

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2366/2014

(Shri Swarn Singh s/o Tehalsingh vs. Govt. Of India and three others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Mr. V.G.Wankhede, Advocate for petitioner
Mr. Rohit Deo, Advocate for respondent no.3

CORAM : SMT. VASANTI A. NAIK &
A.M. BADAR, JJ.

DATED : 5th May, 2015.

Heard.

By this petition, the petitioner seeks a direction to the respondent no.2 to allot three grace marks to the petitioner and declare him successful in the 68th Station Officer and Instructors Course in National Fire Service College.

According to the petitioner, the petitioner was required to appear only at the oral examination, in view of the communication dated 29th November, 2013 (Annexure "G" to the petition), but the respondents conducted the written examination. It is stated that the respondent no.3 had given a paper to the petitioner, that was required to be solved within six minutes. However, the paper was snatched from the petitioner at the end of third minute with *mala fide* intention. Since the petitioner has failed by three marks in the oral and practical examination, the petitioner has sought a direction to the respondent no.3 to grant

three grace marks to the petitioner for declaring him successful.

The relief sought by the petitioner cannot be granted in exercise of the writ jurisdiction. Firstly, the learned counsel for the petitioner is not able to point out any rule or provision, by which grace marks could be granted to the petitioner, by the respondents. In the absence of any provision for allotment of grace marks, the petitioner cannot seek a direction to the respondents to allot grace marks to the petitioner. It is case of the petitioner that though petitioner was required to appear only at the oral and practical examination, the petitioner was asked to appear at the written examination and solve the paper. It cannot be said that the petitioner was directed to appear at the written examination as answering a paper within a period of six minutes, as stated on behalf of the petitioner, appears to be a part of the practical examination. Even assuming that the said paper pertains to the written examination, the petitioner is estopped from challenging the action on the part of the respondent no.3 of directing the petitioner to appear at the written examination. A candidate participating in the selection process cannot question the process at a subsequent stage. If, in the view of the petitioner, the written test was not required to be conducted, the petitioner ought not have appeared at the written test and ought to have challenged the action. It would not be necessary to refer to the judgments reported in (2009) 2 SCC 227 ; (2008) 4 SCC 171 and (2011) 1 SCC 150, in this regard. Also, it would be possible for this Court to decide the issue whether the paper was snatched from the petitioner after three minutes, though the petitioner was entitled to avail the time of six minutes to answer the paper, in exercise of the writ jurisdiction. The said issue could be decided only after permitting the parties to tender evidence.

In view of the aforesaid, the Writ Petition is dismissed
with no order as to costs.

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