

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 5527 of 2010 (O&M)

Date of Decision : February 25, 2016

Smt. Kamlesh Devi Petitioner
vs.
State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. D. S. Bali, Senior Advocate
with Mr. Parveen Jain, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

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DEEPAK SIBAL, J. :

Through the present petition, challenge is made to the selection of Social Study Masters (SS Masters), made in pursuance to advertisement dated 20.07.2006 (Annexure P-5).

After hearing counsel for the parties and perusing the record with their able assistance, the uncontroverted facts, which have emerged are that through advertisement dated 20.07.2006, applications were invited by the respondent State for filling up various posts including 247 posts of SS Masters, out of which 117 posts were for the General Category and 27 for

Backward Class-B (BC-B) Category. The petitioner, being a member of BC-B Category, applied for consideration of his candidature under either BC-B or General Category. The applications being large in number when compared to the number of posts advertised, the respondent – Haryana Staff Selection Commission (hereinafter referred to as – the Commission) decided to shortlist the eligible candidates for interview and accordingly, eligible candidates up to eight times the advertised posts were decided to be shortlisted. The criteria, which formed the basis for shortlisting, was also made public through a Corrigendum dated 18.05.2009.

After application of the aforementioned criteria for shortlisting, when the number of eligible candidates was not reaching the figure of eight times the advertised number of posts, through another Corrigendum dated 19.05.2009, which was also made public, the minimum cut-off percentage was lowered. After applying the aforesaid criteria, eight times the number of eligible candidates were interviewed between December 2008 and June 2009 and the result of the same was published on 23.01.2010. In pursuance to the result, appointments were offered in March 2010. As the petitioner was not selected, he has preferred the present petition to challenge the entire selection.

Learned senior counsel appearing on behalf of the petitioner has submitted that as per the advertisement, the selection was to be held after holding a written test followed by interview, but this criteria was changed as in fact, the selections took place only on the basis of interview. According to him, this vitiates the entire selection.

A perusal of the advertisement shows that it was indicated therein that the selection would be conducted on the basis of a written examination or interview. It was nowhere specifically stated that the selection would be based on a written test followed by interview. So as to how the selection was to take place was then specified through Corrigendum dated 18.05.2009, wherein, it was publicly brought to the notice of all that since the number of applications were large in proportion to the number of posts advertised, the respondent Commission decided to shortlist the candidates for interview. The aforesaid Corrigendum is reproduced below for ready reference :-

“CORRIGENDUM

*Notice to the short listed candidates for interview
for the posts of Social Studies Master, Education
Department Haryana Advt. No. 6/2008, CAT No.14*

*Reference Commission's Advertisement No.
6/2006 Category No. 14 dated 20.7.2006 which
was published in the various newspapers for
recruitment to the 247 posts of Social Studies
Master, Education Department, Haryana.*

*Keeping in view the large number of
applications and as per condition of
advertisement, the Commission has decided to
shortlist 8 time eligible candidates of the
advertised posts in the respective category for
interview on the basis of essential academic
advertised qualification i.e. (average %age of BA
and B.Ed) prescribed for the above post. The*

eligible candidates on cut off date i.e. 21.8.2006 will be required to possess the condition of subjects combination i.e. in addition to English in BA a combination of two subjects out of the following i.e. History, Political Science, Economics, Geography, Sociology and Public Administration. The minimum cut off for each category is given below :-

Sr. No.	Category	%age
<u>1.</u>	<u>General</u>	<u>72</u>
2.	SC	66
3.	BC-A	66
<u>4.</u>	<u>BC-B</u>	<u>68</u>
5.	ESM (Gen)	58
6.	ESM (SC)	All eligible
7.	ESM (BC-A)	All eligible
8.	ESM (BC-B)	All eligible
9.	OSP (GEN)	All eligible
10.	OSP (SC)	All eligible
11.	OSP (BC-A)	All eligible

All the short listed candidates with the above mentioned cut off or higher will be interviewed from 16.6.2009 to 19.6.2009 at Canal Rest House Rohtak, Yamunanagar, PWD (B&R) Rest House Ambala Cantt and Rewari and Commission's office, Bays No. 67-70, Sector-2, Panchkula. The eligible candidates are advised to read the above mentioned notice carefully and attend the interview on the aforesaid month as per interview schedule to be published separately and as per dates indicated in the call letter. However, such candidates who do not possess the minimum

cut off for shortlisting under their respective categories are advised not to contact the commission in this regard. Call letters for the interviews for the above mentioned posts are being issued separately. If any candidate who possesses the above mentioned cut off and does not receive the call letter upto 11.6.2009, he/she is advised to contact the Haryana Staff Selection Commission along with original mark-sheets/certificates etc. in support of his/her academic qualifications and proof of having deposited the requisite fee, during office hours on 12.6.2009. After the aforesaid date, no request for issue of duplicate Roll No. will be entertained. The Commission will not be responsible for postal delay in receipt of Roll No. if any.

Use of Mobile Phone, Pager and other electronic device in Haryana Staff Selection Commission during interview is strictly prohibited.

[Emphasis supplied]

A perusal of the above quoted Corrigendum makes it abundantly clear that the selection of candidates, after resorting to shortlisting, would be only on the basis of interview. The interview schedule was also clearly mentioned and other instructions with regard to the interview were also stipulated.

As per the second Corrigendum dated 19.05.2009, the minimum cut-off percentage was lowered but the rest of the terms and conditions were advertised to be the same as per the first Corrigendum

quoted above. The Second Corrigendum dated 19.05.2009 is reproduced below :-

“CORRIGENDUM

Notice to the short listed candidates for interview for the posts of Social Studies Master, Education Department Haryana Advt. No. 6/2008, CAT No.14

Reference Commission's Notice dated 18.5.2009 which published in the Tribune, Indian Express, Amar Ujala and Dainik Bhaskar newspapers on 19.5.2009.

On re-scrutiny of the applications the 8 time cut off percentage in the respective category calling for interview for 247 posts of Social Studies Master, Education Department Haryana in the aforesaid notice shall be substituted as under :-

<i>Sr. No.</i>	<i>Category</i>	<i>%age</i>
<u>1.</u>	<u>General</u>	<u>66</u>
2.	SC	60
3.	BC-A	62
<u>4.</u>	<u>BC-B</u>	<u>65</u>
5.	ESM (Gen)	54
6.	ESM (SC)	All eligible
7.	ESM (BC-A)	All eligible
8.	ESM (BC-B)	All eligible
9.	OSP (GEN)	All eligible
10.	OSP (SC)	All eligible
11.	OSP (BC-A)	All eligible

Rest of the terms and conditions of the notice dated 18.5.2009 will remain the same.

[Emphasis supplied]”

As per the criteria and the schedule made public through the afore-quoted Corrigendums, the interviews took place between December 2008 and June 2009 and on the basis thereof, the merit list was prepared and the selected candidates were offered appointment. The petitioner being one of the candidates, would be deemed to be well aware of the aforesaid developments. In spite of having such knowledge, he laid no challenge thereto. Rather he let the entire selection process come to a logical end and only when he was not selected, did he choose to file the present petition to challenge the entire selection. The petitioner would clearly be estopped by his conduct from doing so and such an opinion of mine would be in line with the law laid down through a catena of judgments both by the Apex Court as also this Court.

In the case of **Madan Lal vs. State of Jammu and Kashmir – 1995 (3) SCC 486**, the Apex Court has 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. Upto 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.”

To the same effect is the decision of the Apex Court in the case of **Dhananjay Malik and others vs. State of Uttaranchal and others** – **2008 (4) SCC 171**, wherein it has been held as under :-

“8. *In Madan Lal vs. 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. In the present case, as already pointed out, the writ petitioners-respondents 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.

9. *In a recent judgment in the case of [Marripati Nagaraja vs. The Government of Andhra Pradesh](#), (2007) 11 SCR 506 at p.516 SCR this Court has succinctly held that the appellants had appeared at the examination without any demur. They did not question the validity of fixing the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process.*

10. *We are of the view that the Division Bench of the High Court could have dismissed the appeal on this score alone as has been done by the learned Single Judge.”*

In **Vinod Kumar vs. State of Haryana and others – 2006 (4)**

SLR 237, a Division Bench of this Court, while upholding a similar

objection of estoppel, has held as under :-

“5. We have thoughtfully considered the submissions made by the learned Counsel for the parties and are of the view that these writ petitions are liable to be dismissed for more than one reason. The advertisement has not placed any embargo on the eligibility of those who have qualified the Certificate Course in Physical Education after qualifying Matric. The change in rule in the year 2001, for admission to the aforementioned course confining admission to only 10+2 pass candidates, cannot constitute a basis for setting aside the selection as the petitioner, who had passed 10+2 examination and thereafter qualified the Certificate Course in Physical Education, has also been made eligible. The Certificate Course passed by the private respondents has been duly recognised. Therefore, we do not find any substance in the first submission of the learned Counsel. The other submission that 50% marks have been allocated to the Viva Voce test can also not be accepted because firstly it would depend on the selection body, the age of the candidate and the requirement of the job, which would determine the criteria to be adopted by the selection bodies. The determination of 50% marks for Viva Voce cannot be held to be arbitrary. By a catena of judgments of the Hon'ble Supreme Court it has now been laid down that merely because 50% marks have been kept for Viva Voce/ would not constitute a basis

for quashing a selection. In the case of [Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors.](#) , various principles have been culled out, which go into the consideration of framing a criteria by the selection bodies. In [Anzar Ahmad v. State of Bihar and Ors.](#) (1984)1 S.C.C. 151, the Hon'ble Supreme Court has gone to the extent of upholding the selections, which have been made on the basis of 100% marks for Viva Voce. However, in that case selection was made by allocating 50% marks for academic qualification and 50% for interview and the selection was upheld. Therefore, there is no substance even in the second contention raised on behalf of the petitioner. Moreover, the petitioner has participated in the selection and having failed he would be estopped by the principle of estoppel to challenge the selection of the private respondents as has been held by the Hon'ble Supreme Court in Madan Lal's case (supra). [Emphasis supplied]"

To the same effect is a Single Bench judgment of this Court, in the case of **Pankaj Sharma and another vs. Secretary, Staff Selection Commission, Panchkula and others** – **C. W. P. 12392 of 2011**, decided on **11.05.2015**, wherein it has been held as under :-

"It is a matter of record that the petitioners have participated in the selection process and there was a lot of gap in between the submission of applications, date of interview and declaration of the result. In case the petitioners had any grievance qua non-disclosure of the

criteria in the advertisement, they could have challenged the advertisement on the ground available to them. Since the petitioners have participated in the entire selection process, therefore, they are estopped from challenging the same. [Emphasis supplied]”

In Satyender vs. Haryana Staff Selection Commission and others – C.W.P. No. 21025 of 2014, decided on 04.11.2014, another Single Bench of this Court has held :-

“Even the submission raised by counsel as regards selection criteria having not been disclosed at the threshold i.e. at the stage of issuance of the advertisement, is without merit. It shall be presumed that the petitioner had read the advertisement dated 14.8.2010 at the stage of submitting his application for the post of Auditor. A grievance, if any, with regard to the criteria having not been disclosed in the advertisement, was required to be agitated on all grounds that may have been available at that stage itself. The petitioner having applied for the post of Auditor in response to the advertisement dated 14.8.2010 and having subjected himself to the process of selection and having remained unsuccessful cannot now be permitted to turn around to raise such a submission.”

The same view has been taken by another Single Bench of this Court in the case of Suresh Kumar and others vs. State of Haryana and others – C. W. P. No. 6485 of 2008, decided on 09.01.2014 as

under :-

“Another reason which disentitles the petitioners to the claim as made by them is that the challenge to the criteria at the stage when the selection has proceeded with in which the petitioners have taken a chance and failed. They cannot be permitted to challenge the criteria at this stage as they should have agitated this cause at the initial stage. Having taken a chance, they cannot now be allowed to turn around and lay a challenge to it as they would be estopped to do so.”

From the aforesaid facts and settled position of law, it is clear that the present petition, at the behest of the petitioner, would not lie on application of the principles of estoppel.

Even otherwise, the petitioner has no case. The entire case of the petitioner is built on a false assumption that the advertisement specified the selection criteria to be on the basis of a written test followed by interview. A close scrutiny of the advertisement does not further the case of the petitioner. It has nowhere been mentioned in the advertisement that the selection would be on the basis of a written test followed by interview or that it would be on the basis of only a written test. The advertisement simply indicates that the selection would be either on the basis of a written test or interview and if that is so, then the respondent Commission was well within its rights to form a selection criteria within the four corners of law.

The right of the Selection Board to frame a selection criteria,

in the absence of there being no statutory prescription otherwise, has been recognised by the Apex Court in the case of **Ramesh Kumar vs. High Court of Delhi and another – 2010 (3) SCC 104** to the following effect :-

“13. Thus, law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum Bench Marks for written test as well as for viva-voce. [Emphasis supplied]”

To the same effect is the judgment of a Single Bench of this Court in the case of **Tarun Rathee vs. State of Haryana and others** - **C.W.P. No. 23557 of 2012**, decided on **30.11.2012**, wherein it was held as under :-

“It is now settled by various judicial verdicts that the recruiting agency can evolve its own criteria for selection in the absence of any statutory mandate, limiting such criteria. If the process of selection and the criteria is provided under the statutory Rules, the same cannot be deviated from by the recruiting authority. No statutory Rules/Instructions has been referred to by the petitioners which would prescribe a criteria for selection or shortlisting of the candidates. In the absence of the same, the discretion is that of the Commission to evolve its own process of

shortlisting and devise its own method for the same. The power of judicial review, no doubt is available to the Court, but that jurisdiction is limited and the Court can only interfere with such decision of the recruiting/appointing authority if the same was illegal or suffered from procedural impropriety or was irrational and that too to the extent that it was in outrageous defiance of logic or moral standards. Interference by the Court would also be permissible in case such a decision is totally arbitrary, unjust and based on malafides. If these traits are absent, the Court would not interfere in the exercise of discretion by the competent authority in laying down the procedure and criteria for selection or shortlisting for restricting the candidates for a reasonable limit. [Emphasis supplied]”

To the same effect is the judgment in the case of **Pearl Sidhu vs. State of Punjab - 2014 (11) RCR (Civil) 221**, wherein it was held as under :-

“28. *It is by now settled by various judicial verdicts that the recruiting agency can evolve its own criteria for selection in the absence of any statutory mandate, limiting such criteria. If the process of selection and the criteria is provided under the statutory Rules, the same cannot be deviated from by the recruiting authority. No statutory Rules/Instructions has been referred to by the petitioners which would prescribe a criteria for selection or shortlisting of the candidates. In*

the absence of the same, the discretion is that of the Commission to evolve its own process of shortlisting and devise its own method for the same. The power of judicial review, no doubt is available to the Court, but that jurisdiction is limited and the Court can only interfere with such decision of the recruiting/appointing authority if the same was illegal or suffered from procedural impropriety or was irrational and that too to the extent that it was in outrageous defiance of logic or moral standards. Interference by the Court would also be permissible in case such a decision is totally arbitrary, unjust and based on malafides. If these traits are absent, the Court would not interfere in the exercise of discretion by the competent authority in laying down the procedure and criteria for selection. [Emphasis supplied]"

As per the selection criteria, the appointments were to be made on the basis of interview preceded by shortlisting of candidates, a process which is legally recognized, to which even otherwise, there is no challenge in the present petition. The petitioner had applied for consideration of his case under the BC-B Category and General Category. The minimum cut-off marks prescribed for coming into the zone of consideration for the General Category were 66% and for the BC-B Category 65%, whereas the petitioner's score admittedly was 49.19%. He was thus clearly not falling within the zone of consideration and this fact came to the knowledge of the petitioner when the second Corrigendum dated 19.05.2009 was made public, to which neither any challenge was made then nor any challenge is

made through the present petition.

In view of the aforesaid discussion and the settled position of law, finding no merit in the present writ petition, the same is hereby ordered to be dismissed with no order as to costs.

(DEEPAK SIBAL)
JUDGE

February 25, 2016
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