

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8863 of 2015

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Rakesh Ranjan, aged about 33 Years, son of Shri Dinesh Prasad Das, Resident of :
Goushala Chowk, P.O. & Police Station- Katihar, District - Katihar.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Administrative Reforms Department, Government of Bihar, Patna.
2. The Bihar Public Service Commission through, Secretary, Bihar Public Service Commission, Bailey Road, Patna.
3. The secretary, Bihar Public Service Commission, Baiely Road, Patna.
4. The High Court of Judicature at Patna through, Registrar General, Bailey Road, Patna.
5. The Registrar General, High Court of Judicature at Patna, Bailey road, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajesh Kumar Singh, Advocate.
For the High Court : Mr. Piyush Lal, Advocate.
For the B.P.S.C. : Mr. Sanjay Pandey, Advocate.
For the State : Mr. Kumar Manish, Advocate.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI, ACJ

and

HONOURABLE MR. JUSTICE HEMANT GUPTA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 12-05-2016

The petitioner has sought for quashing of Clause 3 of the
Advertisement for interview, whereby the qualifying marks were
fixed for interview in the midst of selection process.

2. An Advertisement No. 1/2012 (28th Bihar Judicial Service
Competitive Examination, 2012) was published for selection of
candidates for appointment on the post of Civil Judge (Junior Grade).
After *viva voce*, the final result was published on 18th of October,

2014. It is the said result, which is challenged, *inter alia*, on the ground that it is in violation of Rule 15(c) and 19 of the Bihar Civil Services (Junior Branch) Recruitment) Rules, 1955 and the law, which stands settled, in this regard, that the rule of selection cannot be changed in the midst of the selection process.

3. It has come on record that the *preliminary test* was conducted by Bihar Public Service Commission (hereinafter referred to as “the Commission”) on 13th of July, 2013, the result whereof was declared on 23rd of December, 2013. The Commission published an advertisement, in the newspaper, for holding *Mains Examination*. The petitioner appeared in the *Mains Examination*, result of which was published on 22nd/26th of August, 2014. The petitioner is a candidate, who has passed the *Mains Examination*.

4. It has come on record that on 27th of August, 2014, the High Court, while recommending the two Hon’ble Judges for the purpose of conducting *viva voce* test, communicated that there would be minimum percentage of marks for qualifying in the interview, i.e., 35 *per cent* would be required for qualifying in the *viva voce* test. In pursuance of such communication, the candidates were called for interview for *viva voce* test from 8th of October, 2014, till 18th of October, 2014, vide Advertisement, Annexure-5. The Condition No. 3 was specific that as per the direction of the High Court, the minimum

qualifying marks in the interview (*viva voce* test) would be 35 *per cent*. It is in pursuance of such advertisement that the petitioner appeared for interview, but has remained unsuccessful in the result published.

5. It may be stated that subsequently, Rule 15 (c) of the Bihar Civil Services (Junior Branch) (Recruitment) Rules, 1955, that there shall be no qualifying marks for the *viva voce* test stands amended vide notification, dated 3rd of December, 2014, as the amended clause provided that there shall be qualifying marks of 35 *per cent* for the *viva voce* test.

6. It has been brought to our notice that it was on 13th of September, 2014, that the Full Court took a decision to amend Rule 15 (c) of the Rules and the communication to this effect was sent to the State on 21st of October, 2014, and, thereafter, the notification, amending the Rules, was published on 3rd of December, 2014.

7. The sole argument of the learned counsel for the petitioner is that the rules of the game have been changed after selection process was set in motion and, therefore, such change cannot be sustained.

8. On the other hand, learned counsel for the respondents argued that the petitioner is estopped to challenge the qualifying marks since there was a condition in the advertisement itself fixing 35



per cent marks as the minimum qualifying marks for *viva voce*. Once the petitioner was aware of such a condition, he is estopped to challenge such condition after appearing in the interview without any protest. The petitioner was a fence sitter, who took a chance for appearing in the interview, and, having remained unsuccessful, has, now, chosen to dispute the selection process.

9. We have heard learned counsel for the parties and find no merit in the writ petition.

10. There is no change of rules of the game, which have been altered. The only change is fixing minimum qualifying marks for the *viva voce* test. Such condition has been incorporated to ensure that only suitable candidates make it to judicial service. Such a condition is in the interest of better administration of justice and cannot be faulted with. The Statutory rules, though were amended subsequently, yet the fact remains that the petitioner never objected to the qualifying marks having been fixed for the *viva voce* test before appearing in the interview. He is, therefore, estopped from challenging the condition in the advertisement after appearing in the interview and taking a chance.

11. A three judge Bench, in ***Om Prakash Shukla v. Akhilesh Kumar Shukla and others***, reported in ***1986 (Supp) SCC 285***, held that petitioner should not have been granted any relief as he

appeared in the examination without protest. He filed petition after he had perhaps realized that he would not succeed in the examination.

The Court held as follows:-

“24. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the district of Kanpur also. They were not responsible for the conduct of the examination.”

12. Later, in ***Madan Lal and others v. State of J&K and others***, reported in (1995) 3 SCC 486, following the judgment in ***Om Prakash Shukla's*** case (supra), the Court applied principle of estoppel to hold 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. Relevant extract from the judgment reads as under:-

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called



for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. 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. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla 1986 Supp SCC 285 it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

13. In a further judgment, reported as ***Dhananjay Malik and others v. State of Uttaranchal and others, (2008) 4 SCC 171***, the judgment reported in ***Madan Lal's case*** (supra) was followed, when it was observed to the following effect:-

“7. It is not disputed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated

in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

8. *In Madan Lal v. State of J&K (1995) 3 SCC 486 this Court pointed out that when the petitioners appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, 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 writ petitions. This Court further pointed out 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.*

9. *In the present case, as already pointed out, the respondent-writ petitioners herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.”*

14. In ***Manish Kumar Shahi v. State of Bihar and others, (2010) 12 SCC 576***, the petitioner challenged the marks assigned for *viva voce* test. The Court held that the petitioner is not entitled to

challenge the criteria of the process of selection. It was held to the following effect:-

“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 Madan Lal v. State of J&K (1995) 3 SCC 486, Marripati Nagaraja v. Govt. of A.P.(2007) 11 SCC 522, Dhananjay Malik v. State of Uttaranchal (2008)4 SCC 171, Amlan Jyoti Borooah v. State of Assam (2009) 3 SCC 227 and K.A. Nagamani v. Indian Airlines (2009) 5 SCC 515.”

15. Recently, in ***Ranjan Kumar and others v. State of Bihar and others***, reported in (2014) 16 SCC 187, the Court held that a candidate cannot take summersault saying that the procedure, adopted by the Department, was vitiated. The Court held to the following effect:-

“14. The next submission which has been presented before us is that when the respondents had appeared in the interview knowing fully well the process, they could not

have resiled later on or taken a somersault saying that the procedure as adopted by the department was vitiated. In this connection, it is apt to refer to the principle stated in Om Prakash Shukla v. Akhilesh Kumar Shukla 1986 Supp SCC 285. In the said case a three-Judge Bench, taking note of the fact that the petitioner in the writ petition had appeared for the examination without protest and filed the petition only after he realised that he would not succeed in the examination, held that the writ petitioner should not have been granted any relief by the High Court.

15. In this context, we may quote a passage from Madan Lal v. State of J&K (1995) 3 SCC 486 with profit: (SCC p. 493, para 9)

“9. ... 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. In Om Prakash Shukla v. Akhilesh Kumar Shukla 1986 Supp SCC 285 it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

16. In Chandra Prakash Tiwari v. Shakuntala Shukla (2002) 6 SCC 127, the Court observed as follows: (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 seems 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.”

17. In Union of India v. S. Vinodh Kumar (2007) 8 SCC 100, the Court reiterated the principle that 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.

16. In view of the principles of law laid down categorically and unequivocally, the petitioner herein cannot be permitted to dispute the condition of obtaining minimum qualifying marks in the *viva voce* test, when the condition was informed to the petitioner before he appeared in the *viva voce* test.

17. In view of the above, we do not find any merit in the writ application. The same is dismissed.

(Hemant Gupta, J)

I. A. Ansari, ACJ : I agree.

(I. A. Ansari, ACJ)

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