were aggrieved of this condition, they were required to challenge the same in the year 2008 itself. However, the petitioners, as per the annexures attached with the file, opted to appear in the typing test. The file reveals that the petitioners were given number of opportunities to clear the typing test, but they failed to make the grade. Even at the time of their promotion as Junior Assistant on incharge basis, they accepted the condition to qualify the mandatory typing test within six months of their promotion on adhoc basis. However, when the petitioners failed to clear the typing test despite providing of number of opportunities, they in the year 2021 filed TA No.1382/2021 before the learned Tribunal seeking to declare the condition prescribed in the recruitment rules as

regards conducting of typing test for Orderlies, Peons, Chowkidars etc. as null and void.

5. 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 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 Borooah 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 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."

6. As regards the contention of petitioners that if for any reason they cannot be given promotion to the post of Junior Assistant, then the respondents can be given direction to promote them against the post of Laboratory Assistant. Since the petitioners have failed to take any such plea before the learned Tribunal, as such they are debarred from taking this plea at this stage.
7. The judgments relied upon on behalf of the petitioners are clearly distinguishable and are not applicable to the facts of present case.

8. Viewed thus, we are not inclined to take a view other than the one taken by the learned Tribunal. This petition is, accordingly, dismissed along with connected MP, if any.

Srinagar
11.07.2024
(Anil Sanhotra)

(M.A. Chowdhary)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No

I pronounce this judgment today in terms of Rule 138(4) of the Jammu and Kashmir High Court Rules, 1999.

Jammu
11.07.2024

(M.A. Chowdhary)
Judge