

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

CWP No.2775 of 2015

Rakesh Kumar Sharma

... Petitioner

Versus

State of Punjab & others

... Respondents

CWP No.24852 of 2014 (O&M)

Pawan Kumar

... Petitioner

Versus

State of Punjab & others

... Respondents

CWP No.24969 of 2014

Arun Kumar & others

... Petitioners

Versus

State of Punjab & others

... Respondents

Decided on : 09.02.2016

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

Present : Mr.P.S.Khurana, Advocate, for the petitioner
(in CWP-2775-2015).

Mr.Amit Arora, Advocate, for the petitioner
(in CWP-24852-2014).

Mr.K.R.Dhawan, Advocate, for the petitioners
(in CWP-24969-2014).

Mr.Kamal Sehgal, Addl.A.G., Punjab.

G.S. Sandhawalia, J. (Oral)

This judgment shall dispose of CWP-2775-2015, 24852
& 24969-2014, involving common questions of law and facts.
However, to dictate orders, facts have been taken from
CWP-2775-2015 titled *Rakesh Kumar Sharma Vs. State of Punjab
& others*.

The petitioner seeks quashing of the action of the respondents in declining to consider the candidature of the petitioner in Register-A-II, while declaring the result as per Register-C, for the process years 2008, 2012 & 2013, for the post of Punjab Civil Services (Executive Branch) against advertisement No.2 (Annexure P4).

The petitioner, who is an employee of the Government of Punjab and working as Assistant Controller (Finance & Accounts) District Food & Supplies Controller, Bathinda, has pleaded that he was initially appointed as a Clerk in the year 1998 and appointed in the State Account Service (SAS) on 16.07.2003 on the post of Section Officer. Thereafter, he was promoted to the post of Assistant Controller (Finance & Accounts) on 29.07.2011 and is posted in the office of State Accounts Service.

Respondent No.4-Commission, vide advertisement No.2, invited on-line applications from eligible employees working in the State of Punjab in Group A and Group B services, for selection to the posts of Punjab Civil Services (Executive Branch), to be filled through register-A-II and Register-C. The last date for applying, as per on-line application form was 12.05.2014 and the hard copy along with the certificates and documents through proper channel, i.e., through the Head of Department was till 30.05.2014. In pursuance of the advertisement, letter was

circulated in the office of the petitioner on 05.05.2014.

It is the case of the petitioner that though he was performing duties as a ministerial staff, working in the SAS cadre but the Department did not process his case under the same and his application was processed under Register-C. On the declaration of the result and publication in the website, when the name of the petitioner did not figure in the final list in Register-A-II, he came to know that his name had only been considered in Register-C and not in Register-A-II. He, thereafter, submitted a representation and raised his grievance on the ground that he is performing the duties of a ministerial staff and the non-consideration in Register-A-II was detrimental as well as contrary to the classification of a ministerial staff. The representation made on 05.10.2014 is appended as Annexure P8. Resultantly, the action of the respondents in considering his case in Register-C and not in Register-A-II, is the subject matter of dispute.

Counsel for the petitioner has vehemently argued that the duties and functions of the petitioner which he is discharging are that of a ministerial staff and therefore, he was liable to be considered for in Register-A-II, as per the Punjab Civil Services (Executive Branch) 1st Amendment Rules, 2011.

In the considered opinion of this Court, the present writ petition is a classic example where the petitioner having taken the

chance in the category which he had applied for, which is Register-C, has now, chosen to start agitating for something which he was never even a contender. The reason for this change of mind is but obvious. A perusal of the advertisement (Annexure P4) would go on to show that for the 3 years for which the posts were being filled up, there were 25 posts for Register-A-II, in contrast to the 9 posts for Register-C. The vacancy statement is reproduced as under:

1. VACANCIES : -

Sr. No.	Name of Post	Process Year for Register A-II and Register C	No. of posts (Register A-II)	No. of posts (Register C)
1	Punjab Civil Service (Executive Branch)	2008	8	3
2	-do-	2012	10	3
3	-do-	2013	7	3

It is, thus, obvious that the petitioner having not made in the successful list in Register-C, on the declaration of the result on 25.09.2014, suddenly woke up regarding his right of consideration in Register-A-II, of which, he was never an applicant but had given a common examination. It is not disputed that he himself has applied on-line (Annexure P7) for Register-C recruitment process. It is on this basis that he deposited the fees and thereafter, was issued an admit card for the said examination on 30.06.2014 (Annexure P7 Colly.), which clearly depicts the

factum of Register-C. The screening test took place on 06.07.2014, in which also, he willingly sat for a common examination, which was for both-Register-A-II and Register-C. At that point of time, he never raised any grouse, being aware that under which category he had applied and that roll number had been issued for Register-C and being well aware of the post that he was holding, whether it was a ministerial post or a post having greater responsibilities, being the Assistant Controller (Finance & Accounts).

The record has also been produced by the Commission wherein his application dated 14.05.2014, whereby the hard copy was forwarded by the Head of the Department (Treasury & Accounts) Branch, under Register-C, as per the terms of the advertisement. It is, thus, apparent that the petitioner only on having failed to make the cut on the declaration of the result on 25.09.2014, has raised this bogie of a fresh consideration against a category for which he had never even applied and by taking the plea that the post he holds is ministerial in nature and therefore, he is liable to be considered for the same under Register-A-II. The first representation was, thus, made on 05.10.2014 (Annexure P8). If the petitioner had been aggrieved, at any point of time, it was always open to him to have represented, immediately after 30.05.2014, which was the last date after the applications had

been submitted by the Head of the Department.

It is settled principle that a person who has already taken a chance, cannot then turn around and question the process of selection. The Apex Court in **Madan Lal & others Vs. State of Jammu & Kashmir & others AIR 1995 (SC) 1088** 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. 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.**

The present petitions also deserve to be dismissed on an additional ground of concealment as a specific plea has been taken that the petitioners had applied on-line under Register-A-II

but the Department did not process the same and the applications were processed by the Department under Register-C. The on-line application was to be filled by the petitioner himself. The Department had only to forward a hard copy and therefore, the plea which has been taken is clearly only to bring the case within the ambit of consideration for Register-A-II. The facts have already been noticed in detail as to how the petitioners' conduct estopps them from holding out otherwise that they are entitled for consideration under Register-A-II, having applied and sat in the examination, seen the result and then, on being unsuccessful, starting to represent and then, approach this Court and burden it with unnecessary litigation, which is patently dishonest on the face of it. This Court had also been approached belatedly in December, 2014 and February, 2015.

The Apex Court in **M/s Prestige Lights Ltd. Vs. State Bank of India 2007 (8) SCC 449** has also held that where there is suppression of material facts or the facts are twisted and distorted, the petitioner is not entitled to be heard on merits and unscrupulous litigants who abuse the process of Court, are not to be heard. Relevant observations read as under:

“33. It is thus clear that though the appellant-Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the

Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

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35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

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37. For the foregoing reasons, we hold that by dismissing the petition in limine, the High Court has neither committed an error of law nor of jurisdiction. The appellant-Company is not entitled to any relief. Though the respondent-Bank is right in submitting that the appellant has suppressed material facts from this Court as also that it has not complied with interim order passed by the Court and it has, therefore, no right to claim hearing on merits, we have considered the merits of the matter also and we are of the considered view that no case has been made out for interference with action taken by the respondent-Bank or the order passed by the

High Court.”

It is also a matter of fact that on account of the said conduct, the petitioners have also got interim orders, which has resulted in keeping the process of recruitment stalled, successfully, for a period of over a year.

Resultantly, this Court is of the opinion that the writ petitions deserve to be dismissed, with costs of Rs.10,000/- each. The respondent-State shall ensure that the petitioners deposit the amount with the Punjab State Legal Services Authority, within a period of 2 months, from the receipt of a certified copy of this order.

FEBRUARY 09, 2016

sailesh

**(G.S. SANDHAWALIA)
JUDGE**