

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 13176 of 2013 (O & M)

Date of decision: 16.02.2016

Vijay Kumar

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Gurdeep Singh, Advocate,
for Mr. Gautam Thapar, Advocate,
for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

Mr. Rajiv Joshi, Advocate,
for the applicant-respondent no. 5.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 96 of 2014

Application for placing on record written statement on behalf
of respondent no. 5 is allowed, subject to all just exceptions.

The same is taken on record.

CWP No. 13176 of 2013

The petitioner seeks quashing of the memo dated 31.01.2013
(Annexure P-5) whereby, the post of Dispensers were advertised for Class
IV employees and the result dated 26.03.2013 (Annexure P-6) wherein, out
of the 38 officials, 36 had appeared and only 7 had secured the required
marks. It is, however, the case of the respondents that 8 officials had
qualified the test. The petitioner also seeks re-conducting of the written

test.

It is the case of the petitioner that he is a class IV employee working under respondent no. 4 since 08.09.1999. He was possessing the qualification of Homeopathic Dispenser but given the charge of the said post without any additional benefits. Reference is made to an order passed by this Court in ***CWP No. 24259 of 2011, Rajpreet Singh vs. State of Punjab*** in which, directions were issued on 23.12.2011 in view of the order dated 01.09.2010 (Annexure P-1) that he be permitted to work as such subject to his verification and his qualification though his engagement was as a class IV employee in the dispensary.

It is the case of the petitioner that a committee was constituted and it verified his qualification and approved the carrying on of his duties. There were few posts lying vacant and he had applied for promotion to the post of a Dispenser, which was not addressed. Vide communication dated 31.01.2013, a letter was written that the syllabus for the test was attached and the employees working in the department to be promoted were to take the written test. The test was conducted on 26.03.2013 and the petitioner had failed in spite of the earlier directions issued by this Court on 23.12.2011. The petitioner had 18 years experience and allegations were raised against respondent no. 3 regarding the conducting of the test and there were mala fides alleged as he wanted to accommodate his brother.

It is pertinent to note that the said respondent, who is the Principal of the Homeopathic Department, has not been impleaded in person though mala fides have been alleged, which was the basic necessity so that the said respondent could have rebutted the said ground. The manner of conducting the test was challenged.

In the written statement filed by the State, the defence taken was that the test was conducted in a transparent manner under the supervision of the Secretary, Health and the result was declared and put on website on the same day. Persons who had applied in pursuance of the advertisement have not been arrayed as party and selection had also been made. Merely because the petitioner has the experience of working on the said post would not give him claim for promotion. He had appeared in the written test and could not make out any grievance as per the Rules.

16 posts were available and 8 persons had been declared as successful and he could not clear the minimum pass marks. The second test was also held to fill up the remaining 8 seats and he had again appeared in the same. The promotion could not be given as per the Rules. It was admitted that Sushil Kumar was brother of respondent no. 3. The written test was conducted under the supervision of Secretary, Health and the process had started on 09.08.2011 and the said respondent no. 3 had only joined in May, 2012. In the additional affidavit filed, it was deposed that in the second test held on 17.06.2014, the petitioner had appeared but again failed and he had submitted a request dated 16.06.2014 (Annexure R-1) that he does not want to proceed with the present case.

The above sequence of events would go on to show that the petitioner has admittedly taken a chance and appeared in two consecutive tests and has failed to make the grade. Thereafter, he has sought to challenge the same, which cannot be permitted in view of the judgment of the Apex Court in ***Madan Lal & others Vs. State of Jammu & Kashmir & others AIR 1995 (SC) 1088*** in which, it has been held 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 concerned respondents 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 concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. 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, that 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 Selection Committee was not properly constituted. In the case of [Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.](#), (AIR 1986 SC 1043), 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.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot

sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.”

The said view was followed in ***Dhananjay Malik & others Vs. State of Uttranchal & others (2008) 4 SCC 171, K.A. Nagamani Vs. Indian Airlines & others 2009 (5) SCC 515 and Manish Kumar Shahi Vs. State of Bihar & others 2010 (12) SCC 576.***

It is also a matter of fact that the persons selected as per Annexure P-6 have not been arrayed as party to defend and only one private respondent no. 5 has been impleaded.

In such circumstances, the writ petition is not maintainable at the instance of the petitioner in view of the above facts. Accordingly, this Court does not feel that there is any scope for interference and the present writ petition is accordingly dismissed.

16.02.2016
shivani

(G.S. SANDHAWALIA)
JUDGE